

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED APRIL 17, 1857;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN

APPENDIX.

PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

BANGOR:
WHEELER & LYNDE.

1857.

CHAP. 133.

Such discharges to be filed with clerk or jailer.
R. S., c. 171, § 26.

SEC. 17. Any order discharging recognizances shall be filed in the office of the clerk of the court, at which the party and witnesses are to appear; and an order superseding a commitment shall be delivered to the jailer; and if so filed or delivered, and not otherwise, shall bar all remedy by civil action for such injury.

REMEDIES ON RECOGNIZANCES.

Forfeited recognizances to be defaulted, &c.

R. S., c. 171, § 27, 28.

SEC. 18. When any person, under recognizance in a criminal case, fails to perform its condition, his default shall be recorded, and process shall be issued against such of the consors as the prosecuting officer directs, but no costs shall be taxed for travel in the suit; but any surety may be discharged by paying to the county treasurer, before or after process, the amount for which he is bound as surety, with costs, if any, or depositing it with the clerk of the court where the recognizance is filed.

Court may remit penalty, &c.

R. S., c. 171,

§ 29.

1845, c. 161.

1846, c. 212.

SEC. 19. When the penalty of any recognizance in a criminal case is forfeited, on scire facias against principal, sureties, or witnesses, the court, on application of any defendant, may remit all or any part of the penalty; or the sureties may surrender the principal in court at any time before final judgment on scire facias, and be discharged by paying the costs of suit; but if a principal has been thus surrendered twice, and is again released on bail in the same case, the sureties in such third, or any subsequent recognizance, shall not be so discharged.

Certain forms in proceedings unessential.

R. S., c. 171,

§ 30.

SEC. 20. No action on such recognizances shall be defeated, nor judgment thereon arrested, for any omission to record a default of the principal or surety at the proper term, nor for any defect in the form of the recognizance, if it can be sufficiently understood, from its tenor, at what court the party or witness was to appear, and from the description of the offence charged, that the magistrate was authorized to require and take the same.

CHAPTER 134.

PROCEEDINGS IN COURT IN CRIMINAL CASES.

OATH AND DUTY OF GRAND JURY.

- SEC. 1. Clerks of courts to prepare alphabetical lists of grand jurors.
2. Grand jurors' oath.
 3. Form of affirmation.
 4. Election of foreman.
 5. Term of his office.
 6. Oath of witnesses before the grand jury. List to be returned to the court.
 7. Grand jury to present all offences, appoint one to take minutes, and when dismissed may be recalled.
 8. Disclosures improper to be made by grand jurors.

BAIL, ARRAIGNMENT AND TRIAL OF CRIMINALS.

9. In what cases persons in prison, on charges of capital offences, may be bailed or discharged, if not indicted.

SEC. 10. If indicted, when they may claim a trial.

11. Standing mute equivalent to not guilty.
12. In capital cases only ten jurors to be peremptorily challenged. Accused arraigned before one justice, and if he pleads guilty, sentenced; if not guilty, preparations made and time appointed for trial and chief justice notified. Court for trial of such cases to consist of not less than a majority of the justices, and a majority of whole court must concur in ruling.
13. If stated term not held in six months, chief justice to order special term. What notice shall be given thereof. No civil action disposed of without consent.
14. Rights of persons indicted for felony to a copy of indictment, if indicted for a capital offence or one punishable with state prison for life, a copy of indictment, list of jurors and witnesses, at expense of the state.
15. Prosecuting officer may summon witnesses; no fees need be tendered them; no cost for witnesses where no bill found, or for defect of roads.
16. Punishment for not attending, when summoned as a witness.
17. Witnesses not to be paid till second or third day in continued cases; costs allowed before arrest or trial, in certain cases; but no extra charges for aid or otherwise, unless on examination of officer on oath or other proof.
18. Person arraigned, need not be asked how he will be tried; and dilatory pleas may be rejected unless verified by oath.
19. Depositions may be taken out of the state, on request of defendant.
20. Facts to be tried and challenges allowed as in civil cases, but no grand juror or person with conscientious scruples about the penalty of death, shall sit in a capital case.
21. Jurors' oaths and affirmations.
22. When a person indicted shall, or may not, be present at his trial.
23. View may be ordered by court.
24. When the court may postpone criminal trials, or discharge the jury.

PAYMENT OF PRIVATE CLAIMS FROM FORFEITED RECOGNIZANCES.

