

MAINE STATE LEGISLATURE

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REPORT

OF THE

COMMISSIONERS

APPOINTED TO

REVISE THE PUBLIC LAWS

OF THE

STATE OF MAINE.

TITLE IX.

AUGUSTA:

STEVENÉ & BLAINE, PRINTERS TO THE STATE.

1856.



TITLE NINTH.

CIVIL RIGHTS AND REMEDIES.

- Chap.* 81. Commencement of civil actions, indorsement and service of writs, attachment of property, and limitation of civil actions.
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ARTICLE I. *Writs and commencement of actions.*

SECTION 1. The forms of writs in civil actions, shall remain
2 as heretofore established; but the supreme judicial court, by
3 general rules, may from time to time, make such alterations
4 therein for all courts, as changes in the law or other causes
5 require. R. S., c. 114, § 1.

SECT. 2. When the parties reside in the State, all personal
2 and transitory actions shall be brought in the county in which
3 one of them lives, and when not so brought, on motion or
4 inspection by the court, the writ shall be abated, and the
5 defendant allowed double costs; except as is provided in the
6 following sections. R. S., c. 114, § 2.

SECT. 3. Actions on bonds given by sheriffs and coroners
2 to the treasurer of the state, shall be brought in the county
3 in which such sheriff or coroner is commissioned to act.

R. S., c. 114, § 3.

SECT. 4. All actions of debt founded on judgment for dam-
2 ages and costs, or for costs only, rendered by any court of
3 record in this state, may be brought in the county where the
4 same was rendered, or in the county in which either of the
5 parties to such judgment, or his executor or administrator
6 resides at the time of bringing the action. R. S., c. 114, § 4.

SECT. 5. In all actions commenced in any court proper to
2 try the same, jurisdiction shall be sustained, if goods, estate,
3 effects or credits of any defendant, named in the action, are
4 found within this state, and attached on the original writ;
5 and service shall be made, as provided in the eighteenth
6 section of this chapter. R. S., c. 114, § 5.

SECT. 6. Local and transitory actions shall be commenced
2 and tried as follows: When both parties are counties, in
3 either county or in any county adjoining either; when a

4 county is plaintiff, if the defendant lives therein, in any
 5 adjoining county; if he does not live therein, in the county
 6 in which he does live; when a county is defendant, if the
 7 plaintiff lives therein, in that county or in any adjoining
 8 county; if he does not live therein, in that county or in that
 9 in which he does live; when a corporation is one party and
 10 a county the other, in any adjoining county; when both par-
 11 ties are towns, parishes or school districts, in the county in
 12 which either is situated; when one party is a town, parish or
 13 school district, and the other some corporation or natural
 14 person, in the county in which either of the parties is situated
 15 or lives; but all actions against towns for damages by reason
 16 of defects in highways, shall be brought and tried in the county
 17 in which the town is situated. All other corporations may
 18 sue and be sued in the county in which they have any estab-
 19 lished place of business, or in that in which the plaintiff or
 20 defendant, being a natural person, lives.

R. S., c. 114, § 6, 7, 8, 9, 10, 11, 12, 13. 1849, c. 108.

SECT. 7. When a forfeiture is recoverable in a civil action,
 2 it shall be brought in the county in which the offense was
 3 committed, unless a different provision is made in the statute
 4 imposing it; and if on trial, it does not appear that it was
 5 committed in the county where the action is brought, the
 6 verdict shall be in favor of the defendant.

R. S., c. 114, § 14.

SECT. 8. Any action against two or more defendants, re-
 2 siding in different counties, to be tried before a justice of the
 3 peace, or municipal or police court, may be brought in the
 4 county where either resides; and the writ and execution, in
 5 such case, shall be directed to, and executed by the proper
 6 officers in each of such counties accordingly; but if there be
 7 but one defendant, such action shall be commenced in the
 8 county where he resides.

