

MAINE STATE LEGISLATURE

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priation is expressly made, they inure to the county where the offense is prosecuted.

.59 Me. 191.

Sec. 17. Limitation of prosecutions. R. S. c. 132, § 15. When no other limitation is provided, no indictment for any offense, except treason, murder, arson or manslaughter, shall be found after six years from the commission thereof; but any time, during which the offender is not usually and publicly resident in the state, shall not be a part of said six years.

See c. 119, § 3; c. 127, § 47; c. 129, § 32.

CHAPTER 134.

Appointment of Municipal and Police Judges, and Proceedings of Magistrates in Criminal Cases.

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Appointment of Municipal and Police Judges.

Sec. 1. Appointment of municipal and police judges; salaries; all fees to be paid over. R. S. c. 133, § 1. Judges of municipal and police courts shall be appointed and shall hold their offices as provided in the constitution. Their salaries, unless established by law, shall be fixed by the municipal officers of their towns, and paid quarterly from the treasuries thereof, and shall not be diminished during their continuance in office; and all fees received by them shall be paid quarterly into said treasuries, except when their compensation is fixed by law, by the allowance to them in whole or in part, of the fees accruing in their courts. All fees of such courts paid to the jailer after commitment, shall be paid over by him, quarterly, into said treasuries.

See Constitution Me. Art. vi, § 8.

Criminal Jurisdiction of Magistrates.

Sec. 2. Magistrates and women may administer oaths; magistrates may require aid. R. S. c. 133, § 2. 1915, c. 288. Judges of municipal and police courts, clerks of courts, trial justices and justices of the peace; also women, otherwise eligible under the constitution, appointed by the governor with the advice and consent of the council; may administer all oaths required by law, unless another officer is specially required to do it. Upon view of an affray, riot, assault or battery, within their county, such judges and justices may, without warrant, command the assistance of any sheriff, deputy sheriff,

constable or person present to repress the same, and to arrest all concerned therein.

See c. 2, § 42; 104 Me. 354.

Sec. 3. Jurisdiction of larcenies, when the value does not exceed ten dollars. R. S. c. 133, § 3. Such judges and trial justices have jurisdiction of the offenses described in sections one, six, seven, eight, ten and twelve of chapter one hundred and twenty-two, when the value of the property is not alleged to exceed ten dollars; they may punish for the first offense by fine not exceeding ten dollars, and by imprisonment for not more than two months; and on a second conviction, by fine not exceeding twenty dollars, and by imprisonment for not more than six months.

27 Me. 282; 37 Me. 133; 72 Me. 468; 104 Me. 354.

Sec. 4. Jurisdiction of breaches of the peace and violations of law. R. S. c. 133, § 4. They have jurisdiction of assaults and batteries, breaches of the peace, and violations of any statute or by-law of a town, village corporation or local board of health, when the offense is not of a high and aggravated nature, and of offenses and misdemeanors, jurisdiction of which is conferred by law, and of all attempts to commit offenses of which they now have jurisdiction by law; and may cause affrayers, rioters, breakers of the peace and violators of the law, to be arrested; and they may try and punish by fine not exceeding ten dollars, or by imprisonment not exceeding thirty days, and may require such offenders to find sureties for keeping the peace.

See § 7; 26 Me. 73; 39 Me. 478; 47 Me. 465; 73 Me. 281; 84 Me. 272; 104 Me. 354.

Note. Jurisdiction is conferred upon judges of municipal and police courts and trial justices in the following cases:

