

MAINE STATE LEGISLATURE

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CHAPTER 203

PROCESS

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SUBCHAPTER I

GENERAL PROVISIONS

Sec.

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§ 551. Writs or precepts sold only to attorneys; indorsement

Clerks of judicial courts, judges and registers of the probate courts, Judges and clerks of the District Court shall not sell or deliver any blank writs or precepts bearing the seal of said courts and the signature of said judges and registers to any person, except one who has been admitted as an attorney and counselor at law and solicitor and counselor in chancery in accordance with the laws of this State. Said judges and registers of said probate courts shall not receive any paper, petition or other instrument pertaining to the practice of law before said probate courts unless it bears the indorsement of an attorney or counselor at law duly authorized to practice before said courts. The above provisions shall not apply to a party in interest in the subject matter in said courts.

R.S.1954, c. 112, § 2; 1959, c. 317, § 116; 1963, c. 402, § 165.

§ 552. Writs of seizin or execution

Writs of seizin or execution and all other processes appropriate to civil actions in which equitable relief is sought may be issued by the court to enforce its decrees.

R.S.1954, c. 107, § 33; 1961, c. 317, § 331.

§ 553. Action commenced when writs made

An action is commenced when the complaint is either filed with the clerk, deposited in the mail addressed to the clerk, delivered to an officer for service or deposited in the mail addressed to such officer.

R.S.1954, c. 112, § 103; 1959, c. 317, § 151.

§ 554. New process after loss or destruction

When in an action pending, the loss or destruction of a writ, complaint or other process after service is proved by affidavit or otherwise, the court may allow a new one to be filed, corresponding thereto as nearly as may be, with the same effect as the one lost or destroyed.

R.S.1954, c. 113, § 13; 1961, c. 317, § 359.

§ 555. Copy of writ for defendant on request; neglect

Every officer, plaintiff or his attorney, having in his possession a writ on which an attachment has been made, shall make and deliver to the debtor or his attorney, if requested and the legal fee tendered, an attested copy thereof, and if he unreasonably refuses or neglects to do so for 24 hours, he forfeits \$5 and \$5 additional for every subsequent 24 hours that he so refuses or neglects. Such forfeit shall be recovered by the debtor to his own use, in a civil action.

R.S.1954, c. 89, § 203; 1961, c. 317, § 235.

SUBCHAPTER II

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Sec.

601. Necessity for.

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603. New indorser or additional deposit required.

§ 601. Necessity for

When the plaintiff, petitioner or complainant in any judicial proceeding is not an inhabitant of the State, every original summons, writ, petition or complaint shall, upon motion of an adverse party made within 20 days of service upon him, be indorsed by a sufficient inhabitant of the State, or security for costs fur-

nished by deposit in court in such amount as the court shall direct. If pending such action, the plaintiff, petitioner or complainant removes from the State, such an indorser shall be procured or security for costs furnished on motion, but if one of such plaintiffs, petitioners or complainants is an inhabitant of the State, no indorser or security shall be required except by special order of the court. The name of an attorney of this State upon such summons, writ, petition or complaint will be deemed to have been placed there to meet the requirements of this section in the absence of any words used in connection therewith showing a different purpose.

R.S.1954, c. 112, § 6; 1959, c. 317, § 119.

§ 602. Liability of indorser

In case of avoidance or inability of the plaintiff or petitioner, the indorser is liable, in a civil action brought within one year after the original judgment in the court in which it was rendered, to pay all costs recovered against the plaintiff. A return upon the execution by an officer of the county where the indorser lives, that he has demanded of the indorser payment thereof, and that he has neglected to pay or to show the officer personal property of the plaintiff sufficient to satisfy the execution, or that he cannot find the indorser within his precinct, is conclusive evidence of his liability in the action.

R.S.1954, c. 112, § 7; 1961, c. 317, § 335.

§ 603. New indorser or additional deposit required

If, pending such action, petition or process, any such indorser or deposit becomes insufficient or such indorser removes from the State, the court may require a new and sufficient indorser or additional deposit, and by consent of the defendant the name of the original indorser may be struck out. Such new indorser shall be liable or such deposit holden for all costs from the beginning of the action. If such new indorser is not provided or security furnished within the time fixed by the court, the action shall be dismissed and the defendant shall recover his costs.

R.S.1954, c. 112, § 8; 1961, c. 317, § 336.

SUBCHAPTER III

FORM AND CONTENT

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- 651. Unknown defendant sued by assumed name.
- 652. Verification of complaint.
- 653. Simulating legal papers forbidden.

§ 651. Unknown defendant sued by assumed name

When the name of a defendant is not known to the plaintiff, the summons may issue against him by an assumed name. If duly served, it shall not be dismissed for that reason but may be amended on such terms as the court orders.

R.S.1954, c. 112, § 5; 1959, c. 317, § 118.

§ 652. Verification of complaint

Verification by the oath of a party for whose benefit the complaint sets forth that it is prosecuted is equivalent to such verification by the plaintiff.

R.S.1954, c. 107, § 12; 1961, c. 317, § 330.

§ 653. Simulating legal papers forbidden

No person shall send, deliver, mail or in any manner cause to be sent, delivered or mailed to any person, firm or corporation any paper or document simulating or intended to simulate a summons, complaint, writ or court process of any kind. Any person violating this section shall be punished by a fine of not more than \$100.

R.S.1954, c. 105, § 9.

SUBCHAPTER IV

SERVICE

Sec.