R. S., c. 114, § 15. 1842, c. 10, § 3.

ARTICLE II. *Writs, endorsement and other requisites of.*

SECT. 9. Every writ, original, of scire facias, of error, of
 2 audita querela, petition for writ of certiorari, for review, or
 3 for partition, and bill in equity, shall before entry in court, be

4 endorsed by some sufficient inhabitant of the state, when the
5 plaintiff or petitioner is not an inhabitant thereof; and if
6 pending such suit, the plaintiff or petitioner removes from the
7 state, such endorser shall be procured, on motion of the de-
8 fendant or any other party to the suit; but if one of two or
9 more such plaintiffs or petitioners is an inhabitant of the
10 state, no endorser shall be required, except by special order
11 of the court. R. S., c. 114, § 16, 17.

SECT. 10. In case of the avoidance or inability of the plain-
2 tiff or petitioner, the indorser shall be liable in an action on
3 the case, brought against him within one year after the orig-
4 inal judgment, in the court in which it was rendered, to pay
5 all costs recovered against the plaintiff. A return upon the
6 execution in any case, by an officer of the county, where
7 the endorser lives, that he has demanded of the endorser
8 payment thereof, and that he has neglected to pay the same,
9 or to show the officer personal property sufficient to satisfy
10 the execution, or that he cannot find the endorser within his
11 precinct, shall be conclusive evidence of his liability in the
12 suit. R. S., c. 114, § 18.

SECT. 11. If pending any such suit or petition, any such
2 endorser becomes insufficient or removes from the state, the
3 court may require a new and sufficient endorser, the defend-
4 ant consenting, that the name of the original endorser shall
5 be struck out; and such new endorser shall be liable for all
6 costs from the beginning of the suit, as if he had been the
7 original endorser; and if such new endorser is not provided,
8 the action shall be dismissed, and the defendant recover his
9 costs. R. S., c. 114, § 19, 20.

SECT. 12. All civil actions, except scire facias, or on other
2 special writs, shall be commenced by original writs, signed
3 and sealed by the clerk, and bearing test of any justice of the
4 court who is not a party. Writs issued by a justice of the
5 peace, or judge of a municipal or police court, shall be sealed
6 and signed by such justice or judge, unless otherwise provi-
7 ded in the act establishing such court. R. S., c. 114, § 21.

SECT. 13. All original writs in the supreme judicial court,
2 may be issued by the clerk in term time or vacation, and
3 framed either to attach the goods or estate of the defendant,

4 and for want thereof, to take his body; or as an original
5 summons, with or without an order to attach goods or estate.

R. S., c. 114, § 22, 23.

SECT. 14. In actions against corporations, and in other
2 cases where goods or estate are attached, and the defendant
3 is not liable to arrest, the writ and summons may be com-
4 bined in one.

R. S., c. 114, § 25.

ARTICLE III. *The service of writs, attachment of property, and
disposal thereof.*

SECT. 15. When goods or estate are attached on either of
2 said writs, a separate summons, in form by law prescribed,
3 shall be delivered to the defendant, or left at his dwelling
4 house or place of last and usual abode, fourteen days before
5 the sitting of the court to which it is returnable; which shall
6 be a sufficient service of the writ or original summons.

R. S., c. 114, § 24.

SECT. 16. Where the process is by original summons, as
2 against executors, administrators or guardians, in ejectment,
3 dower, scire facias, error, review, and all other civil actions,
4 wherein the law does not require a separate summons to be
5 left with the defendant, the service by the proper officer shall
6 be sufficient, by his reading the writ or original summons to
7 the defendant, or by giving him in hand, or leaving at his
8 dwelling-house or place of last and usual abode, a certified
9 copy thereof, fourteen days before it is returnable.

R. S., c. 114, § 26.

SECT. 17. If the defendant was never an inhabitant of this
2 state, or has removed therefrom, the summons, where goods
3 and estate are attached, or a copy of the original summons,
4 as the case may require, shall be left with his tenant, agent
5 or attorney, fourteen days before the sitting of the court.

R. S., c. 114, § 27.

SECT. 18. When the goods or estate of any person not an
2 inhabitant of the state, and having no tenant, agent or attor-
3 ney therein, are attached in any civil action, and in all other
4 cases where the court orders notice, any justice of the court
5 to which the writ or process is returnable, may in vacation,
6 make his order by him signed on the back of the writ or pro-

7 cess, directing how the defendant shall be notified; or the
8 court after entry may order such notice to the defendant as
9 justice requires; and if such order is complied with, and
10 proved to the satisfaction of the court, the defendant shall be
11 held to answer to the suit as in other cases. Such order may
12 be made by such justice in any county in which the court
13 is in session. A justice of the peace or judge of a municipal
14 or police court, may in like cases, and with the same effect,
15 order like notice, on any writ or process, returnable or in
16 actions pending before them.

