

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 JANUARY 25, 1871;

TO WHICH ARE PREFIXED
THE CONSTITUTIONS

OF THE
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX.

BY AUTHORITY OF THE LEGISLATURE.



PORTLAND:
PUBLISHED BY BAILEY & NOYES.

CHAP. 83.

CHAPTER 83.

TRIAL JUSTICES, THEIR JURISDICTION AND PROCEEDINGS IN CIVIL ACTIONS.

APPOINTMENT, QUALIFICATION AND JURISDICTION.

- SEC. 1. Trial Justices, their appointment and term of office.
2. Oath or affirmation to be taken.
3. Jurisdiction in civil actions; not to exceed twenty dollars.
4. Title to real estate pleaded, case to be removed to supreme judicial court. Recognizance in such case; if not given, to be tried.
5. Copy, &c., to be produced at appellate court; proceedings, if not entered.
6. Writs, form and service of.
7. Actions where brought, when parties live in same county.
8. Where brought, when parties live in different counties.
9. Writs issued by one justice returnable before another.
10. Writs returnable between certain hours.
11. Nonsuit or default if no appearance within one hour. May be stricken off.
12. Continuance when justice is unable to attend. Proceedings.
13. Trial justices and justices of the peace may issue subpoenas.
14. Justice may hold courts at his dwelling house or office. May adjourn court. General issue to be pleaded. Only one travel in action continued at plaintiff's request.
15. Judgments on defaults, nonsuits or trial.
16. Costs for defendant, if plaintiff does not prevail.

OF APPEALS.

- SEC. 17. Appeal, when and how claimed; effect of.
18. Appeal, recognizance for, when and how given.
19. Appeal, papers to be produced at appellate court; failure to enter, &c., effect of.

EXECUTIONS.

- SEC. 20. Executions; when issued; when returnable.
21. Executions may be directed into other counties in certain cases.

SCIRE FACIAS.

- SEC. 22. Writs of scire facias, when he may issue.
23. Writs of scire facias when directed into other counties.

RECORDS, HOW KEPT AND TRANSCRIBED.

- SEC. 24. Records, how to be kept; on his death may be transcribed into the book of another justice.
25. Execution issued on the transcribed record.
26. Removing from the state, must deposit his records with the clerk. Administrators of deceased justice also. Penalty on administrator for neglect. Duty of the clerk in such cases.
27. Proceedings if his records are not completed. When an execution may be used in place of a copy of the record.
28. Justice whose commission has expired may certify copies and issue new executions for two years; how done afterwards.

JUSTICE NOT TO BE OF COUNSEL.

CHAP. 83.

SEC. 29. Justice not to be of counsel in any case before himself. Not to try any case commenced by himself.

EX-OFFICIO, JUSTICES OF THE PEACE AND QUORUM.

SEC. 30. Trial justices are, ex-officio, justices of the peace and quorum.

APPOINTMENT, QUALIFICATION AND JURISDICTION.

SEC. 1. Trial justices shall be appointed and commissioned by the governor, with the advice and consent of the council, to act within the county for which they are appointed, and shall hold their offices for the term of seven years from the date of their commissions.

Trial justices, their appointment and term of office.
1860, c. 164.

SEC. 2. Before entering upon the duties of the office, each shall take and subscribe the oaths or affirmations prescribed by the constitution and the laws of the state, to be taken by other officers appointed in like manner.

Qualification of trial justices.
1860, c. 164.

SEC. 3. Every trial justice, may hold a court in his county, as provided in this chapter, and have original and exclusive jurisdiction of all civil actions, including prosecutions for penalties in which his town is interested, when the debt or damages demanded do not exceed twenty dollars, except those in which the title to real estate, according to the pleadings or brief statement filed in the case by either party, is in question; and except that in those towns in which a municipal or police court is established, his jurisdiction shall be restricted to those cases in which jurisdiction has been heretofore given to justices of the peace, in the act establishing such court, and to cases wherein jurisdiction has been or may be given to trial justices in like manner. (a)

Jurisdiction in civil actions, not to exceed twenty dollars.
R. S. c. 83, § 1.
27 Me. 85.
52 Me. 244.