- Of complaints as to vicious dogs, c. 4, § 120.
- Of assaults upon, and obstruction of officers, c. 124, § 24; in cases relating to protection of children, c. 64, § 53; of prosecutions under child labor law, c. 49, § 81.
- Violations of truancy laws, c. 16, §§ 71, 117; of laws relating to public health, c. 19, § 65; of laws as to sale of poisons, c. 20, § 27.
- Obstruction of ditch or drain in public way, c. 24, § 82; neglect to maintain guide-posts on public highway, § 107.
- Violation of law relating to use of wide-rimmed wheels, c. 26, § 10; building laws, c. 30, § 35; law for the protection of innkeepers, c. 31, § 19; requiring licenses for public exhibitions, c. 32, § 13.
- Violations of law relating to inland fisheries and game, c. 33, §§ 85, 86.
- Of prosecutions under pure food law, c. 36, § 40; for neglect to mark apple barrels and boxes, c. 36, § 26; under law regulating sale of milk and dairy products, c. 37, § 24; under law for protection of nursery stock, c. 38, § 12; to enforce authority of commissioner of labor and industry, c. 49, § 12.
- Violations of law regulating intelligence offices, c. 42, § 12; sea and shore fisheries, c. 45, § 92; itinerant vendors, c. 41, § 27; law relating to weights and measures, c. 48, § 26.
- Violations of insurance laws, c. 53, § 93; fraternal beneficiary laws, c. 54, § 26.
- Of prosecutions for desertion and non-support of families, and for crimes against children, c. 120, § 41.
- Violations of law prohibiting prize-fights, c. 125, § 6; keeping houses of ill fame, c. 126, § 12; circulation of criminal news among children, § 26; fights between animals, § 46; cruelty to animals, §§ 57, 66; of law against gambling-houses, c. 127, § 1; relating to sale of intoxicating liquors, § 40; relating to sterling and coin silver, c. 128, § 16; fraudulently obtaining advances in lumbering operations, c. 128, § 12; desertion of vessel by seamen, c. 128, § 21; giving false fire alarms, c. 129, § 27; malicious mischiefs, § 32; wanton injury to baggage, § 34; sale of cigarettes, c. 120, § 41; c. 130, § 23; relating to tramps, c. 130, § 24.
- Penalty for swelling scallop meats by artificial means, c. 130, § 14.
- To order removal of paupers, c. 29, §§ 38, 40; to commit to house of correction, c. 29, § 42; c. 143, § 6; to state school for boys, c. 144, § 3; to state school for girls, c. 144, §§ 20, 23.
- Judges of municipal and police courts and trial justices required to make returns of prosecutions under law relating to inland fisheries and game, c. 33, § 91.

Sec. 5. On complaint, may cause arrest of offenders; proceedings. R. S. c. 133, § 5. They shall, on complaint, cause to be arrested persons found within their county charged with offenses; and those having committed offenses therein who have escaped therefrom; and all persons charged with felonies, offenses and misdemeanors; and when the offense on examination is found to be one not within their jurisdiction for trial, they may cause

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them to recognize with sufficient sureties to appear before the supreme judicial or superior court, and, in default thereof, shall commit them.

23 Me. 532; 95 Me. 452; 100 Me. 78; 104 Me. 354.

Sec. 6. Examination on oath into the circumstances of the alleged offenses; issue of warrant. R. S. c. 133, § 6. When complaint is made to any such magistrate, charging a person with the commission of an offense, he shall carefully examine, on oath, the complainant, the witnesses by him produced and the circumstances, and, when satisfied that the accused committed the offense, shall, on any day, Sundays and holidays not excepted, issue a warrant for his arrest, stating therein the substance of the charge; and he may try those brought before him for offenses within his jurisdiction, although the penalty or fine accrues wholly or partly to his town.

3 Me. 51; 10 Me. 476; 25 Me. 491; 39 Me. 214; 86 Me. 529; 96 Me. 172; 100 Me. 336; 104 Me. 354.

Sec. 7. Rule for prosecutions of violation of municipal ordinance. R. S. c. 133, § 7. In any prosecution before a municipal or police court or trial justice for violation of an ordinance or by-law of a city or town, or of any by-law of a village corporation or local board of health, it shall not be necessary to recite such ordinance or by-law in the complaint, or to allege the offense more particularly than in prosecutions under a general statute.

Sec. 8. Jurisdiction of trial justices in towns where there is a municipal or police court. R. S. c. 133, § 8. 1915, c. 267. A trial justice, residing in a town in which there is a municipal or police court, has the same jurisdiction as other trial justices in the county in all matters, the exclusive jurisdiction of which is not conferred on such court. Warrants issued by trial justices shall be made returnable before any trial justice in the county, and such warrants may be returned before any municipal or police court in the same county and the same proceedings had thereon as if said warrants had originally issued from said municipal or police court; and a justice, for issuing one not so returnable, shall be imprisoned for six months and pay the costs of prosecution.