R. S., c. 114, § 28. 1844, c. 86. 1850, c. 154.

SECT. 19. When a suit is brought against a county, the
2 summons shall be served, by leaving an attested copy thereof
3 with one of the county commissioners, or with their clerk.

R. S., c. 114, § 41.

SECT. 20. In all suits against the inhabitants of any town,
2 parish, religious society or school district, the summons shall
3 be served by leaving a copy thereof with the clerk, or one of
4 the selectmen or assessors of the corporation sued, if there is
5 any such officer; if not, with a member of such corporation.

R. S., c. 114, § 42.

SECT. 21. In suits against all other corporations, whether
2 created by act of the legislature, or under a general law of
3 the state, the summons shall be served by leaving a copy
4 thereof with the president or clerk, cashier, treasurer, or any
5 general agent or director, as the case may be, of the corpora-
6 tion sued; if there be no such officer or agent found within the
7 county where such corporation is established, or where its
8 records or papers are by law required to be kept, such copy
9 may be left with any member thereof. R. S., c. 114, § 43.

SECT. 22. In an action against an insurance company
2 established in any other state or country, by an inhabitant of
3 this state, on a policy of insurance, signed or countersigned
4 by an agent in this state, on property or lives within this
5 state, a summons in usual form, or a copy of the writ and
6 declaration, delivered to the agent or attorney of the com-
7 pany within this state, or left at his last and usual place of
8 abode, shall be a sufficient service thereof; or if such service
9 is made upon the person, being an inhabitant of the state,

10 who signed or countersigned the policy on which such action
 11 is founded, it shall also be a sufficient service; but in either
 12 case the court may order further notice to be given to such
 13 company. 1846, c. 186.

SECT. 23. In all the cases mentioned in the four preceding
 2 sections, the writ shall be served thirty days before the sitting
 3 of the court to which it is returnable. R. S., c. 114, § 44.

SECT. 24. When an action is commenced against two or
 2 more persons, on a joint obligation or contract, and any one
 3 or more of them is not an inhabitant of the state, and has no
 4 tenant, agent or attorney in the state, service made on him,
 5 as is provided in the eighteenth section of this chapter, shall
 6 be sufficient, unless further notice is ordered by the court.

R. S., c. 114, § 47.

SECT. 25. When the service of a writ is defective or insuf-
 2 ficient, by reason of some mistake of the officer or of the
 3 plaintiff, as to the place where, the time when, or the person
 4 with whom, the summons or copy should have been left, the
 5 court may order a new summons to be issued and served, in
 6 such manner as they direct; and such service shall be as
 7 effectual as if made and returned on the original writ.

R. S., c. 114, § 48.

SECT. 26. When the name of a defendant is not known to
 2 the plaintiff, the writ may issue against him, by an assumed
 3 name; and if duly served, it shall not be abated for that
 4 cause, but may be amended on such terms as the court shall
 5 order.

R. S., c. 114, § 49.

SECT. 27. All goods and chattels may be attached and
 2 held as security to satisfy the judgment for damages and
 3 costs which the plaintiff may recover, except such as from
 4 their nature and situation have been considered as exempted
 5 from attachment, according to the principles of the common
 6 law, as adopted and practised in this state, and such as are
 7 hereinafter mentioned. Such personal property may be
 8 attached on writs, or taken on executions, issued by a justice
 9 of the peace, or judge of a police or municipal court, in any
 10 county; and they may for that purpose, be directed to the
 11 proper officer of such county, by such justice or judge.

R. S., c. 114, § 29. 1842, c. 10, § 1.

SECT. 28. All real estate liable to be taken in execution, 2 according to the provisions of chapter seventy six, may be 3 attached on mesne process, and held as security for the pur- 4 poses mentioned in the preceding section. The officer, in 5 order to make such an attachment, need not enter on such 6 estate, or be within view of it. R. S., c. 114, § 30.