25. Payment of private claims out of forfeited recognizances.

EXCEPTIONS, AND BAIL AFTER VERDICT.

26. Questions of law may be received on report. Accused to give recognizance, or be committed; and, after verdict of guilty against him, only a justice of the supreme judicial court, or a person appointed by the justice who tried the case, can admit him to bail.

OATH AND DUTIES OF GRAND JURORS.

SEC. 1. Prior to the commencement of each term of the supreme judicial court in any county, to which grand jurors are returned, the clerk of the court shall make out, from the returns on the venires, an alphabetical list of such jurors.

Clerks of courts to prepare lists of grand jurors. R. S., c. 172, § 1.

SEC. 2. When the grand jury is to be impaneled, the clerk shall call the first two persons named on the list, and administer the following oath to them: "You, as grand jurors of this county of _____, do solemnly swear, that you will diligently inquire and true presentment make of all matters and things given you in charge. The state's counsel, your fellows', and your own, you shall keep secret. You shall present no man for envy, hatred, or malice; nor leave any man unrepresented for love, fear, favor, affection, or hope of reward; but you shall present things truly as they come to your knowledge, according to the best of your understanding. So help you God." The other jurors shall then be called, in such divisions as the court orders, and the following oath shall be administered to them: "The same oath which your

Grand jurors' oath. R. S., c. 172, § 2.

CHAP. 134.

Form of affirmation.
R. S., c. 172,
§ 3.

fellows have taken on their part, you and each of you on your part shall well and truly observe and keep. So help you God."

SEC. 3. When any person returned as grand juror is conscientiously scrupulous of taking an oath, he may make affirmation, substituting the word "affirm" instead of "swear;" and also the words "This you do under the pains and penalties of perjury" instead of "So help you God."

Election of foreman.
R. S., c. 172,
§ 4.

SEC. 4. The grand jury, having been impaneled and instructed by the court, shall retire in company with an officer to their room, and there elect, by ballot, one of their number for foreman, and give notice thereof to the court, and the clerk shall record it.

Term of his office.
R. S., c. 172,
§ 5.

SEC. 5. Such foreman shall continue in office during the time for which he was returned; but in case of his sickness or absence, the jury may in like manner elect and announce to the court another foreman.

Oath of witnesses before the grand jury, &c.
R. S., c. 172,
§ 6.

SEC. 6. The attorney general, county attorney, or foreman of the grand jury, shall swear, or affirm, in the presence of the jury, all witnesses who are to testify before them, and a list thereof shall be returned into court by the foreman before the jury is discharged, and filed and entered on record by the clerk.

Grand jury to present all offences, &c.
R. S., c. 172,
§ 7, 8, 9.

SEC. 7. Grand juries shall present all offences cognizable by the court at which they attend; and may appoint one of their number to take minutes of their proceedings to be delivered to the attorney, if the jury so directs; and when they are dismissed before the court adjourns, they may be summoned again, on any special occasion, at such time as the court directs.

Disclosures improper to be made by grand jurors.
R. S., c. 172,
§ 10, 11.

SEC. 8. No grand juror or officer of the court shall disclose, that an indictment for felony is found against any person not in custody or under recognizance, except by issuing process for his arrest, until he is arrested; nor shall any grand juror state how any member of the jury voted, or what opinion he expressed, on any question before them; and the court in charging such jury shall impress on their minds the provisions of this section.

BAIL, ARRAIGNMENT AND TRIAL OF PRISONERS.

In what cases persons in prison may be bailed or discharged, if not indicted.
R. S., c. 172,
§ 12, 13.

SEC. 9. Any person in prison, charged with a crime punishable with death, may be bailed or discharged, if he is not indicted at the second term of the court in the county where the crime is alleged to have been committed, when there are two terms there in each year; but when there is only one term a year therein, and the accused has been in prison six months before the first term and is not then indicted, he shall be bailed or discharged.

If indicted, when they may claim a trial.
R. S., c. 172,
§ 14, 15.

SEC. 10. Any person in prison under indictment shall be tried or bailed at the first term next after the finding thereof, if he demands it, unless the court is satisfied that some of the witnesses on the part of the state have been enticed away, or detained from court by some cause beyond their control; and all persons under indictment for felony, if they have been arrested thereon, shall be tried or bailed at the second term after the finding thereof.

