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Chapter 115.

Bail in Civil Actions.

Sec. 1. Bail bond; returned with writ.—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. (R. S. c. 102, § 1.)

Description required. — There must be such minuteness of description in the bond that it may therein distinctly appear in what suit it was taken, and for what the bail was answerable, so that the bond might, with certainty, apply to that suit only. Kavanagh v. Saunders, 8 Me. 422.

The condition of bail bonds must be for the appearance of the party and for no other purpose, so that if there be any other condition expressed in the bond, or the bond be single without any condition, or be with an impossible one, the bond is void. Kavanagh v. Saunders, 8 Me. 422.

Condition that debtor shall "abide, do and perform the judgment". — See Hewins v. Currier, 62 Me. 236.

Alteration of bond by substitution of one obligee for another. — See Hale v. Russ, 1 Me. 334.

Last clause is directory.—The provision of this section requiring the clerk of court to note on the writ that a bail bond taken on mesne process is filed, is directory and not mandatory. S. N. Maxcy Mfg. Co. v. Bowie, 96 Me. 435, 52 A. 905, wherein the court said that the question was not decided in Ruggles v. Berry, 76 Me. 262.

Bail discharged by subsequent increase in ad damnum.—See Langley v. Adams, 40 Me. 125.

Cited in State v. Baker, 50 Me. 45.

Sec. 2. Sureties.—No officer is obligated to accept a bail bond unless signed by at least 2 sureties having sufficient property in the county in which the principal is arrested or held in custody, and if he takes a bail bond with only 1 surety, he is liable to the plaintiff for any deficiency thereof. (R. S. c. 102, § 2.)

Sec. 3. When obligors held.—A bail bond binds the obligors although signed by only 1 surety, or when signed by 2 or more sureties when all or any of them had not sufficient property in the county. (R. S. c. 102, § 3.)

Sec. 4. Surrender of principal before entry.—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 15 days thereafter, leaving with the jailer an attested copy of the writ of 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. (R. S. c. 102, § 4.)

A surrender of the principal to the sheriff holding the execution is a discharge of the bail. Ryan v. Watson, 2 Me. 382.

Cited in Ruggles v. Berry, 76 Me. 262.

Sec. 5. Names of bail entered on execution.—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. (R. S. c. 102, § 5.)

Application to bail taken after commitment. — See Holmes v. Chadbourne, 4 Me. 10.

Quoted in Ruggles v. Berry, 76 Me. 262.

Sec. 6. Officer to notify bail; fees paid.—The officer holding the execution shall, 15 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 20 days, unless 1 day at least before the execution is returnable the bail produce and deliver to the officer the principal debtor. (R. S. c. 102, § 6.)

Cross reference. — See c. 89, § 150, re fees.

Purpose of provision requiring officer to notify bail.— The provision requiring the officer to notify the bail at least fifteen days before the expiration of the execution was intended to prevent the success of any artful proceedings, calculated to prejudice the bail. Kidder v. Parlin, 7 Me. 80.

It does not excuse officer from making diligent search.—The provision requiring the officer to notify the bail does not excuse the officer from making diligent search for the body and goods of the debtor, as before. Kidder v. Parlin, 7 Me. 80.

Sec. 7. Surrender of principal in court.—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. (R. S. c. 102, § 7.)

Cited in Ruggles v. Berry, 76 Me. 262.

Sec. 8. In case of avoidance, officer's duty; liability of bail.—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 30 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 defense. (R. S. c. 102, § 8.)

Failure to certify on execution that it had been in officer's hands thirty days.— See Holmes v. Chadbourne, 4 Me. 10.

Cited in Ruggles v. Berry, 76 Me. 262.

Sec. 9. When scire facias against bail may issue.—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 1 year from the rendition of judgment against the principal, and he need not declare on the bail bond but may merely allege that the defendants became bail in the original action. (R. S. c. 102, § 9.)

Scire facias is the exclusive remedy and an action of debt will not lie. Hewins v. Currier, 62 Me. 236.

This process supersedes and precludes any other remedy upon the bail bond given to the officer making the arrest. Ruggles v. Berry, 76 Me. 262.

Sec. 10. Pleadings and defense by bail.—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 defense 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. (R. S. c. 102, § 10.)

Sec. 11. Surrender of principal on scire facias; exoneration of bail in civil action after entry of action.—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 15 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.

Any bail may, after the action is entered and before final judgment in the original suit, exonerate himself from all liability by surrendering his principal to the jail in the county where the writ is returnable, and within 5 days thereafter leaving with the jailer an attested copy of the writ of process whereby the arrest was made, of the return indorsed thereon and of the bail bond, and notifying, in writing, the clerk of the court 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. (R. S. c. 102, § 11.)

Right of constable to recover fees from bail.—See Thompson v. Wiley, 20 Me. 479.

Stated in Ryan v. Watson, 2 Me. 382.

Sec. 12. When bail taken in a justice action.—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 7 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 $20. (R. S. c. 102, § 12.)

Sec. 13. Surrender of principal before trial justice.—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. (R. S. c. 102, § 13.)

Sec. 14. Officer's fees; duty and liability for neglect.—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. (R. S. c. 102, § 14.)

Sec. 15. Surrender in such case, before and after judgment.—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. (R. S. c. 102, § 15.)

Stated in Jones v. Emerson, 71 Me. 405.

Cited in Hussey v. Danforth, 77 Me. 17.

Sec. 16. Remedy of bail against principal.—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. (R. S. c. 102, § 16.)