

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:
PUBLISHED BY BAILEY & NOYES.

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.

SEC. 18. Person arraigned, need not be asked how he will be tried; and dilatory pleas CHAP. 134.
may be rejected unless verified by oath.

19. Depositions may be taken out of the state, on request of defendant. Accused may be a witness, at his own request. Husband or wife may testify with the consent of the other.
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.

SEC. 25. Payment of private claims out of forfeited recognizances.

EXCEPTIONS, AND BAIL AFTER VERDICT. REVERSAL ON WRIT OF ERROR.

- SEC. 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.
27. Reversal of judgment on writ of error.

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 venire, an alphabetical list of such jurors. Clerks of courts to prepare lists of grand jurors. R. S. c. 134, § 1. See c. 106.

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 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." Form of affirmation. R. S. c. 134, § 3.

CHAP. 134. **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. **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. **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. **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. It is sufficient in every indictment for murder, to charge that the defendant did feloniously, wilfully and of his malice aforethought, kill and murder the deceased, and for manslaughter, to charge that the defendant did feloniously kill and slay the deceased, without setting forth the manner or means of death.

Disclosures improper to be made by grand jurors. **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. **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. **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 fel-

ony, if they have been arrested thereon; shall be tried or bailed at the second term after the finding thereof. Any person indicted, although he has not been arrested, is entitled to a speedy trial, if he demands it, in person, in open court. CHAP. 134.

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. Being mute.
R. S. c. 134,
§ 11.

SEC. 12. When a person, indicted for an offence punishable with death, is put upon his trial, the clerk under the direction of the court, shall place the names of all the traverse jurors summoned and in attendance, in a box, upon separate tickets, and the names, after being mixed, shall be drawn from the box by the clerk, one at a time, for the purpose of constituting a jury of trial. All peremptory challenges, except as herein provided, and all other challenges and objections to the juror drawn, shall be made and determined, and the juror sworn or set aside, before another name is drawn, and so on until the panel is completed. The person indicted shall not challenge peremptorily, more than ten of the jurors while the panel is being formed; but he may, before the trial commences, challenge peremptorily, one of the jurors from the panel. The supreme judicial court, may, by general rules, prescribe the mode of exercising the latter right of challenge. Jury for trial,
how empanel-
ed.
Challenges.
Rules by S. J.
C.
R. S. c. 134,
§ 12.
1864, c. 247.
1867, c. 103.

SEC. 13. One justice of the supreme judicial court may hold a term thereof in any county, except the county of Cumberland, for the trial of capital cases, and exceptions may be taken, as in other cases, to their rulings and decisions. One justice
may try capi-
tal cases.
Justice of su-
perior court
in Cumberland
county, same
powers.
1860, c. 133.
1868, c. 216.

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. Competent counsel shall be assigned by the court in capital cases, when it appears that the accused has not sufficient means to employ counsel, and reasonable compensation shall be allowed by the court, to be paid out of the state treasury. Rights of per-
sons indicted
for felony, &c.
R. S. c. 134,
§ 14.
1870, c. 37.

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. Prosecuting
officer may
summon wit-
nesses, &c.
R. S. c. 134,
§ 15.

CHAP. 134. 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.

Punishment for not attending, &c.
R. S. c. 134, § 16.

Witnesses not to be paid till second or third day in continued cases, &c.
R. S. c. 134, § 17.

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 treasury; 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. 134, § 18.
15 Me. 104.
23 Me. 111.
36 Me. 198.
37 Me. 329.
38 Me. 298.
39 Me. 359.

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. Responder t may testify at his own request. Husband and wife by consent of each other may testify.
R. S. c. 134, § 19.
1859, c. 102.
1864, c. 280.
1865, c. 312.
1866, c. 53.

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. In all criminal trials, the accused shall, at his own request, but not otherwise, be a competent witness. The husband or wife of the accused shall be a competent witness, when either is called, with the consent of the respondent.