SEC. 4. When it appears by the pleadings or brief statement in the case, that the title to real estate is in question, it shall be removed, on the request of either party, to the supreme judicial court; and such party shall recognize to the other party in a reasonable sum, with sufficient sureties, to enter the case at the next term of said court; and if he does not so recognize, the justice shall hear and decide the case, as if such request had not been made. (b)

Title to real estate pleaded, case to be removed. Proceedings.
R. S. c. 83, § 2.

SEC. 5. The party so recognizing shall produce at said court a copy of the record, and all such papers as are required to be produced by an appellant; and if he fails so to do, or to enter the action as before provided, he shall, on the complaint of the adverse party, be nonsuited or defaulted, as the case may be; and such judgment shall be rendered as law and justice require.

Copies to be produced at appellate court. Proceedings if not entered.
R. S. c. 83, § 3.

SEC. 6. The writ in civil actions commenced before a trial justice, shall be a summons, a capias and attachment, or scire facias, of

Writs, form and service of.
R. S. c. 83, § 4.

(a) 12 Me. 17; 13 Me. 136; 15 Me. 188; 18 Me. 23; 29 Me. 531; 35 Me. 129; 39 Me. 267, 476; 43 Me. 431.

(b) 3 Me. 256; 9 Me. 219; 27 Me. 8.

CHAP. 83. the form prescribed by law, signed by the justice, and duly served not less than seven, nor more than sixty days before the return day thereof.

Actions where brought when parties live in same county. 1866, c. 27, § 1.

SEC. 7. All actions between parties residing in the same county, returnable before any trial justice, shall be commenced before some such disinterested justice residing or holding his court in the town where one of the parties, or his attorney, or person summoned as trustee in such action, resides; and if there is no such justice residing or holding his court therein, then before some such justice, if any, in an adjoining town, otherwise before any such justice in the county.

Where brought when parties live in different counties. 1866, c. 27, § 2.

SEC. 8. When the parties reside in different counties, such actions shall be commenced before any disinterested trial justice residing in the county where any defendant resides; but all trustee actions, returnable before such justice, shall be commenced within the county where some trustee, therein named, resides.

Writs issued by one justice, returnable before another. 1866, c. 27, § 3.

SEC. 9. Original writs issued by any trial justice may be made returnable before any other trial justice of the same county, and shall have the same effect as if signed by the latter justice.

Writ returnable between certain hours. Justice to be present with writ. 1860, c. 164, §§ 7, 8.

SEC. 10. No writ shall be made returnable before any trial justice, at an earlier hour than nine o'clock in the forenoon, nor later than four in the afternoon. No judgment of such justice shall be valid unless he shall be present with the plaintiff's writ at the place, and within one hour after the time therein named, unless the case is continued by some other justice, as provided in section twelve.

Nonsuit or default if no appearance in one hour. May be stricken off within twenty-four hours. 1860, c. 164, §§ 9, 10.

SEC. 11. The justice may enter judgment on nonsuit or default against the party failing to appear, at the expiration of one hour after the time of return set forth in the writ; but may in his discretion, on motion of either party, strike off the same within twenty-four hours thereafter, upon such terms as he deems reasonable.

When justice is unable to attend, another justice may continue. Proceedings. R. S. c. 83, § 12. 1861, c. 26, § 1. 17 Me. 413. 18 Me. 23. 31 Me. 336. 39 Me. 465.

SEC. 12. When a trial justice is unable to attend at the time and place appointed by him for the trial of any suit already entered, or at which any writ is returnable before him, any other trial justice who might legally try the same, or any justice of the peace and quorum, residing in the same or adjoining town, may attend and continue such action, once, to a day certain, not exceeding thirty days, and note the fact on the writ, and in his own docket; and if the inability is not removed at that time, such action, at the time and place fixed in the continuance, may be entered before, and tried by some other trial justice of the same town, or if none such resides therein, then before some trial justice of the same county, who may render judgment and issue execution as if the action had been originally returnable before him.