SECT. 29. A right in equity of redeeming lands mortgaged, 2 or taken in execution, may be attached on mesne process ; 3 and if before the levy of the execution the lands are redeemed, 4 or the incumbrance thereon is removed, the attachment shall 5 hold the premises discharged of the mortgage or levy, as 6 effectually as if they had not existed and the premises had 7 been attached. R. S., c. 114, § 31.

SECT. 30. No attachment of real estate on mesne process, 2 shall create any lien on such estate, unless the officer making 3 it, within five days thereafter, files in the office of the regis- 4 ter of deeds in the county or district in which all or any part 5 of said lands are situated, an attested copy of so much of the 6 return, made by him on the writ, as relates to the attach- 7 ment, together with the names of the parties, the sums sued 8 for, the date of the writ, and the court to which it is return- 9 able. If the copy is not so filed within five days, the 10 attachment shall take effect from the time it is filed, if before 11 the entry of the action, although it may be after service on 12 the defendant. And such proceedings shall be had in such 13 office by the register of deeds, as are prescribed in the seventh 14 chapter. R. S., c. 114, § 32, 34.

SECT. 31. No such attachment, though made and notice 2 thereof given as directed in the preceding section, shall be 3 valid, unless the plaintiff's demand on which he founds his 4 action, and the nature and amount thereof, are substantially 5 set forth in proper counts, or a specification of such claim is 6 annexed to the writ. R. S., c. 114, § 33.

SECT. 32. No personal property, and no real estate, except 2 equities of redeeming real estate mortgaged, or taken in exe- 3 cution, or equities of redemption which have been sold on 4 execution, or an obligee's conditional right to a deed of con- 5 veyance of real estate to him, which has been sold on 6 execution, and except property attached and replevied, and

7 property attached, belonging to a person dying after an
8 attachment of it had been made, or specially provided for in
9 any other case, shall be held to be taken in execution,
10 by virtue of an attachment, longer than thirty days next
11 after the day on which final judgment was rendered in the
12 suit. R. S., c. 114, §. 35.

SECT. 33. When final judgment is rendered for the defend-
2 ant, the attachment shall be thereby forthwith dissolved.
3 The final judgment mentioned in this and the preceding sec-
4 tion, is the judgment rendered in the original action, and not
5 such as may be rendered on review or writ of error.

R. S., c. 114, § 36, 94.

SECT. 34. When hay in a barn, horses or neat cattle are
2 attached, and are suffered to remain, by the permission of
3 the officer, in the defendant's possession, on security given
4 for their safe keeping and delivery to the officer, they shall
5 not be subject to a second attachment, to the prejudice of the
6 first. R. S., c. 114, § 37.

SECT. 35. When any personal property is attached, which
2 by reason of its bulk or other special cause cannot be imme-
3 diately removed, the officer may, within five days thereafter,
4 file in the office of the clerk of the town, in which the
5 attachment is made, an attested copy of so much of his
6 return on the writ, as relates to the attachment, together
7 with the names of the parties, the sums sued for, the date of
8 the writ, and the court to which it is returnable; and such
9 attachment shall be effectual and valid, as if the property
10 had remained in his possession and custody. The clerk
11 shall receive the copy and note thereon the time of his re-
12 ceiving it, and enter it in a book kept for that purpose, and
13 keep it on file for the inspection of those who may be inter-
14 ested therein, for which he shall be entitled to ten cents.

R. S., c. 114, § 39, 40. 1849, c. 107.

SECT. 36. The following goods and property shall be ex-
2 empted from attachment and execution.

3 *First*—The debtor's wearing apparel, beds, bedsteads,
4 bedding, and household utensils, necessary for himself, his
5 wife and children; but the beds and bedding so exempted,
6 shall not exceed one bed, bedstead and necessary bedding for

7 every two persons, nor the other household furniture, the
8 value of fifty dollars.

9 *Second*—The tools of any debtor, necessary for his trade
10 or occupation.

11 *Third*—All bibles and school books in actual use in the
12 family, and one copy of the statutes of the state.

13 *Fourth*—All iron stoves, used exclusively for warming
14 buildings.

