

# MAINE STATE LEGISLATURE

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FOURTH REVISION.

THE  
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED AUGUST 29, 1883, AND TAKING EFFECT JANUARY 1, 1884.

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BY THE AUTHORITY OF THE LEGISLATURE.



PORTLAND:  
PUBLISHED BY LORING, SHORT & HARMON  
AND  
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1884.

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**ERRATA:**

**The following two leaves are  
inserted because one or more pages  
in this chapter have errors  
noticed and corrected here.**

# ERRORS.

## ERROR IN THE TEXT OF THE REVISED STATUTES.

Page 63, § 3, line one.—Erase the last word “may.”

## ERROR IN THE TEXT OF THE REPEALING ACT.

Page 999.—Transfer “Chapter 48, Section 6, of an act to facilitate the prompt administration of justice by establishing a superior court in Kennebec County,” from the year 1879 to 1878.

## ERROR IN THE COMMISSIONER'S NOTES.

Pages 177, 178.—Erase the last two lines of page 177, and the first three lines of page 178.

## ERRORS IN THE MARGINAL REFERENCES.

- Page 59, § 6, ¶ xx.—Erase “*R. S.*, c. 1, ¶ xx”, and supply, at the bottom of the page, “*R. S.*, c. 1, § 4”
- “ 66, § 24.—Erase “*Resolve of 1837*, c. 52.”
- “ 69, § 44.—Supply “*Resolve of 1840*, c. 107.”
- “ 72, § 68.—Erase “*See c. 6*, §§ 40-67.”
- “ “ § 70.—Erase “*R. S.*, c. 2, § 66.”
- “ 79, § 12, (note b).—“*See c. 18*, § 73” should read “*See c. 18*, § 75.”  
“ “ “ “ “*See c. 30*, § 15” should read “*See c. 30*, § 16.”
- “ “ § 14.—Supply “*See c. 18*, § 75.”
- “ 83, § 40.—“*R. S.*, c. 3, § 34” should read “*R. S.*, c. 3, § 33.”
- “ 84, § 46.—“*See c. 18*, § 67” should read “*See c. 18*, § 59.”
- “ 86, § 59, ¶ i, (note b).—“*See c. 17*, §§ 25-29” should read “*See c. 17*, §§ 27, 28.”
- “ “ “ ¶ vi, (note e).—“*See c. 18*, § 15” should read “*See c. 18*, § 17.”
- “ 92, note.—“*c. 18*, §§ 39, 103” should read “*c. 18*, §§ 39, 97.”
- “ 97, § 16.—Erase “*R. S.*, c. 4, § 16.”
- “ 108, § 86.—“*Art. ii*, § 2” should read “*Art. ii*, § 1, ¶ 2.”
- “ 117, § 28.—Erase the first reference to “1878, c. 31, § 1.” Also erase “*R. S.*, c. 5, § 26.”
- “ 176, § 27.—“*Resolve of 1883*, c. 20” should read “*Resolve of 1883*, c. 86.”
- “ 183, § 5.—“*See § 93*, ¶ 6” should read “*See § 93*, ¶ v.”
- “ 202, § 102.—“1883, c. 229” should read “*See c. 115*, § 1.”
- “ 209, § 1.—Supply “1880, c. 215.”
- “ 210, § 7.—Supply “1880, c. 215.”
- “ 249, § 44.—“1875, c. 25, § 6” should read “1875, c. 25, § 6.”
- “ 270, § 16.—Supply “1880, c. 215.”
- “ 330, § 26.—“*See c. 40*, § 77” should read “*See c. 40*, § 74.”
- “ “ § 28.—“*See c. 40*, § 38” should read “*See c. 40*, §§ 33, 40.”
- “ 374, § 23.—“*See § 17*” should read “1880, c. 234, § 1.”
- “ 384, § 74.—Add “1883, c. 138, § 3.”  
“ “ “ “ “1883, c. 144, § 4.”
- “ 506, § 1.—Supply “*See 1880*, c. 215.”
- “ 642, § 80, bottom of the page.—Supply “1878, c. 48, § 6.”
- “ 709, § 105.—“*See c. 134*, § 13” should read “*See c. 134*, § 19.”
- “ 773, § 42.—Supply “1883, c. 198, § 2.”
- “ 804, § 35.—“*See c. 134*, § 26” should read “*c. 134*, § 26.”
- “ 861, § 1.—“*R. S.*, c. 2, § 20,” } should read “1883, c. 221.”  
“ “ “ “*R. S.*, c. 115, § 1.” }
- “ 862, § 4.—“*See c. 63*, §§ 32 to 39” should read “*See c. 63*, § 35.”