SEC. 11. When any person indicted stands mute, the court shall order the plea of not guilty to be entered, and it shall have the same effect as if he had pleaded not guilty.

SEC. 12. Any person, indicted for an offence punishable with death, shall challenge peremptorily no more than ten of the jurors; and he may be arraigned before the court held by one justice, and if he pleads guilty, the court may proceed to pass sentence according to law; but if he pleads not guilty, the court, after appointing counsel for him, and making all proper preparations for trial, shall assign a time therefor, and give notice to the chief justice, that he may direct a court to be held accordingly, which shall consist of not less than a majority of the justices of said court, and not less than said majority must concur in any ruling or instruction.

SEC. 13. When a stated term of the court is not held within six months after an indictment for a capital offence is found in any county, a special term may be held to try the same; and the chief justice, by his order in writing to the sheriff, shall appoint the time and direct what notice shall be given; and the sheriff shall give it accordingly, and the clerk shall issue venires for jurors, and all preparations shall be made by the sheriff as for a stated term; but the court at such term shall dispose of no civil actions without consent of parties.

SEC. 14. The clerk shall, without charge, furnish, to any person indicted for a crime punishable by imprisonment in the state prison, a copy of the indictment; if he is indicted for a crime punishable by death, or imprisonment in the state prison for life, he shall furnish a copy of the indictment; a list of the jurors returned; and process to obtain witnesses, to be summoned and paid at the expense of the state.

SEC. 15. The prosecuting officer shall have the same power to issue a summons for witnesses in criminal cases as the clerk of the court; and no costs shall be taxed for witnesses before the grand jury in a case where no bill is found, nor in complaints against towns for defect of road, unless they are recognized so to attend, or summoned by order of the grand jury or prosecuting officer; nor shall it be necessary to tender any fees to witnesses summoned in behalf of the state.

SEC. 16. If any person, duly summoned as a witness in behalf of the state before any court or grand jury, without reasonable cause fails to appear at the time and place designated in the summons, if he is not punished therefor as for contempt, he shall be punished, on indictment, by imprisonment less than one year, or by fine not exceeding one hundred dollars.

SEC. 17. No fees in criminal cases, continued after the first term, shall be allowed to witnesses on the part of the state, until the second day of the term in Hancock, Oxford, Franklin, Piscataquis, and Aroostook, nor until the third day in any other county, unless legally summoned at an earlier day; and the court, in all such cases, previous to the determination thereof, may allow such costs for justices, officers, aids, jurors, and witnesses, as are provided by law, to be paid from the county treas-

CHAP. 134.

Being mute.
R. S., c. 172,
§ 16.

In capital cases
only ten jurors
to be chal-
lenged.
Majority of
justices must
concur.

R. S., c. 172,
§ 17, 18, 19.
1849, c. 100.
1855, c. 174, § 1.
1854, c. 56.
1856, c. 272.
1857, c. 55.

If stated term
not held in six
months, &c.
R. S., c. 172,
§ 20, 21.
1852, c. 247,
§ 25.

Rights of per-
sons indicted
for felony, &c.
R. S., c. 172,
§ 22, 23.

Prosecuting
officer may
summon wit-
nesses, &c.
R. S., c. 172,
§ 24.
1844, c. 95, § 2.

Punishment
for not attend-
ing, &c.
1845, c. 153.

Witnesses not
to be paid till
second or third
day in con-
tinued cases,
&c.
R. S., c. 152,
§ 3, 9, 15.

CHAP. 134.

ury; but no court or magistrate shall allow any charge for aid or other expenses of the officer in serving a warrant, except his stated fees for service and travel, unless, on his examination, on oath, or on other evidence, they find such additional charges reasonable.

Person arraigned need not be asked how he will be tried, &c.
R. S., c. 172, § 26, 27.

SEC. 18. When a person is arraigned on any indictment, he need not be asked how he will be tried; and when a plea in abatement, or other dilatory plea to an indictment is offered, the court may refuse to receive it, until it is verified by affidavit or other evidence.

Depositions may be taken out of state, &c.
R. S., c. 172, § 28, 29.

SEC. 19. On application of the defendant in a criminal case, the court may grant a commission to take the depositions of material witnesses living out of the state, to be taken on interrogatories in the manner, have the effect, and be subject to the exceptions, as in civil causes; the prosecuting officer may join in such commission, and name therein any material witness to be examined on the part of the state; but if the defendant does not use, at the trial, the depositions so taken for him, those taken for the state shall not be used.