Trial justices and justices of the peace may issue subpoenas. R. S. c. 83, § 10. 1860, c. 164, § 8.

SEC. 13. Every trial justice and justice of the peace may issue subpoenas for witnesses in civil actions pending before any court, or persons authorized to examine witnesses.

SEC. 14. Any trial justice may hold a court at his dwelling house, office, or other suitable place, and the writ shall be made returnable accordingly. He may adjourn his court by proclamation, from time to time, as justice requires. In actions before him the defendant shall plead the general issue, and need not file any brief statement, except where the title to real estate is in question. When an action in which the defendant does not appear, is continued at the request of the plaintiff, only one travel and attendance shall be taxed for him, unless the defendant agrees, in writing, to such continuance.

CHAP. 83.
Where court may be held. May adjourn court. General issue to be pleaded. Only one travel in suit continued at plaintiff's request. R. S. c. 83, § 11, 23. 1860, c. 164, § 8. 17 Me. 413. Judgment on default, nonsuit and trial. R. S. c. 83, § 5. 49 Me. 412.

SEC. 15. If any person duly served with process does not appear and answer thereto, his default shall be recorded, and the charge in the declaration taken to be true; and on such default, and when the action is, on trial, maintained, the justice shall enter judgment for such sum, not exceeding twenty dollars, as he finds due to the plaintiff, with costs, and issue execution.

SEC. 16. If the plaintiff fails to enter and prosecute his action, or if, on trial, he does not maintain his action, the defendant shall recover judgment for his costs to be taxed by the justice; and execution shall issue therefor.

If plaintiff does not prevail, costs for defendant. R. S. c. 83, § 6.

APPEALS.

SEC. 17. Any party aggrieved by the judgment of the justice, may appeal to the next supreme judicial court in the same county, and may enter such appeal at any time within twenty-four hours, Sunday not included, after the judgment; and in that case no execution shall issue, and the case shall be entered and determined in the supreme judicial court.

Appeal, when and how claimed, effect. R. S. c. 83, § 7. 24 Me. 437.

SEC. 18. Before such appeal is allowed, the appellant shall recognize with sufficient surety or sureties to the adverse party, if required by him, in a reasonable sum, with condition to prosecute his appeal with effect, and pay all costs arising after the appeal.

Appeal, recognizance. R. S. c. 83, § 8. 42 Me. 327.

SEC. 19. The appellant shall, at the appellate court, produce a copy of the record, and of all the papers filed in the cause, except depositions or other written evidence or documents, the originals of which shall be produced; and if he fails to produce such papers, and enter and prosecute his action, the court, on complaint of the adverse party, may affirm the former judgment with costs.

Appeal, papers to be produced by appellant. R. S. c. 83, § 9. 44 Me. 29.

EXECUTIONS.

SEC. 20. Executions shall not be issued by a trial justice, until twenty-four hours after the rendition of judgment, and shall be made returnable in three months from the day they are issued.

When executions may issue and when returnable. R. S. c. 83, § 13. 11 Me. 177. 33 Me. 530.

SEC. 21. When a debtor removes or is out of the county in which judgment is rendered against him by a trial justice, or municipal or police court, such justice or judge may issue execution against

Executions may be directed into other

CHAP. 83. him, directed to the proper officers in the county where he is supposed to be; and it shall have the same force as if issued by a justice or court of the latter county.

counties.
R. S. c. 83, § 14.

SCIRE FACIAS.

When writs of scire facias may issue.
R. S. c. 83, § 15.

SEC. 22. Every trial justice may issue writs of scire facias against executors or administrators, upon a suggestion of waste, after judgment against them; against bail in civil actions, and indorsers of writs; and enter judgment and issue execution, as any court might do in like cases.

Writs of scire facias, when directed into other counties
R. S. c. 83, § 16.

