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Chapter 147.

Proceedings in Criminal Cases.

Issue of Process and Arrest.

Sec. 1. Criminal prosecutions by indictment; excepted cases.—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 courts, trial justices and courts martial. (R. S. c. 134, § 1.)

Sec. 2. Justices and magistrates may issue processes.—The justices of the supreme judicial court and of the superior court, judges of municipal courts and trial justices in their counties, in the manner provided in chapter 146, in vacation or term time, may issue processes for the arrest of persons charged with offenses. (R. S. c. 134, § 2.)

Sec. 3. Officer's oath to complaint.—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. (R. S. c. 134, § 3.)

Sec. 4. Arrests without warrant; liability.—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 may arrest and detain such persons against whom a warrant has been issued though the officer does not have the warrant in his possession at the time of the arrest, 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. (R. S. c. 134, § 4. 1953, c. 169.)

Officer is trespasser ab initio if he fails to obtain warrant within reasonable time.—The duty imposed upon an officer under this section is but co-extensive with the common-law powers of an officer to make arrests without a warrant for offenses committed in his presence. Failure to obtain a warrant within a reasonable time makes the officer a trespasser ab initio, and subjects him to civil liability therefor. State v. Boynton, 143 Me. 313, 62 A. (2d) 182. See also State v. Thompson, 143 Me. 326, 62 A. (2d) 190.

But such failure does not bar prosecution for crime.—In the absence of applicable specific statutory or constitutional provisions, neither illegality of arrest nor the fact that an arrest is illegal ab initio due to failure or delay in obtaining a warrant, nor prosecution before a court without jurisdiction amounts to an immunity bath for crime; nor do any of them bar a new and independent prosecution for the same crime instituted before a court of competent jurisdiction. State v. Boynton, 143 Me. 313, 62 A. (2d) 182. See also State v. Thompson, 143 Me. 326, 62 A. (2d) 190.

An officer may apprehend a person answering the description of a felon and hold him a sufficient length of time to properly investigate and ascertain whether the per-

son arrested is the person named in the warrant. Kittredge v. Frothingham, 114 Me. 537, 96 A. 1063.

But rule is different as to misdemeanor. — A constable has no lawful authority to arrest a person for a misdemeanor of which he is not guilty, on information merely, without a warrant, such person not being found violating any law of the state. Palmer v. Maine Central R. R., 92 Me. 399, 42 A. 800.

Applied in Burke v. Bell, 36 Me. 317; Moore v. Durgin, 68 Me. 148.

Stated in part in Thatcher v. Weeks, 79 Me. 547, 11 A. 599; State v. McLeod, 97 Me. 80, 53 A. 878.

Sec. 5. Arrests in other counties.—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. (R. S. c. 134, § 5.)

Sec. 6. Discharged upon recognizance in county of arrest.—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. (R. S. c. 134, § 6.)

Transfer of Persons Charged with Crime in Two Counties.

Sec. 7. Removal of persons when charged with crime in 2 counties.—When a person is imprisoned or held under arrest in one county, any justice of the superior 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. (R. S. c. 134, § 7.)

Sec. 8. Duties of officer holding prisoner, and of officer holding court's order of removal.—The officer holding the person described in the court 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. (R. S. c. 134, § 8.)

Examination of Offenders.

Sec. 9. Examination of persons arrested.—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. (R. S. c. 134, § 9.)

The requirements of this section are mandatory, and the officer who fails to fully carry out the commands of the warrant, without justification, does so at his peril. Hefler v. Hunt, 120 Me. 10, 112 A. 675.

Sec. 10. Adjournment of examination, on recognizance or commitment.—A magistrate may adjourn an examination before him, from time to time,

for not more than 10 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 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. (R. S. c. 134, § 10.)

Magistrate may adjourn hearings beyond ten days upon request.—A municipal court is authorized by this section to adjourn the hearings for not more than ten days, and if the parties request it might adjourn beyond ten days. State v. Miller, 48 Me. 576; Perro v. State, 113 Me. 493, 94 A. 950.

But he may not adjourn criminal case indefinitely.—A magistrate of an inferior court, unless authorized by statute, cannot adjourn the hearing of a criminal case indefinitely, for by such an adjournment the court loses jurisdiction over the parties, and a judgment entered after such adjournment, except by consent, is void. Perro v. State, 113 Me. 493, 94 A. 950.

Sec. 11. If party fails to appear.—If the party recognizing as provided for in the preceding section 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. (R. S. c. 134, § 11.)

Sec. 12. Examination.—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. (R. S. c. 134, § 12.)

Examination may be waived.—After expressly waiving the preliminary examination provided by this section, it is not open to the respondent to object that it was not made and, in all subsequent proceedings, the waiver may properly be regarded as the substantial equivalent for the examination and the finding thereon which this section and § 13 contemplate. State v. Cobb, 71 Me. 198.

