

MAINE STATE LEGISLATURE

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L A W S

OF THE

STATE OF MAINE;

TO WHICH ARE PREFIXED

THE

CONSTITUTION OF THE U. STATES

AND OF SAID STATE,

IN TWO VOLUMES,

WITH AN APPENDIX.

.....
VOL. I.
.....

Published according to a resolve of the State, passed
March 8, 1821.

BRUNSWICK.

Printed by J. Griffin, for the State.

.....
1821.

and sworn by our said Justices, did return their verdict in writing signed by each of them, that A. B. was upon the ——— day of ——— in the rightful possession of a certain messuage or tract of land [as in the verdict returned] and that &c. [as in the verdict] whereupon it was considered by our said Justices, that the said A. B. should have restitution of the same. We therefore command you, that taking with you the force of the county, if necessary, you cause the said E. F. to be forthwith removed from the premises, and the said A. B. to have the peaceable restitution of the same; and also that you levy of the goods, chattels or lands of the said E. F. the sum of ——— being costs taxed against him on the trial aforesaid, together with ——— cents more for this writ and your own fees, and for want of such goods, chattels or lands of the said E. F. by you found, you are commanded to take the body of the said E. F. and him commit to our gaol in L. in our said county of S. there to remain until he shall pay the sum aforesaid, together with all fees arising on the service of this writ, or until he is delivered by order of law, and make return of this writ, with your doings therein, within twenty days next coming. Witness, our said Justices, at D. aforesaid, the ——— day of ——— in the year of our Lord———.

R. S.
N. O.

[Approved March 19, 1821.]

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CHAPTER LXIV.

An Act directing the Process in Habeas Corpus.

Whereas the writ commonly called the Writ of Habeas Corpus is a writ of right to which the citizens of this State, by the constitution and the law of the land are at all times entitled, to obtain relief from every wrongful imprisonment, or unlawful restraint of personal liberty: Preamble.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That any person imprisoned in any common gaol, or otherwise restrained of his personal liberty by any officer or officers, or any other person or persons for any cause or upon any pretence whatever, he, or any person in his behalf, may complain, in writing,

Who are entitled to writ of habeas corpus, and mode of applying for it.

WRIT OF HABEAS CORPUS.

to the Supreme Judicial Court of this State, or to any one Judge of said Court, in term time in any county, or to any one or more of the Judges thereof in the vacation time of the said Court; and upon such complaint, and upon view of the copy of the warrant (if any there be) by which such person stands committed, or upon his affidavit certified by a Justice of the Peace, or on the oath of the person applying on his behalf, or any other credible witness, or upon the affidavit of such witness, certified as aforesaid, if he lives more than twenty miles from the Court or Judge applied to, that a copy of such warrant has been demanded and denied; the said Court or Judge in term time, and the said Judge in the vacation, hereby are respectively authorized and required to award a writ of habeas corpus, directed to the officer or person imprisoning or restraining the complainant, returnable forthwith to such Court or Judge who awarded the same, or to any other Judge of said Court; except the complaint be in favour of persons committed for treason or felony, or for suspicion thereof, or as accessory to the latter before the fact, plainly and specially expressed in the warrant of commitment, or persons convict or in execution by legal process, criminal or civil, or committed by mesne process in any civil action for want of reasonable bail, and persons with regard to whom the benefit of the said writ shall be suspended by the Legislature agreeably to the Constitution: *Provided*, That nothing in this Act contained shall be construed to hinder or restrain the said Supreme Judicial Court, in term time, or any one or more Judges thereof in the vacation, from bailing any person wherever and for whatever offence committed at their discretion, whenever the circumstances of the case shall appear to require it, persons committed by the Governor and Council, Senate or House of Representatives, agreeable to, and for the causes mentioned in the Constitution, always excepted.

SEC. 2. *Be it further enacted*, That such writ, when awarded by the said Court, shall be signed by the Clerk, tested by the first Justice who is not party thereto, and sealed with the seal thereof; but when awarded by any Judge, in the vacation, shall only be under the hand and seal of such Judge, and shall direct the place to which the com-

Sup. J. Court,
or any Judge
thereof may
grant the writ,

returnable to
said Court, or
any Judge
thereof.