53 Me. 548; 80 Me. 94.

Sec. 9. Warrants must be sealed and signed. R. S. c. 133, § 9. Warrants, issued by a magistrate in criminal cases, shall be under seal, and be signed by him at the time when they are issued.

As to signature of recorder or clerk of a municipal or police court, c. 88, § 7; 34 Me. 222; 36 Me. 368.

Summonses for Witnesses, and Their Fees.

Sec. 10. Summonses to witnesses; when witnesses shall recognize. R. S. c. 133, § 10. Any judge or justice named in section two, when a warrant is issued by him, may cause such witnesses only as he is satisfied can testify to material facts, to be summoned to attend the trial, by inserting their names in the warrant or otherwise; and when the case is appealed or the person is required to appear before a higher tribunal, he may order such witnesses only to recognize for their appearance where the case is to be tried or examined. He may issue summonses for witnesses in criminal cases to appear before any judicial tribunal, at the request of the attorney-general, a county attorney or the party accused, and he shall express in the summons at whose request they are summoned; and when summoned

for the accused, the witnesses are not required to attend without payment or tender of their legal fees.

39 Me. 61.

Sec. 11. Limitation of costs and fees. R. S. c. 133, § 11. No costs shall be allowed by such magistrate to complainants in any capacity; but this shall not prevent the allowance of their fees as officers, to police officers and constables complaining under authority of their town, or when it is made their duty to do so. No witness shall be allowed in a criminal case for more than one travel, or for travel and attendance in more than one case at the same time before any judicial tribunal.

Sec. 12. Witnesses may be required to attend any court in New England, in a criminal case pending. R. S. c. 133, § 12. When, on affidavit filed, the clerk of any court in any other New England state certifies that a criminal case is pending in such court, and that a person named is declared to be a material witness therein, a justice of the peace, on such certificate, or on a paper annexed thereto, shall issue a summons requiring such person to appear and testify at such court; and if, upon payment or tender to him of twelve cents a mile to and from such court, and two dollars for each day's attendance required, he unreasonably neglects to attend and testify, he forfeits two hundred dollars to any prosecutor.

Search Warrants.

Sec. 13. Warrants for search, in what cases may be issued. R. S. c. 133, § 13. A magistrate may issue warrants to search, within the limits of his jurisdiction, any house or place for property stolen, embezzled or obtained by false tokens or pretenses; for forged or counterfeit coins, bank-bills or other writings; for tools, machines or materials, used or designed for making the same; or for a dead body unlawfully disinterred, carried away and concealed; and in other cases when such a warrant is authorized by law. Such warrants can be issued only according to the following provisions.

See c. 30, § 22; c. 33, § 83; c. 37, § 36; c. 44, § 32; c. 45, § 3; c. 126, § 21, 24; c. 127, §§ 11, 12, 29; c. 130, § 5; 79 Me. 104; 95 Me. 199.

Sec. 14. Complaint for such a warrant. R. S. c. 133, § 14. The complaint for a warrant to search must be made in writing, sworn to and signed by the complainant, must specially designate the place to be searched, the owner or occupant thereof, and the person or thing to be searched for, and allege substantially the offense in relation thereto; and that the complainant has probable cause to suspect and does suspect, that the same is there concealed.

See Const. Me., Art. 1, § 5; 33 Me. 570; 79 Me. 104; 96 Me. 153; 100 Me. 448.

Sec. 15. Warrant, its contents, and how directed and served. R. S. c. 133, § 15. Such warrant shall recite, by reference to the complaint annexed or otherwise, all the essential facts alleged in the complaint, be directed to a proper officer or to a person therein named, and be made returnable like other warrants; and the person or thing searched for, if found, and the person in whose possession or custody the same was found, shall be returned with the warrant before a proper magistrate.

25 Me. 491; 96 Me. 153.

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Sec. 16. Search of a dwelling-house. R. S. c. 133, § 16. To authorize the search of a dwelling-house in the night time, the magistrate must be satisfied that it is necessary to prevent the escape or removal of such person or property, and must in his warrant expressly require it.

95 Me. 199.

Appeals from Magistrates.

