

# 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.



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**CHAP. 132.** for such county, the supreme judicial or superior court shall have the same powers as the commissioners in other cases.

Costs in appealed cases.  
R. S., c. 132,  
§ 20.

**SEC. 20.** In cases carried to a higher court by appeal, recognizance, or commitment, costs shall be taxed by the magistrate and certified with the papers.

Warrants must be sealed and signed.  
R. S., c. 132,  
§ 21.  
34 Me., 222.  
36 Me., 368.

**SEC. 21.** Warrants, issued by a magistrate in criminal cases, shall be under seal, and be signed by him at the time when they are issued.

## CHAPTER 133.

### COMMENCEMENT OF PROCEEDINGS IN CRIMINAL CASES.

#### WHEN PERSONS MAY BE PROSECUTED WITHOUT INDICTMENT.

**SEC. 1.** No person is 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 and superior courts, and magistrates, may issue processes in criminal cases.

**3.** Officer, complaining officially, may swear to it according to his knowledge and belief.

#### ARRESTS WITHOUT WARRANTS.

**SEC. 4.** Officers may arrest without warrant, and detain until warrant can be obtained, persons found violating law, and they may have their fees, for such services, 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, if charged with a bailable offence, he may be discharged in the county where he is arrested.

#### TRANSFER OF PERSONS, CHARGED WITH CRIME IN TWO COUNTIES.

**SEC. 7.** Accused may be transferred to another county, upon order of removal.

**8.** Duty of officer, when such order is issued.

#### EXAMINATION OF OFFENDERS.

**SEC. 9.** Examination of persons arrested; magistrate may associate another with him without fees.

**10.** Adjournment of an examination on recognizance or commitment. How the accused may be brought before the magistrate after adjournment.

**11.** Proceedings, if party fails to appear.

**12.** Mode of examination; witnesses may be examined separately, and testimony may be taken in writing.

**13.** When the accused is discharged, complainant shall pay the costs, if complaint is adjudged frivolous or malicious. Complainant may appeal. Proceedings, if probable cause is found. When magistrate may sentence.

#### PROCEEDINGS ON COMMITMENT OR BINDING OVER.

**SEC. 14.** Magistrate shall 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 shall be returned to the county attorney or clerk; magistrate may be compelled to do it, by rule of court or capias.

#### WHEN PROSECUTIONS MAY BE DISMISSED.

**SEC. 18.** What prosecutions may be dismissed, on satisfaction for private injury.

Such discharges shall be filed with the clerk or jailer.

## REMEDIES ON RECOGNIZANCES. BAIL, HOW TO BE DISCHARGED.

- SEC. 20. Forfeited recognizances shall be defaulted and process issued thereon. Sureties may pay county treasurer or clerk, and be discharged.
21. Bail may exonerate themselves by surrender of their principal, before default on recognizance.
  22. After default, court may remit penalty; or sureties may surrender their principal, if not guilty of connivance.
  23. Privileges of preceding section are denied to sureties in liquor cases.
  24. Scire facias, on any recognizance, shall be dismissed on payment of costs, in case of actual sentence.
  25. Certain forms in proceedings on recognizances are unessential.

## WHEN PERSONS MAY BE PROSECUTED WITHOUT INDICTMENT.

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:

Criminal prosecutions must be by indictment. R.S., c. 133, § 1. —excepted cases.

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

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

## WHO MAY ISSUE CRIMINAL PROCESSES.

SEC. 2. The justices of the supreme judicial and superior courts, 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.

Justices of courts, and magistrates, may issue processes. R.S., c. 133, § 2. 39 Me., 213, 482.

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.

How officer may make oath. R.S., c. 133, § 3.

## ARRESTS WITHOUT WARRANTS.

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 they 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.

Officer may arrest, without warrant. R.S., c. 133, § 4. 10 Me., 476. 36 Me., 320. 42 Me., 368. 68 Me., 149.

—liability.

## ARRESTS IN OTHER COUNTIES.

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.

Accused, escaping, may be pursued into other counties. R.S., c. 133, § 5. 17 Me., 195.