Persons con-
fined for cer-
tain offences,
&c. not allow-
ed the writ :

But said Court
or Judge may
bail for any of-
fence, special
cases except-
ed.

Form of writs
to be issued in
different cases:

plainant shall be brought; and the form of such writ when awarded by the Supreme Judicial Court, shall be as follows, viz.

State of Maine.

(L. s.) S—— ss. To—— Greeting.

We command you that the body of A. B. of ——, in our prison, 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 whatsoever name the said A. B. shall be called or charged, you have before our Justices of our Supreme Judicial Court, holden at B—— within and for the county of S—— immediately after the receipt of this writ, to do and receive what our said Justices shall then and there consider concerning him (or her) in this behalf, and have there this writ. Witness, ——, Esq. at B. this —— day of —— in the year of our Lord ——.

Clerk.

And the like form shall be used by the Judge, *mutatis mutandis*, when such writ shall be awarded by him.

SEC. 3. *Be it further enacted*, That when any person shall bring and offer such writ of habeas corpus to the officer or person to whom the same shall be directed, he shall receive the same; and upon payment or tender of such charges for bringing the complainant from the place of imprisonment as the Court or Judge who grants the writ shall order, if the person complaining be confined in a common gaol, or under the custody of an officer, otherwise without such payment or tender, to the place mentioned in the writ, such officer or person shall have the body of the complainant before the Court or Judge before whom the writ is made returnable, (unless committed and detained for some one or more of the causes aforesaid) at the place therein mentioned within three days, if within twenty miles from the place of imprisonment; if more than twenty but within one hundred miles, then within ten days; if above one hundred miles, then within twenty days after the receipt thereof and shall then return the same, and certify thereon the true and all the cause or causes of his or her taking and detaining.

Duty of those to whom the writ is directed and nature of the return to be made.

SEC. 4. *Be it further enacted*, That if after the awarding of such writ by any Judge of the said Supreme Judicial

In certain cases if writ be made re-

turnable before a Judge it may be returned to the Court; and *vice versa* in case of adjournment of Court.

Court, in the vacation, but before the return thereof, the said Court shall sit in any county, the said writ, with the body of the complainant and causes of taking and detaining, may be returned, had and certified to the said Court by the Judge who awarded the same: but if, after awarding such writ by the said Court, in term time but before the return thereof, the said Court shall rise, or be adjourned, the same, with the body of the complainant, and causes of taking and detaining, shall be returned, had and certified before some Judge of the said Supreme Judicial Court.

On return of the writ, Court or Judge must, within 3 days, proceed to examine, &c. and bail or commit, as case may require.

SEC. 5. *Be it further enacted*, That when any person shall be brought by writ of habeas corpus as aforesaid before the said Court, or any Judge thereof, such Court or Judge shall within three days after proceed to examine the said causes; and if committed for an offence or cause bailable by law, they shall bail him by recognising him with sufficient surety or sureties in a reasonable sum having regard to his quality and circumstances, and the nature of the offence; to appear at such Court as shall have cognisance of the offence; and shall certify the recognizance into such Court; if committed upon mesne process in any civil action for want of bail and the bail required shall appear excessive, it shall be ascertained what bail is reasonable, and he shall be discharged on giving the same; but if it shall appear that the complainant is imprisoned or restrained without due order of law, or sufficient cause, he shall be discharged from such commitment or restraint.

Penalty on an officer, if he do not deliver his prisoner, in 6 hours, a copy of warrant, &c. by which he is holden.

SEC. 6. *Be it further enacted*, That if any officer, in whose custody any prisoner shall be, shall not within six hours after demand made, deliver such prisoner a true copy of the warrant or process by which he stands committed, such officer shall forfeit to the party grieved, the sum of two hundred dollars.