Sec. 13. Proceedings upon examination; complaint adjudged frivolous or malicious; appeal; probable cause.—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. 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. (R. S. c. 134, § 13.)

A recognizance must show that an offense has been committed, and that there is probable cause for believing the accused to be guilty of it. A recognizance

is void, if it shows merely that "there is good cause to suspect" the accused to be guilty. State v. Hartwell, 35 Me. 129.

The words "there was good reason and probable cause to believe said defendant is guilty," is equivalent to finding that "there was probable cause to charge the accused." State v. Baker, 50 Me. 45, distinguishing State v. Hartwell, 35 Me. 129.

Stated in part in State v. Cobb, 71 Me. 198.

Cited in Frost v. Holland, 75 Me. 108; State v. Sinnott, 89 Me. 41, 35 A. 1007; State v. Russ, 100 Me. 76, 60 A. 704.

Commitment or Binding Over.

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

Sec. 15. Responsibility of bail.—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. (R. S. c. 134, § 15.)

Sec. 16. Magistrate to recognize material witnesses, or commit them.—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. (R. S. c. 134, § 16.)

Sec. 17. How minors may recognize.—Any person may recognize as provided in the preceding section for a minor to appear as a witness, or the magistrate may take the recognizance of such minor in a sum not exceeding $20, which shall be valid notwithstanding such disability. (R. S. c. 134, § 17.)

Sec. 18. Bail after commitment.—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. (R. S. c. 134, § 18.)

Cross reference.—See c. 126, § 35, re powers of bail commissioners.

Section confers ministerial powers upon justices and bail commissioner.—The power conferred upon the justices and bail commissioner by this section is not a judicial power. Their action under it is merely ministerial. State v. Baker, 50 Me. 45.

And taking of only one surety is regarded as insufficient performance of ministerial duty.—A recognizance with but one surety taken by a justice or bail commissioner in a criminal case, upon the ap-

plication of a prisoner committed before verdict of guilty for a bailable offense, or for not finding sureties to recognize for him, is regarded as an insufficient performance of a ministerial duty, but nevertheless valid as far as it goes and obligatory upon the principal and surety. State v. Baker, 50 Me. 45.

They have power to fix amount and terms of recognizance.—Any justice of the supreme judicial court or bail commissioner for the county has full authority to admit a prisoner to bail. They also have full power to fix the amount and terms of the recognizance. Welch v. Sheriff of Franklin County, 95 Me. 451, 50 A. 88.

But they have no authority to inquire into particulars of offense. — The justices and bail commissioner have no authority to inquire into nor decide upon the particulars as to the description of the offense and time and circumstances of its alleged commission. State v. Corson, 10 Me. 473.

Sec. 19. Examinations and recognizances returned.—All examinations and recognizances taken by a magistrate 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 1st day of its session; and if the magistrate neglects to do so, he may be compelled by order of court or, if that is disobeyed, by attachment for contempt. (R. S. c. 134, § 19.)

The record of the examination before a justice is evidence on the trial of the prisoner, even if it shows no confession but only refusals to answer. State v. Bowe, 61 Me. 171.

Cited in Frost v. Holland, 75 Me. 108.

Dismissal of Prosecutions.

Sec. 20. Dismissal of prosecutions on satisfaction for private injury; discharge of recognizance.—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 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. (R. S. c. 134, § 20.)

Cited in Palmer v. Maine Central R. R., 92 Me. 399, 42 A. 800.

Sec. 21. Discharges filed with clerk or jailer; bar to civil action.—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. (R. S. c. 134, § 21.)

Cited in Palmer v. Maine Central R. R., 92 Me. 399, 42 A. 800.

Remedies on Recognizances. Discharge of Bail

Sec. 22. Forfeited recognizances defaulted.—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 cognizors 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. (R. S. c. 134, § 22.)

Officer must properly join parties to recognizance.—It was not the intention of the legislature under this section to give a prosecuting officer authority to violate

well settled rules of pleading such as nonjoinder or misjoinder of parties to a recognizance. State v. Chandler, 79 Me. 172, 8 A. 553.

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

Sec. 24. Court may remit penalty; or sureties may surrender principal in court.—When the penalty of a recognizance in a criminal case is forfeited on scire facias against the 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. (R. S. c. 134, § 24.)

Power to remit penalty or discharge surety is not inherent. — The authority of the superior court for Penobscot County to remit the penalty or discharge the sureties in an action of scire facias on a forfeited criminal recognizance is not inherent. It is conferred and measured by this section. State v. Leo, 128 Me. 441, 148 A. 563.

Cited in State v. Crowley, 60 Me. 103.

Sec. 25. Liquor cases excepted.—The preceding section is not applicable to recognizances taken under the provisions of chapter 61. (R. S. c. 134, § 25.)

