

# 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.

## CHAPTER LXVII.

An Act regulating Bail in Civil Actions.

Officer to re-  
turn bail bond  
with writ.

Name of bail  
to be inserted  
in margin of  
execution.

Officer to no-  
tify bail, &c.  
15 days before  
return day.

Officer's fees.

Bail may com-  
mit principal,  
&c.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That when bail is given in any civil action for the appearance of the party to answer the suit and to abide the order and judgment of the Court thereon, the officer who served the writ, shall return the bail bond taken by him, with the original writ to the Court or Justice before whom the same may be returnable, and if judgment be obtained against the defendant, in any such action, the Clerk of the Court or Justice of the Peace who may issue execution on said judgment, shall on the margin of said execution insert the names of the persons who became bail in said action, with the places of abode, and addition of said bail: *Provided*, The same be named in the bail bond, and the officer who may receive said execution shall notify the bail personally, or by leaving a written notice signed by said officer, at the usual places of abode of the bail, if living within the county in which said officer lives, at least fifteen days before the expiration thereof, certifying that he cannot find the principal debtor, nor whereof to satisfy said execution, for which notice, said officer shall have a right to demand, recover and receive of, and from said bail the usual fees for service of writs, with travel from the officer's dwelling house to that of the bail, calculated on the road most usually travelled, and shall minute in said notice the amount of said fees, which the bail shall pay in twenty days, unless the bail shall at least one day before the execution is returnable, produce and deliver to the officer the principal debtor for whom bail was given; and it shall be lawful for the person, who may have become, or may hereafter become bail, to commit to the common gaol in the county where such arrest was made, or in that to which the writ is returnable, the principal for whom he has become bound, leaving with the gaoler or prison keeper of such county within fifteen days after such commitment, an attested copy of the writ or process, whereby the arrest was made, and of the return endorsed; and such gaoler or pris-

on keeper is hereby authorized and required to receive the person so committed into custody, in the same manner as if he had been committed by the officer making the arrest; and the person so committed shall be entitled to the liberties and privileges of the prison limits upon the same terms and conditions, and under the same restrictions as are provided where the principal is committed by order of Court. And the bail so committing their principal shall ever after be discharged from the bail bond by them given: *Provided however*, That no person shall have the benefit of the foregoing provision of this Act, unless he shall have committed his principal as aforesaid, before final judgment upon *scire facias*; and if the commitment shall have been made after the writ of *scire facias* shall have issued he shall pay the costs of that suit before he shall be discharged: *And provided, also*, That any bail, who shall claim a discharge under this section, shall have notified in writing the plaintiff in the original suit, or his attorney of the time when and the place where the principal has been committed, within fifteen days from the time of such commitment.

Duty of gaoler.

Proviso.

SEC. 2. *Be it further enacted*, That every person who shall thus become bail, may at any time before final judgment upon the original suit, bring the principal into Court and deliver him into the custody thereof, and be thereby discharged of his suretyship. And in case of the principal's avoidance and the return of *non est inventus* upon the execution, the bail shall be obliged to satisfy the judgment out of his own estate, unless he shall have discharged himself in some one of the modes provided in this Act. And no return of *non est inventus* made by any officer on any execution shall be considered as evidence of the debtor's avoidance so that the bail may be rendered liable on *scire facias*, unless such officer shall certify on such execution, that he has had the same in his hands at least thirty days before the expiration thereof.

Bail may bring principal into Court and be discharged.

Bail liable if principal avoid.

No return of avoidance good unless execution is in officer's hands 30 days before return day.

SEC. 3. *Be it further enacted*, That when the principal shall avoid, so that his goods, chattels or lands cannot be found to satisfy the execution, nor his body found to be taken therewith, the person for whom judgment was given shall be entitled to his writ of *scire facias* from the same

Plaintiff may have *scire facias* against the bail, and judgment,

Court against the bail. And in case no just cause is shown, judgment shall be given against them for the damages and costs recovered against the principal, with additional damages and cost, and execution shall be awarded against them accordingly: *Provided nevertheless*, That if the bail shall bring his principal into Court before judgment is given upon the *scire facias*, and there deliver him to the order of the Court and shall pay the costs which may have then arisen upon the *scire facias*, then the bail shall be discharged; and the principal shall be committed to gaol, there to remain for the space of fifteen days in order to his being taken in execution. And if the creditor shall not, within fifteen days next after the surrender of the principal take him in execution, the Sheriff shall discharge him upon his paying the legal prison fees.

unless bail bring in the principal before judgment, pay costs, &c.

Debtor discharged from gaol unless taken in execution in 15 days.

Proceedings in case of bail in actions before a Justice.