Facts tried and challenges allowed as in civil cases, &c.
R. S., c. 172, § 30, 31, 32.

SEC. 20. Issues of fact joined on indictments shall be tried by a jury drawn and returned in the manner, and challenges shall be allowed to the prosecuting officer and the accused, as in civil cases; but no member of a grand jury finding an indictment, shall sit on the trial thereof, if challenged therefor by the accused; nor shall any person be a juror in a capital case, who cannot conscientiously find a man guilty of an offence punishable with death.

Jurors' oaths; affirmations.
R. S., c. 172, § 33, 34.

SEC. 21. The following oath shall be administered to jurors in capital cases: "You swear, that you will well and truly try, and true deliverance make, between the state and the prisoner at the bar, whom you shall have in charge, according to your evidence. So help you God." In all other criminal cases, the following: "You swear, that you will well and truly try the issue between the state and the defendant, according to your evidence. So help you God." Any juror conscientiously scrupulous of taking an oath may affirm in the mode described in section three.

When a person shall, or may not, be present at his trial.
R. S., c. 172, § 35.

SEC. 22. No person indicted for felony shall be tried, unless present during the trial; but persons indicted for less offences, at their own request and by leave of court, may be tried in their absence, by their attorney.

View.
R. S., c. 172, § 36.

SEC. 23. The court may order a view by any jury in a criminal case.

When the court may postpone criminal cases, &c.
R. S., c. 172, § 37.

SEC. 24. The trial of any criminal case, except a capital one, may be postponed by the court to a future day of the same term, or the jury discharged therefrom, and the case continued, if justice will thereby be promoted.

PAYMENT OF PRIVATE CLAIMS FROM FORFEITED RECOGNIZANCES.

Payment of private claims out of forfeited recognizances.

SEC. 25. When the penalty of a recognizance to prosecute an appeal is paid to the clerk of the court or county treasurer, the court may award to any person therefrom the same sum he

would have been entitled to receive from the penalty affixed to the offence, if paid on conviction, and not on recognizance.

CHAP. 134.

R. S., c. 172,
§ 39.

EXCEPTIONS, AND BAIL AFTER VERDICT.

SEC. 26. A question of law allowable by exceptions may be reserved on a report signed by such justice; and in such case, and when exceptions are allowed, he shall require the defendant to recognize with sufficient sureties to appear at the next term of said court, and abide the final judgment in the case, and commit him if he does not so recognize; when a verdict of guilty is rendered against any person for an offence punishable by imprisonment in the state prison, he shall be admitted to bail only by the justice trying him, by some person by him appointed therefor, or by some other justice of the court.

Questions of law may be reserved, &c.
R. S., c. 172,
§ 41.
1850, c. 152.

CHAPTER 135.

SENTENCE, AND ITS EXECUTION IN CRIMINAL CASES, AND THE LIBERATION OF POOR CONVICTS.

WHAT SENTENCE MAY BE AWARDED.

- SEC. 1. No person punished till convicted; and what sentence may be passed, when none is provided by law.
2. No convict sent to state prison less than a year, and when he is to be punished by imprisonment and a fine, he may be sentenced to either or both.
3. Punishment, when convict has before been sentenced to state prison.
4. In what cases sureties to keep the peace may be required in addition to the other punishment.

EXECUTION OF SENTENCE.

5. Minutes made by the clerk, when sufficient authority for the officer.
6. Removal of convicts to the state prison, upon sentence.

IN CAPITAL CASES.

7. Convicts under sentence of death, to be also sentenced to solitary confinement and labor in the state prison, in the meantime; and execution not to take place within one year, nor until a warrant of the executive therefor.
8. How and where sentence of death shall be executed, and who may be present.
9. Sheriff's return to be made and filed in the office of secretary of state.

LIBERATION OF POOR CONVICTS.

10. Persons imprisoned for non-payment of fines or costs, may be liberated by the sheriff, after thirty days, on giving their notes, and a sworn schedule of their property.
11. Such notes a lien on their real estate, and execution thereon may be proceeded with as in other cases.
12. Penalty for willfully making a false schedule of property.

WHAT SENTENCE MAY BE AWARDED.

SEC. 1. No person can be punished for an offence till convicted thereof in a court having jurisdiction of the person and case. When no punishment is provided by statute for an offence,

No person can be punished till convicted, &c.