Cross reference.—See c. 61, § 73, re proceedings in appeal.

Stated in State v. Leo, 128 Me. 441, 148 A. 563.

Sec. 26. Suit on any recognizance dismissed.—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. (R. S. c. 134, § 26.)

See c. 61, § 73, re appeals in liquor cases.

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

This section is applicable only to recognizances in criminal, and not in civil proceedings. State v. Hatch, 59 Me. 410; State v. Crowley, 60 Me. 103; State v. McCauley, 112 Me. 103, 90 A. 976.

The strictness of the common law has been modified by this section. State v. Baker, 50 Me. 45; State v. Hatch, 59 Me. 410.

And a liberal construction has been adopted. — The purpose of this statute is to modify the strictness of the common law and to prevent the thwarting or delaying a justice by mere technicalities, and in carrying out its spirit a liberal construction has been adopted by the supreme judicial court. State v. Edminster, 105 Me. 485, 75 A. 57; State v. McCauley, 112 Me. 103, 90 A. 976.

This section in regard to recognizances in criminal cases first appears in the revised statutes of 1841. The authorities of an earlier date are, therefore, so far as this section is of any avail, inapplicable. State v. Hatch, 59 Me. 410; State v. McCauley, 112 Me. 103, 90 A. 976.

Action on recognizance cannot be defeated because it contains additional con-

ditions. — In a criminal prosecution if it can be sufficiently understood from the tenor of a recognizance at what court the party is to appear, and from the description of the offense charged, that the magistrate is authorized to require and take the same, an action upon the recognizance cannot be defeated upon the ground that it contains conditions additional to those authorized by the statute. State v. Crowley, 60 Me. 103.

As they are considered surplusage and void of legal effect.—If a commissioner of bail includes in the conditon of a recognizance more than the order of the court required, the part added is mere surplusage and is void of legal effect. State v. Hatch, 59 Me. 410; State v. Cobb, 71 Me. 198.

Jurisdiction of magistrate cannot be presumed.—The recognizance must contain a sufficient description of an offense cognizable by the magistrate as his jurisdiction cannot be presumed. State v. Lane, 33 Me. 536.

Technical precision in description of offense is not required. — All this section requires is that it should appear from the description of the offense that the court taking the recognizance had jurisdiction. It does not require technical precision in the description as is required in an indictment. State v. Howley, 73 Me. 552.

It is unnecessary for the recognizance to recite the fact that the defendant pleaded. This is a matter entirely outside of the description of the offense specified in the statute. State v. Russ, 100 Me. 76, 60 A. 704.

Nor need it state that warrant had proper return.—It is not necessary for the recognizance to state that the warrant had a proper return signed by the officer serving it. This section makes it entirely unnecessary to recite any preliminary acts such as the making of the return of the warrant. State v. Russ, 100 Me. 76, 60 A. 704.

This section makes all recognizances valid, which contain its specific requirements. State v. Hatch, 59 Me. 410.

Sec. 28. Personal recognizance and cash bail.—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. (R. S. c. 134, § 28.)

Cited in State v. Altone, 140 Me. 210, 35 A. (2d) 859.

Sec. 29. Surrender before default.—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. (R. S. c. 134, § 29.)

Money deposited can be returned only to respondent or his order. — Money deposited as bail is regarded as belonging to the respondent and, if the conditions of the recognizance are fulfilled, can be returned only to the respondent or to a third person on order of the respondent. State v. Altone, 140 Me. 210, 35 A. (2d) 859.

Cited in State v. Parent, 132 Me. 433, 172 A. 442.

Sec. 30. Court may order deposit forfeited.—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. (R. S. c. 134, § 30.)

Cash bail is regarded as respondent's money. — When cash bail is deposited by a third person for a respondent who defaults, the court may declare the money forfeited. The money is forfeited to the state as the money of the respondent and no proceeding against the one who advanced it is necessary or in fact authorized. State v. Altone, 140 Me. 210, 35 A. (2d) 859.

Court may order forfeiture even though respondent is imprisoned in another jurisdiction.—It is not an abuse of discretion on the part of a court to order forfeiture of bail even though the failure of the respondent to appear is due to his imprisonment in another jurisdiction for an offense committed there. State v. Altone, 140 Me. 210, 35 A. (2d) 859, distinguishing State v. Parent, 132 Me. 433, 172 A. 442.

Sec. 31. Surrender after default.—At any time after a default, and before the money has been declared forfeited in accordance with the provisions of the preceding section, the respondent may surrender himself in the manner provided in section 29, 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. (R. S. c. 134, § 31.)

Cited in State v. Altone, 140 Me. 210, 35 A. (2d) 859.

Payment of Private Claims from Forfeited Recognizances.

Sec. 32. Private claims paid out of forfeited recognizances.—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 for the offense, if paid on conviction and not on recognizance. (R. S. c. 134, § 32.)