If any minor be enlisted into U. S. army without consent of parents, &c. any judge of S. J. Court or C. C. Com. Pleas shall issue habeas

SEC. 7. *Be it further enacted*, That if any minor, under the age of twenty one years shall be hereafter enlisted within this State, into the army of the United States without the consent in writing, of his parent, guardian or master, either of the Justices of the Supreme Judicial Court, or of the Circuit Court of Common Pleas, are hereby respectively authorized and required on application therefor, to award a

writ of habeas corpus returnable forthwith, directed to the officer or person restraining such minor; and such Justice or Judge is hereby authorized and required, after a full hearing of the parties who shall appear before him, to discharge such minor so enlisted.

corpus on application therefor:

SEC. 8. *Be it further enacted*, That the Justice or Judge aforesaid is hereby authorized and empowered to inquire into the causes of the imprisonment or restraint of any person brought before him, on such writ of habeas corpus, the return of the officer or person on said writ to the contrary notwithstanding.

Proceedings to be had on such writ.

SEC. 9. *Be it further enacted*, That if any officer or person, to whom any writ of habeas corpus shall be directed shall refuse to receive the same, or, after receipt thereof, shall refuse or neglect to yield such obedience thereto as this Act requires (the complainant performing the conditions required) unless prevented by the sickness of the prisoner, or other necessity, he, for such refusal or neglect, in each and every particular shall forfeit to the party grieved the sum of four hundred dollars; and for any false return to such writ shall be further liable to the action of the party.

Penalty against person to whom the writ is directed, for not receiving and obeying it—or making a false return.

SEC. 10. *Be it further enacted*, That the Court or Judge respectively may further punish every disobedience to such writs as for a contempt, and compel obedience thereto, by process of attachment. And in order to prevent any attempts that might be made to deprive any prisoner of the benefit of his habeas corpus, by shifting the custody of such prisoner from one prison or officer to another or sending him away:

Court or Judge may further punish disobedience to such writ as a contempt.

SEC. 11. *Be it further enacted*, That every person duly ordered to be committed for any criminal or supposed criminal matter, shall be carried as soon as may be, and confined in some common gaol and not elsewhere (except persons sent to the work house or house of correction for due cause) and shall not be delivered from one officer to another, except for the more easy and speedy conveyance of the prisoner to such gaol, nor be removed, without his consent from one county to another unless by habeas corpus, or some other legal writ under the penalty of forfeiting for eve-

Persons, ordered to be committed, to be carried to common gaol, &c. soon as may be—and not confined elsewhere, except—

Penalty for removing prisoners, &c. without habeas corpus.

ry offence to the party grieved, the sum of four hundred dollars.

No person discharged on habeas corpus to be again restrained for same cause, unless, &c.

No penalty in this law to prevent recovery of damages at common law.

Any other person may appear for one sequestered, securing costs.

SEC. 12. *Be it further enacted,* That no person enlarged by habeas corpus shall be again imprisoned or restrained of his liberty for the same cause, unless he shall be indicted therefor, or convicted thereof, or shall neglect to find bail when ordered thereunto by some Court of record: *Provided,* That no penalty established by this Act shall be construed to bar any action at common law for false imprisonment or unlawful restraint: And when any person shall be unlawfully carried out of the State, or imprisoned in a secret place, any other person shall be permitted to appear for him in any action brought in his name: *Provided,* Such person shall stipulate for the payment of costs as the Court shall direct.

[Approved February 27, 1821.]

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CHAPTER LXV.

An Act relating to the Writ of Audita Querela, and the proceedings thereupon.

Audita querela, how and from what Courts to be issued.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That in all cases where by law a writ of audita querela lieth, the same may be sued out in the form of a writ of attachment, or a writ of summons, at the election of the complainant: and in all cases where the said writ is brought to set aside or annul any proceedings had upon a writ of execution, the said writ of audita querela shall be sued out of and be returnable to the Court to which the said writ of execution was returnable: and in all other cases the said writ shall be sued out of and be returnable to the Circuit Court of Common Pleas to be holden in such county whereof one of the parties thereto is an inhabitant or resident, unless where the complainant is not an inhabitant or resident within this State; and in such case the said writ may be sued out of and returnable to any Circuit Court of Common Pleas within this State, at the election of the complainant.

Form of writ.

SEC. 2. *Be it further enacted,* That in all cases the said writ of audita querela shall be under the seal of the Court out of which the same shall issue signed by the Clerk thereof, and tested by the first Justice who is not a party to the