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§ 701. Rules for service

Service of process shall be as prescribed by rule of court.
R.S.1954, c. 106, § 17; 1959, c. 317, § 77

§ 702. Duty of sheriffs and deputies; fees

Every sheriff and each of his deputies shall serve and execute, within his county, all writs and precepts issued by lawful authority to him directed and committed, including those in which a town, plantation, parish, religious society or school district, of which he is at the time a member, is a party or interested, but his legal fees for service shall first be paid or secured to him; and if they are not when the process is delivered to him, he shall forthwith return it to the plaintiff or attorney offering it; or if sent to him by mail or otherwise, he shall put it into some post office within 24 hours, directed to the person sending it; otherwise he waives his right to his fees before service.

R.S.1954, c. 89, § 159.

§ 703. Service of precepts by constables

A constable may serve, execute and return upon any person in his town or in an adjoining plantation any writ of forcible entry and detainer, or any precept in a personal action when the damage claimed does not exceed \$100, including those in which a town, plantation, parish, religious society or school district of which he is a member is a party or interested, but before he serves any process, he shall give bond to the inhabitants of his town in the sum of \$500, with 2 sureties approved by the municipal officers thereof, who shall indorse their approval on said bond in their own hands, for the faithful performance of the duties of his office as to all processes by him served or executed. For every process that he serves before giving such bond, he forfeits not less than \$20 nor more than \$50 to the prosecutor.

R.S.1954, c. 89, § 207.

§ 704. Persons subject to jurisdiction

1. Causes of action. Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated in this section, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of said acts:

- A.** The transaction of any business within this State;
- B.** The commission of a tortious act within the State resulting in physical injury to person or property;
- C.** The ownership, use or possession of any real estate situated in this State;
- D.** Contracting to insure any person, property or risk located within this State at the time of contracting.

2. Personal service. Service of process upon any person who is subject to the jurisdiction of the courts of this State, as provided in this section, may be made by personally serving the summons upon the defendant outside this State, with the same force and effect as though summons had been personally served within this State.

3. Jurisdiction based upon this section. Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.

4. Other service not affected. Nothing contained in this section limits or affects the right to serve any process in any other manner now or hereafter provided by law.

R.S.1954, c. 112, § 21; 1959, c. 317, § 125.

§ 705. Civil process served on Lord's Day void; officer liable

No person shall serve or execute any civil process on the Lord's Day, but such service is void, and the person executing it is liable in damages to the party aggrieved as if he had no process.

R.S.1954, c. 112, § 89.

§ 706. Execution of precepts when officer disqualified

If any officer who has commenced the service or execution of a precept becomes disqualified, it may be completed by any other qualified officer with the same legal effect. If any officer

aforesaid has made, in fact, any service, attachment or levy by virtue of any process placed in his hands for service and for any cause has not made his return thereon, such return shall be made by a sheriff, any deputy or other proper officer under direction of a Justice of the Superior Court held in the county where said writ is returnable, the facts to be set forth by said officer in said return to be proved to the satisfaction of said justice. If a deputy sheriff dies after he has served and returned a precept, the sheriff if alive, and if not, any deputy in commission at the time of such service may be allowed by the court to amend such return as the officer who made it might, but the rights of third parties shall not be affected thereby.

R.S.1954, c. 89, § 202.

§ 707. Service of process on vacating office of sheriff

Sheriffs and their deputies have the same authority and their deputies are under the same obligation to serve, execute and return all processes in their hands, when for any cause they cease to hold such office, as before. Official neglects or misdoings of a deputy after his principal is out of office are a breach of such sheriff's bond.

R.S.1954, c. 89, § 162.

§ 708. Sheriff a party

All writs and precepts in which the sheriff of any county is a party may, unless served or executed by a constable, be served or executed by the sheriff of any county adjoining that of which he is sheriff.

R.S.1954, c. 89, § 160.

§ 709. Service on deputy sheriff

Any writ or precept in which the deputy of a sheriff is a party may be served by any other deputy of the same sheriff.

R.S.1954, c. 89, § 161.

§ 710. Service of precepts for work-jails in one or more counties

An officer of any county qualified to serve precepts in criminal cases in the county where he resides may serve any precept required by the laws providing for work-jails, whether such serv-

ice is performed in whole or in part in one or more counties, and processes shall be issued and directed accordingly.

R.S.1954, c. 89, § 200.

§ 711. Action under bastardy laws; service of precept by constable or sheriff

A warrant issued by the District Court for an offense under the laws for the maintenance of bastard children may be directed to and executed by a constable of any town within his county. If the accused has gone into another county before or after the warrant was issued, a sheriff or his deputy or a constable having the warrant may pursue and arrest him in any county and carry him to the county where the act complained of was committed. When such officer arrests a person to commit to the jail of his county, he may convey him by the most convenient and suitable route, although it pass through other counties.

R.S.1954, c. 89, § 199; 1963, c. 402, § 114.

§ 712. Service in actions for breach of duty of officer where principal out of State

In actions against sheriffs, deputy sheriffs and constables for breach of official duty where the principal defendant is out of the State, service may be made on such defendant by delivering a copy of the summons and of the complaint to each of the sureties on his official bond 14 days before the return day thereof, and the Superior Court may order further notice to the defendant by publication of an abstract of the complaint and order thereon in some newspaper published in the county where the complaint is returnable, or in the state paper or in such other manner as the court directs. If the order is complied with and proved, the defendant shall answer to the action and judgment in such case has the same effect as if personal service was made upon the principal defendant.

R.S.1954, c. 89, § 206; 1961, c. 317, § 237; c. 417, § 174.

§ 713. Constables of Bristol may serve on islands

The constables of the Town of Bristol may serve all precepts on Muscongus and Harbor Islands, in the County of Lincoln, the same as in their own town, until and unless said islands can legally elect constables.

R.S.1954, c. 89, § 210.