SEC. 6. If the offence charged is not punishable with 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 examination, may take his recognizance with sufficient

How he may be discharged, in the county where he was arrested. R.S., c. 133, § 6.

**CHAP. 133.** 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, who shall immediately deliver them to the clerk of the court or magistrate before whom the accused recognized to appear.

TRANSFER OF PERSONS, CHARGED WITH CRIME IN TWO COUNTIES.

Of the transfer of persons, when charged with crimes in two counties.  
R.S., c. 133, § 7.

**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 his removal 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, before issuing such order, he shall be satisfied that the administration of speedy and impartial justice requires it.

Duties of officer holding prisoner, and of officer holding court's order of removal.  
R.S., c. 133, § 8.

**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.

EXAMINATION OF OFFENDERS.

Examination of persons arrested.  
R.S., c. 133, § 9.

**SEC. 9.** Every person arrested for an 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.

Adjournment of an examination, on recognizance or commitment.  
R. S., c. 133, § 10.  
48 Me., 582.

**SEC. 10.** A magistrate may adjourn an examination before him, from time to time, for not more than ten days at a time, and the accused may recognize 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.

Proceedings, if party fails to appear.  
R. S., c. 133, § 11.

**SEC. 11.** If the party so recognizing does not appear at the time of such adjournment, the magistrate shall record his default, and certify the recognizance and such record to the appellate court, there to be proceeded with as forfeited recognizances in criminal cases.

Examination.  
R. S., c. 133, § 12.

**SEC. 12.** When the accused is brought before a magistrate, he shall first examine on oath, in the presence of the accused, the complainant

and witnesses for 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 the accused may be kept separate from those against him 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.

SEC. 13. If on the whole examination it appears that no offence has been committed or that there is not probable cause to charge the accused, he shall be discharged, and on motion of the respondent the magistrate shall render judgment whether or not the complaint is frivolous or malicious, and if the magistrate judges the complaint to be frivolous or malicious, he shall order the complainant to pay the costs of prosecution and shall issue execution in favor of the county and against the complainant for such sum, and may receive and pay over said costs to the county treasurer for the use of the county, and if the same are not paid, the magistrate shall return said execution to the county commissioners, for the use of the county. The complainant has the same right of appeal as in civil cases. But if it appears that an offence has been committed and 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 await trial. If the offence is within the jurisdiction of the magistrate, he shall try it, and award sentence thereon.

CHAP. 133.  
71 Me., 204.

When accused shall be discharged. 1879, c. 135. 35 Me., 131. 37 Me., 136. 41 Me., 431. 47 Me., 464. 50 Me., 51. 71 Me., 204.  
—on motion, justice shall decide if complaint is frivolous or malicious; if so, he shall order complainant to pay costs to magistrate.  
—complainant may appeal.  
—proceedings, if there is probable cause to charge the accused.

PROCEEDINGS ON COMMITMENT OR BINDING OVER.

SEC. 14. When the accused is committed, or is bound over to a higher court for trial, the magistrate shall order the material witnesses against him to recognize to appear and testify at said court; and when he is satisfied that 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, in either case, he refuses to recognize as required, he may be committed to prison and remain until discharged by law.

Magistrate shall recognize material witnesses, or commit them. R. S., c. 133, § 14.

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.

How married women and minors may recognize. R. S., c. 133, § 15.

SEC. 16. Any justice of the supreme judicial or superior court, or bail commissioner within his 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.

Who may bail accused, after commitment. R. S., c. 133, § 16. 1873, c. 137, § 2.

SEC. 17. All 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.

Examinations and recognizances to be returned, &c. R. S., c. 133, § 17. 61 Me., 175.

## CHAP. 133.

## WHEN PROSECUTIONS MAY BE DISMISSED.

What prosecutions may be dismissed, on satisfaction for private injury.  
R. S., c. 133, § 18.

SEC. 18. When a person has recognized or is 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, the court, on payment of all costs, may stay 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.

Such discharges shall be filed with clerk or jailer.  
R. S., c. 133, § 19.

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.