SEC. 4. *Be it further enacted*, That whenever bail shall hereafter be taken on mesne process in any civil action, triable before any Justice of the Peace, and there shall have been a return of *non est inventus* upon the execution which issued on a judgment rendered on such process, the said Justice may proceed, within one year from the rendition of such judgment, to issue a *scire facias* upon the same judgment against such bail, which writ being duly served seven days at least before the time therein set for trial and returned, the said Justice may proceed to take cognizance thereof; and if no just cause is shown to the contrary, to render judgment against such bail for the debt or damage, and costs recovered against the principal, with additional damages and costs and to issue execution accordingly. And it shall be no bar to such *scire facias*, that the debt and costs on the original judgment, when added together, exceed the sum of twenty dollars; but the plaintiff shall be entitled to receive his costs of suit as in other cases on such *scire facias*.

Bail may bring principal before Justice and procure an officer to attend;

SEC. 5. *Be it further enacted*, That if the bail shall, at any time before final judgment upon the original suit is rendered against him, or upon the return of such *scire facias*, and before judgment thereon shall be rendered against him, bring his principal before such Justice, and shall procure the Sheriff of the county, or his deputy, or any Constable of the town wherein such Justice may reside, to attend and re-

ceive him, said Justice shall thereupon order him into the custody of such officer; and the principal shall be committed to gaol, and there remain and be proceeded with as is provided in this Act; and upon the payment of the costs which may have arisen on such *scire facias*, the bail shall be discharged from their suretyship as in other cases.

Justice may commit him to such officer, and bail be discharged, paying costs :

SEC. 6. *Be it further enacted*, That when any principal, surrendered as aforesaid, shall be ordered into custody, the said Justice shall make out, and deliver to the officer receiving him, a warrant or mittimus, of the tenor following, to wit :

In such case Justice to give mittimus to officer.

State of Maine.

—, ss. To the Sheriff of the county of —, or his deputy, or to any Constable of the town of —, and to the Keeper of the gaol in said county, Greeting.

(SEAL.) Whereas A. B. of C. in said county [addition] at a Court this day holden before me, has been surrendered by D. E. of F. in said county —, who was bail for the said A. B. in an action wherein one G. H. was plaintiff and the said A. B. was defendant, you, the said Sheriff, Deputy Sheriff, and Constable, are severally required to receive the said A. B. into your custody, and him forthwith to convey to the common gaol of said County; and you the said keeper are hereby required to receive the said A. B. in order to his being taken in execution upon the suit aforesaid. Hereof fail not; and of this warrant and your doings thereon, you are to make due return to myself, and as soon as may be. Given under my hand and seal, the — day of —, Anno Domini —. — Justice of the Peace.

Form of mittimus.

And if the plaintiff shall not within fifteen days next after such surrender, in case the same shall be made upon *scire facias*, or if the same shall be made upon the original process, then within fifteen days next after final judgment, take the said principal in execution, he shall be discharged upon his paying the legal prison fees.

Debtor, if not taken in execution in 15 days to be discharged.

SEC. 7. *Be it further enacted*, That it shall be the duty of any officer as aforesaid upon the request of such person or persons being bail as aforesaid, to repair to said Justice's Court, in order to receive the principal as aforesaid; and such officer shall be allowed and paid by the bail for his re-

Penalty for officer's refusing to attend before Justice.

ceiving and committing said principal on said warrant or mittimus, the same fees as are provided by law for committing any defendant to prison on mesne process. And all and every such officer or officers, shall have the like power and authority, and shall be under the like obligations in all respects and regards whatsoever, to execute and return such warrant or mittimus, issued by such Justice, upon the surrender as aforesaid, as he or they by law have and are under to execute and return any writ or execution whatever; and shall be subject and liable to all the like action or actions, for any fraud or falsehood and neglect of their duty, as is provided by law in other cases.

Limitation of  
scire facias  
against bail.

SEC. 8. *Be it further enacted,* That no *scire facias* shall be served upon the bail, unless it be done within one year next after the entering up final judgment against the principal.

Remedy of  
bail against  
principal.

SEC. 9. *Be it further enacted,* That the bail may have their remedy by action on the case against their principal for all damages sustained by their becoming his sureties.

[Approved March 19, 1821.]

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## CHAPTER LXVIII.

An Act respecting Bailable Offences.

**BE** *it enacted by the Senate and House of Representatives in Legislature assembled,* That any one or more of the Justices of the Circuit Court of Common Pleas, or any two Justices of the Peace and of the quorum for any county, on application made to them by any person who now is, or hereafter may be, confined in gaol for a bailable offence, or for not finding sureties, on recognisance, may proceed to inquire into the same, and admit any such person to bail; and for this purpose shall have and exercise the same power concurrently, which any one or more of the Justices of the Supreme Judicial Court, may or can do; any law, usage or custom to the contrary notwithstanding. And the power hereby given shall be considered to extend to taking the recognisance of any person, committed after conviction, where the sentence is in part, or in whole, to find sureties for good behaviour. [Approved March 10, 1821.]

Who may admit  
persons to  
bail.

Who may be  
bailed.

Extent of the  
power to bail.