Facts tried and challenges allowed as in civil cases, &c.
R. S. c. 134, § 20.

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. (a)

(a) Practice and evidence in criminal cases; 19 Me. 225, 398; 21 Me. 14; 26 Me. 312; 29 Me. 329, 561; 30 Me. 29, 182, 341; 31 Me. 62; 32 Me. 369, 585; 34 Me. 36; 37 Me. 329, 361; 38 Me. 574; 39 Me. 54, 68, 70, 78, 291, 359; 40 Me. 559; 43 Me. 11; 45 Me. 322; 46 Me. 531; 47 Me. 449; 48 Me. 218, 364; 51 Me. 363, 395; 53 Me. 125, 328, 548; 54 Me. 24, 569; 55 Me. 200.

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.

CHAP. 134.

Jurors' oaths; affirmations. R. S. c. 134, § 21.

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.

When a person shall, or may not, be present at his trial. R. S. c. 134, § 22.

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

View. R. S. c. 134, § 23.

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.

When the court may postpone criminal cases, &c. R. S. c. 134, § 24.

PAYMENT OF PRIVATE CLAIMS FROM 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.

Payment of private claims out of forfeited recognizances. R. S. c. 134, § 25.

EXCEPTIONS AND BAIL AFTER VERDICT. REVERSAL ON WRIT OF ERROR.

SEC. 26. A question of law allowable by exceptions, may be reserved on a report signed by the presiding justice, and in such case, and where exceptions are allowed, the defendant may, when the offence charged is bailable, recognize with sureties, in such sum as the court orders, with conditions substantially as follows: The condition of this recognizance is such that, whereas there is now pending in the — court, within and for the county of —, an indictment against the said — for the crime of —, in the course of the proceedings upon which questions of law requiring the decision of the justices of the supreme judicial court have arisen; now if the said — shall personally appear before the said — court, to be held in and for the said county, from term to term, until and including the term of said court next after the certificate of decision shall be received from said justices, and shall abide the decision and order of said court, and not depart without license, then this recognizance shall be void. If he does not so recognize he shall be committed. When a verdict of guilty is rendered against any person for an offence punishable by imprisonment in the state prison, he shall be

Defendant may give bail in bailable case, pending a question of law. Form of recognizance.

After verdict of guilty, can be admitted to bail only by judge trying him, or some person appointed by him. R. S. c. 134, § 26. 1869, c. 43. 34 Me. 223. 38 Me. 296. 298, 574. 40 Me. 129. 41 Me. 165. 42 Me. 334. 43 Me. 282. 55 Me. 200.

CHAP. 135. admitted to bail only by the justice trying him, by some person by him appointed therefor, or by some other justice of the court.

In case of error in sentence, proceedings. 1870, c. 90.

SEC. 27. When a final judgment in any criminal case is reversed by the supreme judicial court, upon a writ of error, on account of error in the sentence, the court may render such judgment therein as should have been rendered, or may remand the case for that purpose to the court before whom the conviction was had.

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.

- SEC. 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.

- SEC. 7. Copy of evidence to be made and certified by judge, upon conviction. Copy of whole record to be sent to governor.
8. Governor and council shall review. Unless pardon or commutation is granted, governor shall issue his warrant for execution in one year after sentence.
9. Disposition of convicts under sentence of death.
10. How and where sentence of death shall be executed, and who may be present.
11. Sheriff's return to be made and filed in the office of secretary of state.

LIBERATION OF POOR CONVICTS.

- SEC. 12. 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.
13. Such notes a lien on their real estate, and execution thereon may be proceeded with as in other cases.
14. Penalty for willfully making a false schedule of property.

WHAT SENTENCE MAY BE AWARDED.

No person can be punished, till convicted. R. S. c. 135, § 1. 1860, c. 176.

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, a person convicted thereof shall be imprisoned less than one year or fined not exceeding five hundred dollars. When it is provided that he shall