SEC. 23. In cases of scire facias against bail, indorsers of writs, executors or administrators, in all trustee processes, or original writs against two or more defendants, before a trial justice, or a judge of a municipal or police court, where the defendant or trustee resides out of the county where the proceedings are had, the justice or judge may direct the writ or execution to any proper officer of the county where the defendant or trustee resides, who shall charge fees of travel from the place of his residence to the place of service only, and postage paid by him.

RECORDS, HOW KEPT AND TRANSCRIBED.

Records, how to be kept and transcribed after death.
R. S. c. 83, § 17.

SEC. 24. Every trial justice shall keep a fair record of his proceedings; and if he dies after giving judgment in a cause and before it is satisfied, any other justice of the county may, on complaint of the creditor, issue a summons to the person in whose possession the record of such judgment is, directing him to produce and deliver it to him; and if he contemptuously refuses to produce it, or to be examined respecting it on oath, the justice may commit him to prison, as punishment for the contempt, to be detained until he submits to such examination and produces the record; and when the record is so delivered to him, he shall transcribe it upon his own book of records, and return the original to the person who produced it; and a copy thereof attested by the transcribing justice, or otherwise proved, shall be legal evidence in all cases where an authenticated copy of the original might be received.

Execution issued on the transcribed record.
R. S. c. 83, § 18.

SEC. 25. On such transcribed record, the justice may issue execution as if the judgment was rendered by himself, changing the form as the case requires; but no such first execution shall issue after one year from the time the judgment was rendered, unless on scire facias.

On removal or death, records to be deposited with clerk.
Penalty on administrator for neglect.
Duty of the clerk in such cases.
R. S. c. 83, § 19.

SEC. 26. Every justice, who removes from the state, shall first deposit with the clerk of the judicial courts in the county for which he was commissioned, all his official records and papers; and the executor or administrator of a deceased justice shall so deposit all the deceased's official records and papers that come into his hands; and if either neglects to do so, he shall forfeit one hundred dollars. The clerk shall receive and safely keep such records and papers, and may

grant certified copies thereof, which shall be as good evidence as if certified by the justice. CHAP. 83.

SEC. 27. If any justice dies or removes from the state, without recording and signing any judgment by him rendered in an action before him, and his docket, original writ, and papers pertaining thereto, and execution if any issued, are so deposited in the office of the clerk, he shall, on payment of usual fees, make out and certify copies of all the papers in such cause, and all facts appearing in such docket; and such copies shall be legal evidence. But if such records have not been deposited with the clerk, the plaintiff in any action may use, in place of such certified copy, an execution issued on such judgment by the justice, with an affidavit thereon made by the plaintiff or his attorney, that it is not satisfied, or satisfied in part only, as the case may be.

Proceedings if records are not completed. When an execution may be used instead of record. R. S. c. 83, § 20. 17 Me. 413. 33 Me. 440.

SEC. 28. Any justice, whose commission expires and is not renewed, may, during two years thereafter, certify copies of judgments rendered by him while in commission, and issue and renew executions thereon, which shall be obeyed by the officer, as if the commission of the justice had not expired; and after two years such copies may be certified and executions issued and renewed, as in case of the death of the justice.

Justice whose commission has expired, may certify copies and issue new executions for two years; how done afterwards. R. S. c. 83, § 21. 1859, c. 75. 11 Me. 377. 35 Me. 137.

JUSTICE NOT TO BE OF COUNSEL.

SEC. 29. No justice shall be of counsel for or give advice to either party, in a suit before him, or be subsequently employed as counsel or attorney in any case tried before him; nor hear or determine any civil action commenced by himself; and every action so commenced shall abate.

Justice not to be of counsel. R. S. c. 83, § 22.

SEC. 30. Trial justices are declared to be, ex-officio, justices of the peace and of the quorum, and all their official acts, attested by them in either capacity, except those pertaining to the exclusive jurisdiction of trial justices, are of equal effect.

Ex-officio, justices of the peace and quorum. 1864, c. 237.