

# MAINE STATE LEGISLATURE

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FIFTH REVISION.

THE  
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED SEPTEMBER 1, 1903, AND TAKING EFFECT JANUARY 1, 1904.

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BY THE AUTHORITY OF THE LEGISLATURE.



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## CHAP. 135.

R. S., c. 133, § 22.  
41 Me., 536.  
50 Me., 55.

—or sureties  
may surren-  
der principal  
in court.

Liquor cases  
excepted.  
R. S., c. 133, § 23.  
See c. 29,  
§§ 63, 68.

Suit on any  
recognizance  
may be dis-  
missed.  
R. S., c. 133, § 24.  
See c. 29, § 63.

Unessential  
forms in  
recogni-  
zances, etc.  
R. S., c. 133, § 25.  
59 Me., 413.  
60 Me., 107.  
71 Me., 204.  
73 Me., 555.  
81 Me., 410.

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 costs of suit, *provided*, that the court is satisfied as aforesaid.

SEC. 25. The preceding section is not applicable to recognizances taken under any of the last fifty-nine sections of chapter twenty-nine.

SEC. 26. 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. 27. No action on any recognizance shall be defeated, nor judgment 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 offense charged, that the magistrate was authorized to require and take the same.

## CHAPTER 135.

## PROCEEDINGS IN COURT IN CRIMINAL CASES.

## OATH AND DUTIES OF GRAND JURORS.

Clerk shall  
prepare list of  
grand jurors.  
R. S., c. 134, § 1.  
See c. 108.

SEC. 1. Prior to the commencement of each term of the court to which grand jurors are returned, in any county, the clerk of the court shall make out, from the returns on the venire, an alphabetical list of such jurors. (a)

Grand jurors'  
oath.  
R. S., c. 134, § 2.  
64 Me., 284.

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 ———, 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."

Form of  
affirmation  
for grand  
juror.  
R. S., c. 134, § 3.

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."

Election of  
foreman.  
R. S., c. 134, § 4.

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.

(a) 36 Me., 130; 38 Me., 201, 300; 49 Me., 576, 594; 51 Me., 397.

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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.

SEC. 6. The attorney general, county attorney or foreman of the grand jury, shall swear or affirm, in presence of the jury, all witnesses who are to testify before them, and a list thereof, stating the cases in which they testify, shall be returned into court by the foreman before the jury is discharged, and filed and entered on record by the clerk. The clerk shall not make such list public, until the criminal cases at such term have been tried or otherwise disposed of.

SEC. 7. Grand juries shall present all offenses 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, in either case, setting forth the manner or means of death.

SEC. 8. No grand juror or officer of the court shall disclose that an indictment for felony has been found against any person not in custody or under recognizance, until he is arrested, except by issuing process for his arrest; 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 this section.

## BAIL. ARRAIGNMENT AND TRIAL OF PRISONERS.

SEC. 9. Any person in prison charged with a crime punishable by imprisonment for life, 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.

SEC. 10. Any person in prison under indictment shall be tried or bailed at the next term 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 felony, 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.

SEC. 11. When a person indicted stands mute, the court shall order the plea of not guilty to be entered, with the same effect as if he had pleaded not guilty.

SEC. 12. When a person indicted for an offense punishable by imprisonment for life, 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 state shall not challenge more than five of the jurors peremptorily,

Term of foreman's office.  
R. S., c. 134, § 5.

Oaths of witnesses before grand jury.  
R. S., c. 134, § 6.  
1887, c. 98.  
67 Me., 129.  
76 Me., 317.

Grand jury shall present all offenses.  
R. S., c. 134, § 7.  
4 Me., 444.

—what is a sufficient indictment for murder or manslaughter.  
32 Me., 379.  
54 Me., 413.  
65 Me., 266.

Disclosures improper to be made by grand jurors.  
R. S., c. 134, § 8.

In certain cases persons in prison, may be bailed or discharged, if not indicted.  
R. S., c. 134, § 9.  
1887, c. 133, § 2.