15 *Fifth*—One cow, and one heifer under three years old ;
16 two swine, one of which shall weigh not more than one hun-
17 dred pounds ; and when he owns a cow, and a heifer more
18 than three years old, or two swine, each weighing more than
19 one hundred pounds, he may elect the cow or the heifer, or
20 which of the swine shall be so exempted ; ten sheep, and the
21 wool from them ; thirty hundred of hay for the use of the
22 cow, and two tons for the use of the sheep, and a sufficient
23 quantity for the use of the heifer.

24 *Sixth*—All produce of farms, until harvested ; and corn
25 and grain necessary and sufficient for the sustenance of the
26 debtor and his family, not exceeding thirty bushels.

27 *Seventh*—All his interest in one pew in any meeting-house,
28 where he and his family stately worship.

29 *Eighth*—All potatoes raised or purchased for the consump-
30 tion of himself and family ; one barrel of flour ; ten dollars
31 worth of lumber, wood or bark.

32 *Ninth*—All the firewood conveyed to his house for the use
33 of himself and family, not exceeding twelve cords.

34 *Tenth*—One boat, not exceeding two tons burthen, usually
35 employed in fishing business, belonging wholly to an inhab-
36 itant of this state.

37 *Eleventh*—One plough of the value of ten dollars ; one
38 cart, of the value of twenty-five dollars ; one harrow, of the
39 value of five dollars ; one yoke, with bows, ring and staple,
40 all of the value of three dollars ; two chains, each of the
41 value of three dollars ; one ox-sled, of the value of ten dol-
42 lars ; one cooking stove of the value of thirty-five dollars ;
43 and all anthracite coal, not exceeding five tons ; and bitumin-
44 ous coal, not exceeding fifty bushels ; and charcoal conveyed
45 to his house to be consumed in his family.

46 *Twelfth*—One pair of working cattle, or instead thereof
 47 one or two horses, not exceeding in value one hundred dol-
 48 lars; and a sufficient quantity of hay to keep them through
 49 the winter season. If he has more than one pair of working
 50 cattle, or if the two horses exceed in value one hundred dol-
 51 lars, he may elect which pair of cattle, or which of the horses
 52 shall be exempted.

R. S., c. 114, § 38. 1847, c. 11, 32. 1849, c. 134.

SECT. 37. A lot of land and the improvements made
 2 thereon, purchased of the state, under the provisions of
 3 chapter three, shall be exempted from attachment, in the
 4 manner therein provided; also, a lot of land, and dwelling
 5 house and out buildings thereon, or so much thereof as does
 6 not exceed five hundred dollars in value, the property of a
 7 house-holder in actual possession thereof, not the owner of a
 8 lot purchased of the state as aforesaid, shall be exempted
 9 from attachment or levy of any execution, as is hereinafter
 10 provided. 1850, c. 207, § 1.

SECT. 38. Any such person, wishing to avail himself of the
 2 foregoing provision, may file in the registry of deeds of the
 3 county or district in which the land lies, a certificate signed
 4 by him, declaring such wish, and describing the land and
 5 buildings; and the register, for the fees for recording deeds,
 6 shall record the same in a book by him kept for that purpose;
 7 and so much of such property as does not exceed the value
 8 aforesaid, shall be forever exempt from attachment or levy
 9 on any execution issued on a judgment recovered for any
 10 debt, contracted jointly or severally, by such person after the
 11 date of the recording thereof; and the record in the register's
 12 office shall be prima facie evidence that the certificate pur-
 13 porting to be there recorded, was made, signed and filed as
 14 appears upon such record. 1850, c. 207, § 4.

SECT. 39. When property, exempted as aforesaid, is claimed
 2 by a creditor to be of greater value than five hundred dollars,
 3 it may be seized on execution, and the appraisers shall
 4 first set off such part of the property as the debtor may select,
 5 and if he neglects so to do, as the officer may select for him,
 6 to the value of five hundred dollars, by metes and bounds;
 7 and shall then appraise and set off to the creditor, in manner

8 prescribed by law, the remainder, or so much thereof as may
9 be necessary to satisfy the execution; and the appraisers
10 shall be sworn accordingly, and the officer shall make return
11 of his doings thereon. 1850, c. 207, § 5.

SECT. 40. After his death, the exempted premises shall not
2 be sold for the payment of his debts during the widowhood
3 of his widow, or the minority of any of his children, but may
4 be occupied by his widow during her widowhood, and by
5 his children during minority, free from any claim by any
6 creditor of his estate. 1850, c. 207, § 2.