Sec. 17. Appeals within twenty-four hours after sentence. R. S. c. 133, § 17. Any person aggrieved at the decision or sentence of such magistrate, may within twenty-four hours after such sentence is imposed, Sunday not included, appeal therefrom to the next supreme judicial or superior court in the same county, and the magistrate shall thereupon order such appellant to recognize in a reasonable sum, not less than twenty dollars with sufficient sureties, to appear and prosecute his appeal and to be committed until the order is complied with. When such appeal is not taken before the adjournment of the session of court at which said sentence is imposed, mittimus shall issue and the respondent shall be committed thereon, under such sentence, but if after adjournment and commitment as aforesaid and within said twenty-four hours, application in writing is made to such magistrate to enter such appeal, he shall supersede such commitment by his written order to the jailer or other officer, and the respondent shall be brought before him and such appeal allowed and entered as if claimed before adjournment. The magistrate shall be allowed one dollar and fifty cents for copies of papers for the appellate court to be paid out of the county treasury.

1 Me. 230; 96 Me. 498; 100 Me. 126; 104 Me. 354.

Sec. 18. Copies sent to appellate court; failure to prosecute appeal. R. S. c. 133, § 18. The magistrate shall send to the appellate court a copy of the whole process, and of all writings before the magistrate. If the appellant does not appear and prosecute his appeal, his default shall be noted on the record; and the court may order the case to be laid before the grand jury, or may issue a *capias* against the body of the appellant, bring him into court, and then affirm the sentence of the magistrate with additional costs.

107 Me. 18; 109 Me. 283; 111 Me. 504.

Sec. 19. Appellant may withdraw appeal and abide by sentence. R. S. c. 133, § 19. The appellant may, at any time before such copy has been sent to the appellate court, come personally before such magistrate, who may permit him, on motion to withdraw his appeal and abide by the sentence appealed from; whereupon, he shall be ordered to comply with said sentence and the sureties taken upon the recognizance upon such appeal shall be discharged. If the appellant is detained in jail for want of sureties to prosecute his appeal, he may give notice, in writing, to the jailer, of his desire to withdraw his appeal and abide by the sentence appealed from; whereupon, such jailer shall cause him to be taken before such magistrate, who shall order him to comply with the sentence appealed from, as hereinbefore provided; and in such case the jailer, or officer taking the appellant before the magistrate by his direction, shall be entitled to the same fees, to be taxed and paid as a part of the costs of prosecution, as are allowed to an officer for serving a mittimus.

109 Me. 283.

Sec. 20. Respondent may appeal without trial. R. S. c. 133, § 20. In all prosecutions before municipal or police courts or trial justices, the respondent may plead not guilty and waive a hearing, whereupon the same proceedings shall be had as to sentence and appeal as if there had been a full hearing.

Provisions Relating to the Fees of Magistrates.

Sec. 21. Limitation of fees of magistrates. R. S. c. 133, § 21. When several warrants are issued by a magistrate where only one is necessary, he shall be allowed only the costs for one complaint and warrant; and when he binds over a party, and the grand jury do not find an indictment against him, or convicts a party and he appeals and is finally acquitted, the magistrate shall have no fees in the case unless the same are certified and approved by the county attorney, and in no case shall he tax other or greater fees than are expressly allowed by law.

Sec. 22. Costs paid; how to be disposed of. R. S. c. 133, § 22. When the costs in a criminal case are paid to the magistrate as a part of the sentence, he may retain his fees, and pay over the other fees to the persons entitled thereto; but if such other fees are not called for in one year, they shall be forfeited to the state, and paid over to the county treasurer within the time, and under the penalty, provided in section seven of chapter one hundred and thirty-eight.

Sec. 23. Allowance of costs by the county commissioners. R. S. c. 133, § 23. When a party accused is acquitted by the magistrate, is not sentenced to pay costs, or does not pay them when so sentenced, and on all legal search warrants, the commissioners of the same county shall examine and correct the bills of cost, including the fees of officers, witnesses and others, and order the same to be paid out of the county treasury to the persons entitled thereto; but when such magistrate, or other person interested in such bill of costs, is one of the commissioners for such county, the supreme judicial or superior court shall have the same powers as the commissioners in other cases.

87 Me. 297.

Sec. 24. Costs in appealed cases. R. S. c. 133, § 24. In cases carried to a higher court by appeal, recognizance or commitment, costs shall be taxed by the magistrate and certified with the papers.

87 Me. 297.