

MAINE STATE LEGISLATURE

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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:
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CHAPTER 133.**COMMENCEMENT OF PROCEEDINGS IN CRIMINAL CASES.****WHEN PERSONS MAY BE PROSECUTED WITHOUT INDICTMENT.**

- SEC. 1. No person bound to answer for an offence without indictment, except for contempt, by information, and before magistrates and courts martial.

WHO MAY ISSUE CRIMINAL PROCESSES.

- SEC. 2. Justices of the supreme judicial court and magistrates may issue processes in criminal cases.
3. Officer, making complaint officially, may swear to it according to his knowledge and belief, and witnesses may be summoned in a warrant or by subpoena.

ARRESTS WITHOUT WARRANTS.

- SEC. 4. Officers may arrest without warrant persons violating law until warrant can be obtained, and have their fees, if they act in good faith.

ARRESTS IN OTHER COUNTIES.

- SEC. 5. The accused may be pursued into other counties, arrested and brought back.
6. How he may be discharged in the county where he is arrested, if for a bailable offence.

TRANSFER OF PERSONS CHARGED WITH CRIME IN TWO COUNTIES.

- SEC. 7. Accused may be transferred to another county upon order.
8. Duty of officer when order is issued.

EXAMINATION OF OFFENDERS.

- SEC. 9. Examination of persons arrested; magistrate may associate another with him without fees.
10. Adjournment of examination on recognizance or commitment. How offender may be brought before the magistrate at the adjournment.
11. Proceedings if party fails to appear.
12. Mode of examination; witnesses may be examined separately, and testimony taken in writing.
13. When the accused shall be discharged, when sentenced, and when bound over or committed.

PROCEEDINGS ON COMMITMENT OR BINDING OVER.

- SEC. 14. Magistrate to recognize material witnesses or commit them.
15. How married women and minors may recognize.
16. Who may bail the accused after commitment.
17. Examinations and recognizances to be returned to the county attorney or clerk, and magistrate compelled to do so by rule or *capias* of the court.

WHEN PROSECUTIONS MAY BE DISMISSED.

- SEC. 18. What prosecutions may be dismissed on satisfaction for private injury.
19. Such discharges to be filed with the clerk or jailer.

REMEDIES ON RECOGNIZANCES. BAIL, HOW DISCHARGED.

- SEC. 20. Forfeited recognizances to be defaulted and process issued thereon. Sureties may pay the amount to county treasurer or clerk and be discharged.

- CHAP. 133.** SEC. 21. Court may remit the penalty; and the sureties may surrender the principal, but only twice in the same case.
22. Certain forms in proceedings on recognizances unnecessary.
23. Bail may surrender principal before or after default on their recognizance. Effect.

WHEN PERSONS MAY BE PROSECUTED WITHOUT INDICTMENT.

No person bound to answer for an offence without indictment, &c.
R. S. c. 133, § 1.

SEC. 1. No person shall be held to answer in any court for an alleged offence, unless on an indictment found by a grand jury, except for contempt of court and in the following cases:

First.—When prosecutions by information are expressly authorized by statute.

Second.—In proceedings before municipal and police courts, trial justices, and courts martial.

WHO MAY ISSUE CRIMINAL PROCESSES.

Justices of the S. J. C. and magistrates may issue processes, &c.
R. S. c. 133, § 2.
1861, c. 32, § 1.
3 Me. 20.
39 Me. 212,
476.

SEC. 2. The justices of the supreme judicial court, judges of municipal and police courts, and trial justices in their counties, in the manner provided in chapter one hundred and thirty-two, in vacation or term time, may issue processes for the arrest of persons charged with offences.

Officer making complaint, &c.
R. S. c. 133, § 3.

SEC. 3. When it is the duty of an officer to make complaint before any magistrate, he may make oath to it according to his knowledge and belief.

ARRESTS WITHOUT WARRANTS.

Officers may arrest without warrant, &c.
R. S. c. 133, § 4.
10 Me. 473.
36 Me. 317.
42 Me. 334.

SEC. 4. Every sheriff, deputy sheriff, constable, city or deputy marshal, watchman, or police officer, shall arrest and detain persons found violating any law of the state, or any legal ordinance or by-law of a town, until a legal warrant can be obtained, and shall be entitled to legal fees for such service; but if, in so doing, he acts wantonly or oppressively, or detains a person without a warrant longer than is necessary to procure it, he shall be liable to such person for the damages suffered thereby.