When person indicted may claim trial.  
R. S., c. 134, § 10.

Standing mute.  
R. S., c. 134, § 11.

Jury for trials of offenses punishable by imprisonment for life, how to be impaneled.  
1887, c. 133, § 3.  
67 Me., 337.  
R. S., c. 134, § 12.  
74 Me., 507.

—challenges.

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—rules by the  
S. J. Court.

Trial of cases  
of murder and  
treason.  
R. S., c. 134, § 13.

Persons  
indicted for  
felony shall  
be furnished  
with copy of  
indictment.  
R. S., c. 134, § 14.  
1887, c. 133, § 4.

—witnesses  
summoned  
at state's  
expense.

—counsel to  
be assigned in  
certain cases.  
—reasonable  
compensation  
to be allowed.  
1901, c. 252.  
76 Me., 207.

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

—no tender of  
fees to state  
witnesses.

Punishment  
of state wit-  
ness for not  
attending.  
R. S., c. 134, § 16.  
See c. 84, § 115.

Witnesses are  
not entitled  
to fees until  
the second or  
third day in  
continued  
cases, etc.  
R. S., c. 134, § 17.

Prisoner need  
not be asked  
how he will  
be tried.  
R. S., c. 134, § 18.  
See c. 79, § 4.

Depositions  
may be taken  
out of the  
state.  
R. S., c. 134, § 19.

and the person indicted shall not challenge peremptorily more than twenty of the jurors while the panel is being formed; but he may, before the trial commences, challenge peremptorily, two of the jurors from the panel. The supreme judicial court may, by general rules, prescribe the mode of exercising the right of challenge from the panel in all criminal cases.

SEC. 13. One justice of the supreme judicial court may hold a term thereof in any county, except in the county of Cumberland, for the trial of persons indicted for treason or murder and exceptions may be taken as in other cases, to their rulings and decisions.

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 imprisonment for life, the clerk 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; if for a crime punishable by imprisonment for a term of years, witnesses shall be summoned and paid at the expense of the state only at the discretion of the court. Competent counsel shall be assigned by the court in cases punishable by imprisonment for life, when it appears that the accused has not sufficient means to employ counsel; and reasonable compensation for the services of counsel shall be allowed by the court, to be paid out of the county treasury.

SEC. 15. The prosecuting officer has the same power as the clerk of the court to issue a summons for witnesses in criminal cases; 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 recognized so to attend, or were summoned by order of the grand jury or prosecuting officer; nor is it necessary to tender fees to witnesses summoned in behalf of the state.

SEC. 16. Whoever, having been 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, shall be punished, on indictment, by imprisonment for less than one year, or by fine not exceeding one hundred dollars.

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 they were summoned at an earlier day; and in all criminal cases, previous to the determination thereof, the court 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 upon oath, or on other evidence, they find such additional charges reasonable.

SEC. 18. When a person is arraigned on an 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. (a)

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, upon interrogatories in the same manner, with the

(a) 15 Me., 107; 23 Me., 114; 36 Me., 132; 37 Me., 333; 38 Me., 300; 39 Me., 361.

same effect, and subject to 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 at the trial, the defendant does not use the depositions so taken for him, those taken for the state shall not be used. And upon like application by the defendant in a criminal case, a like commission may issue to take the deposition of a material witness living in the state; but the prosecuting officer shall not name therein any material witness to be examined on the part of the state. In all criminal trials, the accused shall, at his own request, but not otherwise, be a competent witness. He shall not be compelled to testify on cross examination to facts that would convict, or furnish evidence to convict him of any other crime than that for which he is on trial; and the fact that he does not testify in his own behalf, shall not be taken as evidence of his guilt. The husband or wife of the accused is a competent witness. (a)

SEC. 20. Issues of fact joined on indictments, shall be tried by a jury drawn and returned in the same 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. (b)

SEC. 21. The following oath shall be administered to jurors in cases punishable by imprisonment for life: "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.

