

MAINE STATE LEGISLATURE

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CHAPTER 135.

Commencement of Proceedings in Criminal Cases.

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Issue of Process and Arrest.

Sec. 1. Criminal prosecutions must be by indictment; excepted cases. R. S. c. 134, § 1. No person shall be held to answer in any court for an alleged offense, unless on an indictment found by a grand jury, except for contempt of court, and in the following cases:

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

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

Sec. 2. Justices of courts, and magistrates, may issue processes. R. S. c. 134, § 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-four, in vacation or term time, may issue processes for the arrest of persons charged with offenses.

39 Me. 213, 482.

Sec. 3. Officer may make oath according to his knowledge and belief. R. S. c. 134, § 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.

Sec. 4. Arrests without warrant; liability. R. S. c. 134, § 4. Every sheriff, deputy sheriff, constable, city or deputy marshal 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.

10 Me. 476; 36 Me. 320; 42 Me. 388; 68 Me. 149; 79 Me. 548; 92 Me. 410;
97 Me. 81.

Sec. 5. Arrests in other counties. R. S. c. 134, § 5. When a person charged with an offense 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 offense was committed.

17 Me. 195.

Sec. 6. Right to be discharged upon recognizance, in the county where he was arrested. R. S. c. 134, § 6. If the offense 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 sureties for his appearance at the next court, or before any magistrate having cognizance of the offense 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.

Sec. 7. Removal of persons when charged with crimes in two counties. R. S. c. 134, § 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.

Sec. 8. Duties of officer holding prisoner, and of officer holding court's order of removal. R. S. c. 134, § 8. The officer holding the person described in such order, shall deliver him to the officer presenting it, upon receiving 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.

Sec. 9. Examination of persons arrested. R. S. c. 134, § 9. Every person arrested for an offense 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.

Sec. 10. Adjournment of an examination, on recognizance or commitment. R. S. c. 134, § 10. 1909, c. 139. 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; if the accused fails to appear at the time of adjournment, the magistrate may issue a *capias* to bring said accused before him; but if no sufficient sureties are offered, or the offense is not

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bailable, the accused shall be committed to jail by an order of the magistrate, stating briefly the offense 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.

113 Me. 495.

Sec. 11. Proceedings if party fails to appear. R. S. c. 134, § 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.

Sec. 12. Examination. R. S. c. 134, § 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 defense; 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.

71 Me. 204.

Sec. 13. Proceedings upon examination; complaint may be adjudged frivolous or malicious; appeal; proceedings if there is probable cause to charge the accused. R. S. c. 134, § 13. If on the whole examination it appears that no offense 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 offense has been committed and that there is probable cause to charge the accused, and the offense 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 offense is within the jurisdiction of the magistrate, he shall try it, and award sentence thereon.

35 Me. 131; 37 Me. 136; 41 Me. 431; 47 Me. 464; 50 Me. 51; 71 Me. 204;
75 Me. 111; 89 Me. 43; 100 Me. 78.

Proceedings on Commitment or Binding Over.

Sec. 14. Sureties for respondent in criminal prosecution shall make statement of property. R. S. c. 134, § 14. Any person offering to recognize before any trial justice, judge of a police or municipal court, or bail commissioner, as surety for the appearance before the supreme judicial court or a superior court of any respondent in a criminal prosecution, whether

such respondent be an appellant from the finding of a trial justice or judge of a police or municipal court, or be ordered to recognize to await the action of the grand jury, or be arrested in vacation on *capias* issued on an indictment pending in such supreme judicial or superior court, may be required to file with said trial justice, judge or bail commissioner, a written statement signed and sworn to by said surety, describing all real estate owned by him within the state with sufficient accuracy to identify it, and giving in detail all incumbrances thereon and the value thereof, such valuation to be based on the judgment of said surety. Said certificate shall remain on file with the original papers in said case and a certified copy thereof shall be transmitted by the magistrate taking such bail to the clerk of the court before which said respondent so recognizes for his appearance.