ARRESTS IN OTHER COUNTIES. TRANSFER OF PERSONS CHARGED WITH CRIME IN TWO COUNTIES.

The accused may be pursued into other counties, &c.
R. S. c. 133, § 5.
17 Me. 193.

SEC. 5. When a person charged with an offence in any county, before or after the issue of the warrant, removes, escapes, or is found out of it, the officer having the warrant may pursue and arrest him in any other county, command aid as in his own county, and convey him to the county where the offence was committed.

How discharged in county where arrested, &c.
R. S. c. 133, § 6.

SEC. 6. If the offence charged is not punishable with death or imprisonment in the state prison, the officer shall, on request of the accused, take him before a magistrate of the county where he is arrested; and such magistrate, without any examination, may take

his recognizance with sufficient sureties for his appearance at the next court, or before any magistrate having cognizance of the offence in the county where it was committed, and thereupon the accused shall be discharged; and the magistrate shall certify that fact on the warrant, and deliver the same with the recognizance to the officer, and he shall immediately deliver them to the clerk of the court or magistrate before whom the accused recognized to appear. CHAP. 133.

SEC. 7. When a person is imprisoned or held under arrest in one county, any justice of the supreme judicial court, in term time or vacation, may order the removal of such person into another county, when complaint has been made and warrant issued, or an indictment has been found, charging the person so arrested or imprisoned, with the commission of a crime in such other county, for examination or trial under said complaint or indictment; but he shall be satisfied before issuing such order, that the administration of speedy and impartial justice requires it. Of the transfer of persons when charged with crimes in two counties. 1868, c. 134, §§ 1, 2.

SEC. 8. The officer holding the person described in such order, shall deliver him to the officer presenting it, and give to him an attested copy of the same, and of the complaint and warrant, or indictment on which such order is founded. The officer receiving the accused person, shall bring him before the proper court or magistrate, in the county to which he is removed, for examination and trial, and make due return of his proceedings. Duties of officers holding prisoner and of officer holding order of court. 1868, c. 134, § 8.

EXAMINATIONS OF OFFENDERS.

SEC. 9. Every person arrested for any offence shall be brought before the magistrate issuing the warrant, or some other in the same county, for examination; and the warrant, with a proper return thereon, signed by the officer serving it, shall be delivered to the magistrate, who may associate another magistrate with him in such examination, but no fees shall be taxed for him. Examinations of persons arrested, &c. R. S. c. 133, § 7.

SEC. 10. Any magistrate may adjourn an examination before him, from time to time, not more than ten days at a time, and may recognize the accused with sufficient sureties for his appearance before him at the time of adjournment; but if no sufficient sureties are offered, or the offence is not bailable, the accused shall be committed to jail by an order of the magistrate, stating briefly the offence with which he is charged, and that he is committed for examination at a future day therein named, and, on the day appointed, he may be brought before such magistrate by his verbal order to the officer committing him, or by a written order to any other person. Adjournment of examination on recognizance or commitment, &c. R. S. c. 133, § 10. 48 Me. 576.

SEC. 11. If the party so recognized does not appear at the time of such adjournment, the magistrate shall record his default, and certify the recognizance and such record to the supreme judicial court, Proceedings, if party fails to appear. R. S. c. 133, § 9.

CHAP. 133. there to be proceeded with as any other forfeited recognizance in a criminal case.

Examination,
&c.
R. S. c. 133,
§ 10.

SEC. 12. When the accused is brought before a magistrate, he shall first examine, in the presence of the accused, on oath, the complainant and witnesses to support the prosecution as to all pertinent facts, and then the witnesses in defence; the witnesses on both sides may be examined, each one separately from all the others; and the witnesses for may be kept separate from those against the accused during the examination, according to the directions of the magistrate, who may reduce the testimony of any witness to writing, when he thinks it necessary, and require him to sign it.

When accused
shall be dis-
charged, &c.
R. S. c. 133,
§ 11.
35 Me. 129.
37 Me. 130.
41 Me. 430.
47 Me. 462.

SEC. 13. If it appears on the whole examination that no offence is committed, or that there is not probable cause to charge the accused, he shall be discharged; but if it appears that an offence is committed, that there is probable cause to charge the accused, and the offence is bailable, and sufficient bail is offered, it shall be taken, and the accused discharged; but if it is not bailable, or no sufficient bail is offered, the accused shall be committed to prison to await a trial. If the offence is within the jurisdiction of the magistrate, he shall try it, and award sentence thereon.