SECT. 41. No exemptions under the four preceding sections
2 shall apply to or defeat the liens of mechanics or other
3 persons, under the provisions of chapter ninety.

1850, c. 207, § 3.

SECT. 42. When the share or interest of any person in any
2 incorporated company is attached on mesne process, an
3 attested copy of the writ, with a notice thereon of the attach-
4 ment, signed by the officer, shall be left with the clerk,
5 cashier or treasurer of the company; and such attachment
6 shall be a lien on all accruing dividends, as well as on the
7 share; and if the officer having the writ of attachment
8 exhibits it to the officer of the company having custody of
9 the account of shares, or interest of the stockholders, and
10 requests a certificate of the number held by the defendant,
11 and such officer unreasonably refuses to give it, or wilfully
12 gives him a false certificate thereof, he shall pay double the
13 damages occasioned by such refusal or neglect; to be recov-
14 ered against him in an action on the case, by the creditor.

R. S., c. 114, § 45.

SECT. 43. The franchise, and all rights, privileges and
2 immunities of any incorporated company, of demanding and
3 receiving tolls, or other corporate property, may be attached
4 on mesne process, and the officer making the attachment,
5 shall leave an attested copy of the writ, with a notice thereon
6 of the attachment, signed by him, with the clerk, treasurer,
7 or some officer or member of the corporation, as provided
8 in section twenty-one. R. S., c. 114, § 46.

SECT. 44. Different attachments in one or more counties,
2 may be made successively upon the same writ, and by differ-

3 ent officers, before the service of the summons upon the person
4 whose property is attached; but none after such service.

R. S., c. 114, § 50.

SECT. 45. All writs of scire facias may contain a direction
2 to the officer serving them, to attach the property of those
3 against whom they issue, and also to arrest their bodies when
4 liable to be arrested, in the same manner as may be done in
5 case of writs of attachment. R. S., c. 114, § 51.

SECT. 46. When personal property is attached, if the cred-
2 itor and debtor consent, the officer may sell it before judg-
3 ment, observing the directions for selling on execution; and,
4 when the same property is attached by different creditors, in
5 different suits, it may be so sold by the first attaching officer;
6 or in case of his death, if he was a deputy sheriff, then by
7 the sheriff or another deputy, by the written consent of the
8 defendant and all attaching creditors; and the proceeds of
9 the sale, after deducting the necessary expenses, shall be held
10 by such first attaching officer, or the sheriff, subject to the
11 successive attachments, in like manner, as if the sale had
12 been on execution. R. S., c. 114, § 52.

SECT. 47. When living animals, or goods liable to perish
2 or waste, or be greatly reduced in value by keeping, or which
3 cannot be kept without great expense, are attached, and the
4 parties do not consent to a sale thereof, as before provided,
5 the property so attached, at the request of either of the par-
6 ties interested therein, may be examined and appraised in the
7 manner following.

R. S., c. 114, § 53.

SECT. 48. Upon such request made to the officer, he shall
2 give notice to all parties of the time and place of the appraisal,
3 with the names of the parties to the action, and of the sup-
4 posed owner of the property, by posting up advertisements
5 thereof in two or more public places, in the town where it
6 was attached; or he may give like personal notice thereof,
7 to all parties to the suit, in which it is attached, the notice
8 in each case to be four days at least before the day of the
9 appraisal; and he shall prepare a schedule of the property,
10 and cause three disinterested persons, acquainted with the

11 nature and value of such goods, to be appointed and duly
12 sworn as appraisers thereof.

R. S., c. 114, § 54. 1846, c. 198.

SECT. 49. The appraisers shall be appointed, one by the
2 creditor, one by the debtor, and one by the officer; and, if
3 the creditor or debtor neglects to appoint one, the officer shall
4 appoint one in his behalf. R. S., c. 114, § 55.

SECT. 50. The appraisers shall examine the property
2 attached, and if they are of opinion that any part of it is
3 liable to perish, or to be wasted, or greatly reduced in value
4 by keeping, or kept at a great expense, they shall proceed to
5 appraise it according to their best judgment, at its value in
6 money; and it shall thereupon be sold by the officer, and
7 the proceeds held and disposed of in the manner before pro-
8 vided, in the case of a sale by consent of parties, unless it is
9 taken by the debtor, as is provided in the following section.