Sec. 15. Responsibility of bail. R. S. c. 134, § 15. All bail shall be responsible for the appearance of their principal at all times during the term of court at which they agree to have him, until verdict or certification of the case to the law court on demurrer or exceptions, unless said bail shall have sooner surrendered him into the custody of the sheriff or jailer of the county in which the case is pending.

Sec. 16. Magistrate shall recognize material witnesses, or commit them. R. S. c. 134, § 16. 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.

Sec. 17. How minors may recognize. R. S. c. 134, § 17. Any person may so recognize for a minor to appear as a witness, or the magistrate may take the recognizance of such minor in a sum not exceeding twenty dollars, which shall be valid notwithstanding such disability.

Sec. 18. Bail after commitment. R. S. c. 134, § 18. 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 offense, or for not finding sureties to recognize for him, may inquire into the case and admit him to bail.

85 Me. 544; 95 Me. 453.

Sec. 19. Examinations and recognizances to be returned, etc. R. S. c. 134, § 19. 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.

61 Me. 175; 75 Me. 111.

Dismissal of Prosecutions.

Sec. 20. Dismissal of prosecutions on satisfaction for private injury. R. S. c. 134, § 20. When a person has recognized or is committed by a magistrate, or is indicted, or held upon a complaint and warrant for an assault and battery or other misdemeanor, for which the party injured has

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a remedy by 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.

92 Me. 411.

Sec. 21. Discharges shall be filed with clerk or jailer. R. S. c. 134, § 21. 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.

92 Me. 411.

Remedies on Recognizances. Discharge of Bail.

Sec. 22. Forfeited recognizances shall be defaulted. R. S. c. 134, § 22. 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.

33 Me. 200, 539; 41 Me. 345; 79 Me. 176.

Sec. 23. Bail exonerated by surrender before default upon recognizance. R. S. c. 134, § 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.

Sec. 24. Court may remit penalty; or sureties may surrender principal in court. R. S. c. 134, § 24. 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 costs of suit, provided, that the court is satisfied as aforesaid.

41 Me. 536; 50 Me. 56.

Sec. 25. Liquor cases excepted. R. S. c. 134, § 25. The preceding section is not applicable to recognizances taken under any of the last thirty-eight sections of chapter one hundred and twenty-seven.

See c. 127, §§ 43, 48.

Sec. 26. Suit on any recognizance may be dismissed. R. S. c. 134, § 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.

See c. 127, § 43.

Sec. 27. Unessential omissions and defects in recognizances, not fatal. R. S. c. 134, § 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.

59 Me. 413; 60 Me. 107; 71 Me. 204; 73 Me. 555; 81 Me. 410; 100 Me. 77;
105 Me. 488; 112 Me. 104.

Sec. 28. Personal recognizance and cash bail. 1907, c. 36. When a person arrested on a criminal process has been ordered to recognize with sureties for his appearance before any court, he may, instead of giving sureties, at any time give his personal recognizance and deposit in money the amount of the bail which he is ordered to furnish, with the clerk of such court; in case there is no clerk, with the justice of such court, and such justice or clerk shall give him a certificate thereof, and upon delivering such certificate to the officer having him in custody, he shall be discharged from such custody.

Sec. 29. Respondent may surrender before default. 1907, c. 36. If money has been deposited as aforesaid, the respondent at any time before default, may surrender himself in the same manner that sureties in criminal cases may surrender their principal, and thereupon the money so deposited shall be returned to the respondent or his order.

Sec. 30. Court may order deposit forfeited. 1907, c. 36. In case of the default of the respondent, said court may at any time thereafter order the money deposited as aforesaid to be forfeited, and the said justice or clerk with whom said deposit is made shall thereupon immediately pay over the said money to the county treasurer.

Sec. 31. Surrender of respondent after default. 1907, c. 36. At any time after a default, and before the money has been declared forfeited in accordance with the preceding section, the respondent may surrender himself in the manner provided in section twenty-nine, and after deducting any amount which the state has disbursed for the apprehension of the said respondent, the court may order the whole or any part of the remainder of the said money to be returned to the respondent as justice may require.