## ERRORS IN CITATIONS OF CASES.

- Page 10, § 8, ¶ iii, (note c).—"14 *Pet.*, 504" should read "14 *Pet.*, 540."  
 " 16, § 1, (note b).—"10 *Me.*, 483" should read "10 *Me.*, 283."  
 " 78, § 5, (note a).—"13 *Me.*, 472, 489" should read "13 *Me.*, 472."  
 " " § 7, (note b).—"12 *Me.*, 589" should read "12 *Me.*, 489."  
 " 147, § 97.—"58 *Me.*, 528" should read "58 *Me.*, 532."  
 " 166, § 1.—"64 *Me.*, 549" should read "64 *Me.*, 599."  
 " 200, § 93, ¶ iv.—Erase "20 *Me.*, 545."  
 " 211, § 19.—"3 *Me.*, 347" should read "3 *Me.*, 249."  
 " 241, § 5, (note b).—"68 *Me.*, 28" should read "63 *Me.*, 28."  
 " 257, § 80, (note a), Construction of ways.—"26 *Me.*, 340" should read "26 *Me.*, 240."  
 " 397, § 1, (note a).—Erase "66 *Me.*, 526."  
 " 521, § 2, (note a).—Erase "60 *Me.*, 377."  
 " " § 9.—Erase "60 *Me.*, 533."  
 " 563, § 10.—"31 *Me.*, 286" should read "31 *Me.*, 254."  
 " 597, § 23.—"4 *Me.*, 19" should read "4 *Me.*, 8."  
 " 705, § 78.—"43 *Me.*, 438" should read "48 *Me.*, 438."  
 " 728, § 12.—Erase "68 *Me.*, 30."  
 " 750, § 5.—Erase "20 *Me.*, 325."  
 " 765, § 1, (note a).—Erase "73 *Me.*, 228."  
 " 814, § 19, (note c).—Erase "71 *Me.*, 543."  
 " 817, § 8, (note b).—"27 *Me.*, 363" should read "27 *Me.*, 362."  
 " 885, § 1.—Erase "62 *Me.*, 285."  
 " 886, § 8.—"36 *Me.*, 225" should read "36 *Me.*, 227."  
 " 933, § 4.—"34 *Me.*, 478" should read "39 *Me.*, 478."

## OMISSION IN REFERENCE INDEX TABLE, PART I.

Page 1060.—Supply "1878, c. 48, § 6," with a reference to "R. S., c. 77, § 80."

**CHAP. 84.** weeks successively, the names of such proprietors as are known to him, of the lands which he proposes to sell, with the amount of the execution or warrant of distress; and, where the names of the proprietors are not known, he shall publish the numbers of the lots or divisions of said land; the last publication shall be three months before the time appointed for the sale. If necessary to complete the sale, he may adjourn it from day to day not exceeding three days. He shall give a deed to the purchaser of said land in fee, expressing therein the cause of sale. The proprietor of the land so sold may redeem it within a year after the sale by paying the sum for which it was sold, the necessary charges, and interest thereon.

Remedy of owner of the property so sold.  
R.S., c. 84, § 31.  
See c. 46, § 55.