R. S., c. 114, § 56.

SECT. 51. The property shall be delivered to the debtor,
2 after it is thus appraised, if he requires it, on his depositing
3 with the attaching officer, the appraised value thereof in
4 money, or giving bond to him with two sufficient sureties,
5 with condition to pay him the appraised value of the prop-
6 erty, or to satisfy all such judgments as shall be recovered in
7 the suits in which the property is attached, if demanded
8 before the attachments expire, or within thirty days after the
9 time when the creditors respectively might have been entitled
10 to demand payment out of the proceeds of the property
11 sold as before provided. R. S., c. 114, § 57.

SECT. 52. The officer taking such bond, shall return it with
2 the writ, on which the first attachment is made, in like
3 manner as bail bonds are returned, with a certificate of his
4 doings in relation thereto; and in case of a forfeiture of the
5 bond, the creditors or any one or more of them, may bring an
6 action of debt thereon, in the name of the officer.

R. S., c. 114, § 58.

SECT. 53. The writ in such action, shall be indorsed with
2 the names of the creditors, by whom the action is brought;
3 and in case judgment is rendered for the defendants, execu-
4 tion for the costs shall be issued against all the creditors,

5 whose names are so indorsed, or separate executions against
6 each creditor for his proper proportion, as the court shall
7 consider most equitable and just. R. S., c. 114, § 59.

SECT. 54. If judgment is rendered for the plaintiff, the
2 money recovered shall be first applied, under the order of
3 court, to pay the reasonable expenses incurred by the credi-
4 tors in prosecuting the suit, so far as the same are not reim-
5 bursed by the costs recovered of the defendant; and the
6 residue shall belong to all the attaching creditors, according
7 to their respective rights. R. S., c. 114, § 60.

SECT. 55. No judgment or execution shall be awarded, for
2 the use of any creditor, without reserving as much as may be
3 due upon any prior attachment, whether the creditor in such
4 prior suit is, or is not, one of those by whom the action is
5 brought on the bond. R. S., c. 114, § 61.

SECT. 56. Any creditor entitled to the benefit of the bond,
2 who has not joined in bringing the action thereon, may on
3 his motion, at any time before final judgment in the action
4 on the bond, be allowed, upon such terms as the court orders,
5 to become a party to the suit, in like manner and with the
6 same effect as if he had been one of the original plaintiffs,
7 and his name shall be indorsed on the writ accordingly, or
8 he may bring scire facias on the judgment, and recover any
9 sum that may be due him on the bond. But no creditor,
10 whose cause of action on such bond accrues more than one
11 year before the commencement of the action thereon, shall
12 have judgment or execution in such action; and no creditor
13 shall sue out any such writ of scire facias on the judgment,
14 unless within one year after the cause of the action accrues.

R. S., c. 114, § 62.

SECT. 57. When goods, which are sold or appraised and
2 delivered to the debtor, in the manner before provided, have
3 been attached by several creditors, any one of them may
4 demand and receive satisfaction of his judgment, notwith-
5 standing any prior attachments; if he is otherwise entitled
6 to demand the money, and a sufficient sum is left, of the
7 proceeds of the goods, or of their appraised value, to satisfy
8 all prior attachments. R. S., c. 114, § 63.

SECT. 58. When goods are sold or disposed of, by consent

2 of parties, or after an appraisal as aforesaid, the proceeds
3 thereof, whilst remaining in the hands of the officer, may be
4 further attached by him, as the property of the original de-
5 fendant, the same as if the goods themselves had remained
6 in his possession; and the proceeds so attached, shall be held
7 and disposed of in the same manner as if the attachment had
8 been made on the goods themselves, before the sale thereof;
9 but nothing in this section shall prevent the officer from pay-
10 ing over to the defendant the surplus of the proceeds of any
11 sale, after retaining enough to satisfy all the attachments,
12 actually existing thereon at the time of the payment.