SEC. 22. No person indicted for felony shall be tried, unless present during the trial; but persons indicted for less offenses, at their own request and by leave of court, may be tried in their absence, by their attorney.

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

SEC. 24. The trial of any criminal case, except for a crime punishable by imprisonment for life, may be postponed by the court to a future day of the same term, or the jury may be discharged therefrom, and the case continued, if justice will thereby be promoted.

#### 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 that he would have been entitled to receive from the penalty affixed to the offense, if paid on conviction, and not on recognizance.

(a) 59 Me., 300; 63 Me., 211; 65 Me., 240; 72 Me., 534; 74 Me., 508; 76 Me., 410; 78 Me., 492; 85 Me., 96.

(b) Practice and evidence in criminal cases. 19 Me., 227, 401; 21 Me., 18; 26 Me., 317; 29 Me., 336, 563; 30 Me., 30, 183, 344; 31 Me., 63; 32 Me., 372, 585; 34 Me., 40; 37 Me., 331, 363; 38 Me., 575; 39 Me., 65, 69, 92, 296, 361; 40 Me., 560; 43 Me., 108; 45 Me., 329; 46 Me., 531; 47 Me., 450; 48 Me., 238, 366; 51 Me., 364, 396; 53 Me., 127, 331, 549; 54 Me., 28, 579; 55 Me., 213; 65 Me., 469; 67 Me., 337; 74 Me., 507, 511; 80 Me., 416; 81 Me., 256.

—depositions may be taken in the state. 1885, c. 307.

—respondent may testify.

—not compelled to convict himself of other crime.

—failure to testify.

—husband or wife may testify.

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

Juror's oath; affirmations. R. S., c. 134, § 21. 1887, c. 133, § 5.

—juror may affirm.

Respondent must be present at trial for felony. R. S., c. 134, § 22. 67 Me., 424.

View. R. S., c. 134, § 23.

When court may postpone or continue. R. S., c. 134, § 24. 1887, c. 133, § 6. 85 Me., 171.

Private claims may be paid out of forfeited recognizances. R. S., c. 134, § 25.

## PROCEEDINGS AFTER VERDICT.

Respondent may give bail in bailable case, pending a question of law.  
R. S., c. 134, § 26.  
See c. 101, § 35.

—form of recognizance.  
41 Me., 167.  
42 Me., 335.  
59 Me., 305.  
70 Me., 334.  
80 Me., 82.  
89 Me., 209.

—bail after conviction of felony.

Three justices may grant new trial in case where punishment is imprisonment for life.  
R. S., c. 134, § 27.  
1839, c. 152.  
76 Me., 324.  
82 Me., 235.

Copy of proceedings in murder cases shall be filed with clerk.  
1887, c. 133, § 7.  
1901, c. 266.

—how paid for.

In case of error in the sentence, proceedings.  
R. S., c. 134, § 28.

SEC. 26. Questions of law 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 offense 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 offense 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 said \_\_\_\_\_ shall personally appear before said \_\_\_\_\_ court, to be held in and for 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 offense punishable by imprisonment in the state prison, he shall be admitted to bail only by the justice trying him, by some person by him appointed therefor, or by some justice of the supreme judicial court.

SEC. 27. If a motion for new trial in any case in which a person has been convicted of any offense for which the punishment is imprisonment for life, is denied by the justice before whom the same is heard, the respondent may appeal from said decision to the next law term; and the concurrence of but three justices shall be necessary to grant such motion.

SEC. 28. Whenever any person is convicted of murder, a copy of the indictment, plea, evidence and charge of the presiding justice, certified by the official stenographer, shall be filed with the clerk of the court where such trial is held. If such stenographer is paid an annual salary, the making and filing of said copy shall be without extra compensation, otherwise the expense thereof shall be paid by the county; but this section shall not apply to cases where motion for new trial is filed.

SEC. 29. 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.