**SEC. 32.** The owner of any real or personal estate so sold, may recover against the town, in an action of assumpsit, the full value thereof with interest at the rate of twelve per cent. yearly, with costs of suit; and may prove and recover the real value thereof, whatever was the price at which it was sold. (a)

## CHAPTER 85.

### BAIL IN CIVIL ACTIONS.

- SEC. 1.** Bail shall be by bond to the sheriff or other officer; bond shall be returned with the writ.
2. What bail the sheriff may require.
  3. In what cases the obligors shall be held.
  4. Surrender of principal before entry; how it shall be done, and its effect.
  5. Names of bail shall be entered on execution.
  6. Officer shall notify bail; his fees shall be paid.
  7. Surrender of principal in court.
  8. In case of avoidance, officer's duty, and liability of bail.
  9. When scire facias against bail may issue.
  10. Pleadings and defence by bail.
  11. Surrender of principal on scire facias.
  12. Proceedings, when bail is taken in a justice action.
  13. Surrender and commitment of principal in such case, and its effect.
  14. Officer's fees, duty, and liability for neglect.
  15. Surrender in such case before judgment, and after judgment.
  16. Remedy of bail against principal.

Bail shall be by bond to officer, to be returned with writ.  
R.S., c. 85, § 1.  
1 Me., 336.  
4 Me., 13.  
8 Me., 423.  
40 Me., 125.

**SEC. 1.** When bail is taken on mesne process, it shall be by bond to the sheriff, if taken by him or his deputy, otherwise to the officer making the arrest, with condition that the defendant will appear and answer to the suit, and abide final judgment thereon and not avoid. The bond shall be returned with the writ, and the clerk shall note on the writ that a bail bond is so filed.

What bail, officer may require.

**SEC. 2.** No officer is obliged to accept a bail bond unless signed by at least two sureties, having sufficient property in the county in which

(a) 69 Me., 468; 74 Me., 43.

the principal is arrested or held in custody; and if he takes a bail bond with only one surety, he is liable to the plaintiff for any deficiency thereof.

CHAP. 85.  
R.S., c. 85, § 2.  
2 Me., 48.

SEC. 3. A bail bond binds the obligors although signed by only one surety, or when signed by two or more sureties, when all or any of them had not sufficient property in the county.

When obligors are held.  
R.S., c. 85, § 3.

SEC. 4. Any bail may, before the action is entered, exonerate himself from all liability, by surrendering his principal to the jail in the county where the arrest was made, or in the county where the writ is returnable, and within fifteen days thereafter, leaving with the jailer an attested copy of the writ or process whereby the arrest was made, of the return indorsed thereon, and of the bail bond, and notifying, in writing, the plaintiff or his attorney of the time and place of the commitment; and the jailer shall receive him into custody as if committed by the officer making the arrest.

Surrender of principal before entry, how to be done and its effect.  
R.S., c. 85, § 4.  
2 Me., 383.

SEC. 5. If judgment is rendered against the principal in the action in which the bail is taken, the clerk of the court or trial justice issuing the execution on the judgment, shall insert, on the margin thereof, the names of the bail, their addition, and places of abode, if inserted in the bail bond; and if the debtor is committed to jail, the clerk or justice shall note in like manner the jail to which he is committed.

Names of bail shall be entered, on execution.  
R.S., c. 85, § 5.  
4 Me., 13.

SEC. 6. The officer holding the execution, shall, fifteen days at least before its expiration, whether the debtor has given bail to the arresting officer or the jailer, notify each of the bail personally, or by leaving a notice in writing, by him signed, at the bail's usual place of abode, if in the officer's county, certifying that he cannot find the principal debtor, or property wherewith to satisfy the execution, for which he may demand and receive of the bail the usual fee for service of a writ, and for travel, and shall minute in said notice the amount of the fees, which the bail shall pay in twenty days, unless, one day at least before the execution is returnable, the bail produce and deliver to the officer the principal debtor.

Officer shall notify bail; his fees must be paid.  
R.S., c. 85, § 6.  
See c. 116.  
7 Me., 81.

SEC. 7. If the bail do not surrender the principal as aforesaid, they may, at any time before final judgment in the original suit, bring him into court where the action is pending, and deliver him into the custody thereof and be thereby discharged.