## REMEDIES ON RECOGNIZANCES. BAIL, HOW TO BE DISCHARGED.

Forfeited recognizances shall be defaulted, &c.  
R. S., c. 133, § 20.  
33 Me., 200, 539.  
41 Me., 345.

SEC. 20. When a 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; and 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.

Bail, how exonerated by surrender before default upon their recognizance.  
R. S., c. 133, § 23.

SEC. 21. 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.

When court may remit penalty, &c.  
R. S., c. 133, §§ 21, 23.  
41 Me., 536.  
50 Me., 56.  
—or sureties may surrender principal in court.

SEC. 22. When the penalty of a recognizance in a criminal case is forfeited, on scire facias against principal, sureties, or witnesses, the court, on application of any defendant, if satisfied that the default of the principal was without the consent or connivance of the bail, 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 may, on application therefor, be discharged by paying the costs of suit, *provided*, that the court is satisfied as aforesaid.

Liquor cases excepted.  
1871, c. 189.  
See c. 27, § 54.  
Scire facias on any recognizance shall be dismissed on payment of costs, and sentence.  
1879, c. 80.  
See c. 27, § 54.

SEC. 23. The preceding section is not applicable to recognizances taken under any of the last forty-nine sections of chapter twenty-seven.

SEC. 24. Whenever, in any suit of scire facias on a recognizance taken in any criminal case, it appears that the surety has surrendered the principal into court for sentence, and that the principal has actually been sentenced upon the indictment or complaint on which the recognizance was taken, such suit shall be dismissed upon payment of costs.

SEC. 25. No action on any recognizance shall be defeated, nor judg-

ment thereon arrested, for an 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.

CHAP. 133.  
 Unessential forms in recognizances, &c. R. S., c. 133, § 22.  
 59 Me., 413  
 60 Me., 107.  
 71 Me., 204.  
 73 Me., 553.

## CHAPTER 134.

### PROCEEDINGS IN COURT IN CRIMINAL CASES.

#### OATH AND DUTIES OF GRAND JURY.

- SEC. 1. Clerks of courts shall 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 grand jury. List shall be returned to court.
7. Grand jury shall present all offences, may appoint one of their number to take minutes; when dismissed, they may be recalled by the court. What is a sufficient indictment for murder or manslaughter.
8. Disclosures, improper to be made by grand jurors.

#### BAIL, ARRAIGNMENT AND TRIAL OF CRIMINALS.

- SEC. 9. In what cases, persons in prison, on a capital charge, may be bailed or discharged, if not indicted.
10. When a person, if indicted, may claim trial.
11. Standing mute is equivalent to a plea of not guilty.
12. Jury for capital trials, how to be impanelled. Peremptory and other challenges. Supreme court may prescribe rules.
13. A single justice may try capital cases.
14. Person indicted for felony is entitled to a copy of the indictment, and if for a crime punishable with death or life imprisonment, to a list of jurors and process for witnesses, at the State's expense. Counsel may be assigned in capital cases; but the fee is limited to one hundred and fifty dollars.
15. Prosecuting officer may summon witnesses; no fees need be tendered them; no costs for witnesses not recognized or summoned, in cases where no bill is found, or for defect of roads.
16. Punishment for not attending, when summoned as a witness for the State.
17. Witnesses are not entitled to fees until the second or third day, in continued cases; no extra charges shall be allowed for aid or otherwise, unless on examination of officer on oath, or other proof, found reasonable.
18. Person arraigned, need not be asked how he will be tried; dilatory pleas 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, but he is not obliged on cross examination to convict himself of any other crime. His failure to testify is not proof of guilt. A husband or wife is a competent witness.
20. Facts shall be tried and challenges allowed, as in civil cases.
21. Jurors' oaths and affirmations.
22. Respondent's presence is required at his trial for felony.
23. View may be ordered by the court.
24. When the court may postpone a criminal trial, or discharge the jury.

#### PAYMENT OF PRIVATE CLAIMS FROM FORFEITED RECOGNIZANCES.

- SEC. 25. When private claims may be paid out of forfeited recognizances.