PROCEEDINGS ON COMMITMENT OR BINDING OVER.

Magistrate to
recognize ma-
terial witness-
es or commit
them.
R. S. c. 133,
§ 12.

SEC. 14. When the accused is committed, or bound over for trial to a higher court, the magistrate shall order the material witnesses against him to recognize to appear and testify at said court; and when he is satisfied there is reason to believe that any of them will not perform the condition of his own recognizance, he may order him to recognize with sufficient sureties; and if he refuses to recognize as required, in either case, he may be committed to prison and remain till discharged by law.

How married
women and
minors may
recognize.
R. S. c. 133,
§ 13.

SEC. 15. Any person may so recognize for a married woman or minor to appear as a witness, or the magistrate may take the recognizance of either in a sum not exceeding twenty dollars, which shall be valid notwithstanding such disability.

Who may bail
the accused
after commit-
ment. Bail
not to be re-
duced by the
justices, &c.
R. S. c. 133,
§ 14.
1861, c. 27.

SEC. 16. Any justice of the supreme judicial court, or any two justices of the peace and quorum for the county, on application of a prisoner committed before verdict of guilty, for a bailable offence, or for not finding sureties to recognize for him, may inquire into the case and admit him to bail. But the amount of such bail or recognizance shall not be reduced by said justices of the peace and quorum, if the supreme judicial court is in session in the county, or if a justice of such court is resident in the town where the accused is confined.

Examinations
and recogni-
zances to be

SEC. 17. All the examinations and recognizances, taken by a magistrate under this chapter, shall be certified and returned to the

county attorney or clerk of the court, at which the accused is to appear, on or before the first day of its session; and if the magistrate neglects so to do, he may be compelled by rule of court, or if that is disobeyed, by attachment for contempt.

CHAP. 133.

returned, &c.
R. S. c. 133,
§ 15.

WHEN PROSECUTIONS MAY BE DISCONTINUED.

SEC. 18. When a person is recognized or committed by a magistrate, or is indicted for an assault and battery, or other misdemeanor, for which the party injured has a remedy by a civil action, except felonious assaults, assaults upon or resistance of an officer of justice in the execution of his duty, and assaults and batteries of such officers, if the injured party appears before the magistrate or court, and in writing acknowledges satisfaction for the injury, on payment of all costs, the court may stay all further proceedings and discharge the defendant; the magistrate may discharge the recognizance, supersede the commitment by his written order, and discharge the recognizance of the witnesses.

What prosecutions may be dismissed on satisfaction for private injury.
R. S. c. 133,
§ 16.

SEC. 19. 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.

Such discharges to be filed with clerk or jailer.
R. S. c. 133,
§ 17.

REMEDIES ON RECOGNIZANCES. BAIL, HOW DISCHARGED.

SEC. 20. 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.

Forfeited recognizances to be defaulted, &c.
R. S. c. 133,
§ 18.
33 Me. 200,
539.
41 Me. 344.

SEC. 21. 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.

Court may remit penalty, &c.
R. S. c. 133,
§ 19.
41 Me. 535.
50 Me. 45.

SEC. 22. 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

Certain forms in proceedings unessential.
R. S. c. 133,
§ 20.

CHAP. 134. description of the offence charged, that the magistrate was authorized to require and take the same.

Bail, how exonerated before and after default upon their recognizance. 1867, c. 110, §§ 1, 2.

SEC. 23. Bail in criminal cases, at any time before default upon their recognizance, may exonerate themselves by surrendering their principal into court, or to the jailer in the county where the principal is held to appear, and delivering to the jailer a certified copy of the recognizance; and the jailer shall receive and detain such principal; and any person, so surrendered, may be afterwards bailed in the same manner as if he had been committed without recognizance. After such default, bail may surrender their principal, as before provided, and the court, on application therefor, being satisfied that the default of the principal was not with the consent or connivance of the bail, may remit the whole or any part of the penalty.

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.

- SEC. 9.** In what cases persons in prison, on charges of capital offences, may be bailed or discharged, if not indicted.
10. If indicted, when they may claim trial.
11. Standing mute equivalent to not guilty.
12. Jury of trial, how impaneled. Of peremptory and other challenges.
13. One justice may try capital cases; justice of superior court for Cumberland county may try.
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.