Surrender of principal in court.  
R.S., c. 85, § 7.  
19 Me., 412.  
20 Me., 481.

SEC. 8. In case of the avoidance of the principal, and return on the execution by the officer that he had had it in his hands at least thirty days before its expiration, and that the principal was not found, his bail shall satisfy the judgment with interest thereon from the time when it was rendered, unless they discharge themselves by surrendering the principal before final judgment against them on the writ of scire facias, or by some other sufficient defence.

In case of avoidance, officer's duty; liability of bail.  
R.S., c. 85, § 8.

SEC. 9. When the principal so avoids, and his property cannot be found to satisfy the execution, the original creditor may have a writ of scire facias, in his own name, from the same court, against the bail, in vacation or in term time, to be sued out within one year from the rendition of judgment against the principal, and he need not declare on the

When scire facias against bail may issue.  
R.S., c. 85, § 9.  
62 Me., 237.

**CHAP. 85.** bail bond, but may merely allege that the defendants became bail in the original action.

Pleadings  
and defence  
by bail.  
R.S., c. 85, § 10.

SEC. 10. The bail may plead, jointly or severally, that they never became bail as alleged in the writ, and under that plea may avail themselves of every defence which would avail them in an action of debt on the bond, on the plea that it is not their bond; or may show any special matter of discharge, filing a brief statement thereof as provided by law.

Surrender of  
principal, on  
scire facias.  
R.S., c. 85, § 11.

SEC. 11. The bail may surrender the principal in court before final judgment on the scire facias, and on paying all the costs on the scire facias, they shall be discharged; and the principal shall be committed to jail to remain for fifteen days; and if the creditor does not, within that time, take him in execution, the sheriff shall discharge him on payment of the legal prison fees.

Proceedings,  
when bail is  
taken in a  
justice  
action.  
R.S., c. 85, § 12.  
68 Me., 30.

SEC. 12. When bail is taken on mesne process in an action returnable before a trial justice, and there is a return on the execution issued on the judgment therein, that the principal is not found, the justice may issue a scire facias thereon against the bail, to be served seven days before the day of trial; and if no sufficient cause is shown to the contrary, he may render judgment for the debt and costs recovered, with interest thereon from the rendition of judgment, against the principal, and issue execution accordingly, notwithstanding the debt and costs on the original judgment exceed twenty dollars.

Surrender  
and commit-  
ment of the  
principal in  
such case,  
and effect  
thereof.  
R.S., c. 85, § 13.

SEC. 13. If the bail, at any time before final judgment in the original suit or on scire facias, bring the principal before the justice, and procure the attendance of an officer to receive him, the justice shall make a record of the surrender, and order him into the custody of the officer to be committed to jail, to be proceeded with as mentioned in the preceding sections; and on payment of costs on the scire facias, the bail shall be fully discharged.

Officer's  
fees; duty,  
and liability  
for neglect.  
R.S., c. 85, § 14.

SEC. 14. The officer shall attend before a justice for such purpose, when requested; and shall be allowed therefor the same fees as for arresting and committing a defendant on mesne process; and for neglect of official duty in such case, he shall be answerable for all damages to the party injured thereby.

Surrender in  
such case,  
before and  
after  
judgment.  
R.S., c. 85, § 15.  
71 Me., 406.

SEC. 15. If the principal is surrendered before final judgment in the original suit, the bail shall deliver to the officer a copy of the writ, with the return thereon, attested by the justice; but if he is surrendered after such judgment, the bail shall deliver a copy of the entry of surrender, attested by the justice; and in either case the officer shall deliver the copy to the jailer with the prisoner; which shall be a sufficient warrant to the officer for receiving and conveying him to jail, and to the jailer for holding him in custody.

Remedy of  
bail against  
principal.  
R.S., c. 85, § 16.

SEC. 16. Bail may have their remedy against their principal, by an action on the case, for all damages sustained by them by reason of their suretyship.