R. S., c. 114, § 64.

SECT. 59. When any personal property is attached in any
2 suit against one or more of the part owners thereof, it shall,
3 upon the request of any other part owner, be examined and
4 appraised, in the manner before provided for an appraise-
5 ment, when made at the request of any party in the suit;
6 except that the part owner who makes the application, shall
7 appoint one of the appraisers, and the defendant shall not
8 appoint any.

R. S., c. 114, § 65.

SECT. 60. The property shall be delivered to the part
2 owner, at whose request it was appraised, upon his giving
3 bond to the attaching officer in a sufficient penalty, with two
4 sufficient sureties, with condition to restore it in like good
5 order, or pay the officer the appraised value of the defend-
6 ant's share or interest therein, or to satisfy all judgments
7 recovered in suits in which the property is attached, if de-
8 manded within the time during which it would have been
9 held by the respective attachments.

R. S., c. 114, § 66.

SECT. 61. If such appraised value, or any part thereof, is
2 so paid, the defendant's share of the property shall thereby
3 become pledged to the party to whom it was delivered; and
4 he may sell it if not redeemed, and shall account to the de-
5 fendant for the balance if any, of the proceeds of the sale.

R. S., c. 114, § 67.

SECT. 62. If the attachment is in any way dissolved, the
2 party to whom the defendant's share was delivered, shall

3 restore it to the defendant, or to the officer who made the
4 attachment, to be by him delivered to the defendant.

R. S., c. 114, § 68.

SECT. 63. The doings of the officer, with the bond, shall be
2 returned; and in case of the forfeiture of any such bond by
3 a part owner, the like proceedings may be had thereon, as is
4 provided in section fifty-two. R. S., c. 114, § 69.

SECT. 64. Personal property not exempted from attachment,
2 mortgaged, pledged, or subject to any lien created by law,
3 and of which the debtor has the right of redemption, may be
4 attached and held in the same manner as if it was unincum-
5 bered; provided the attaching creditor first tenders or pays
6 the mortgagee, pledgee or holder, the full amount unpaid on
7 the demand so secured thereon. R. S., c. 114, § 70.

SECT. 65. Every mortgagee, pledgee or holder of personal
2 property, on demand in writing, made on him by any person
3 desiring to attach it, shall render a just and true account
4 of his debt or demand so secured; and if he unreasonably
5 neglects so to do, for six hours after such demand, the officer
6 may attach the property, the same as if it was unincumbered,
7 and such attachment shall have priority over the mortgage;
8 and any overplus, after satisfying the execution in the suit,
9 shall be paid over to the mortgagee, pledgee or holder; or
10 if he shall receive more than is justly due him on account of
11 the demand so secured, he shall refund the excess, with ten
12 per cent. interest thereon, to the time of recovering judgment.

R. S., c. 114, § 71.

SECT. 66. When property attached on mesne process is
2 claimed by any person not a party to the suit, and he omits,
3 for the space of ten days after notice given him therefor
4 by the attaching creditor, to bring his action of replevin,
5 he shall not bring it afterwards, and the officer making the
6 attachment, at the request of the plaintiff, and on his respon-
7 sibility, the other attaching creditors, if any, consenting
8 thereto, may sell the property at public auction, in the man-
9 ner provided for the sale of goods on execution; unless the
10 defendant claims it in his own right and forbids the sale;

11 but the sale shall not impair the rights of the party so claim-
12 ing the property, to his action of trespass.

R. S., c. 114, § 72.

SECT. 67. Not only the right in equity of redeeming lands
2 mortgaged, but also the right of redeeming such right or
3 equity of redemption, after it is sold on execution, and also
4 the right of redeeming lands levied upon or sold on execution,
5 and the right, title and interest which any person has, by
6 virtue of a bond or contract, to a deed of conveyance of real
7 estate on specified conditions, may be attached on mesne
8 process, and the same lien thereon shall be thereby created
9 by such attachment, as if they were tangible property.

R. S., c. 114, § 73.

SECT. 68. When an action is brought in this state by any
2 person not an inhabitant thereof, or who cannot be found
3 therein to be served with process, he shall be held to answer
4 to any action brought against him by the defendant, if the
5 demands are of such a nature that one judgment or execu-
6 tion can be set off against the other. R. S., c. 114, § 74.

SECT. 69. If there are several defendants in the original
2 action, each of them may bring such cross action against the
3 original plaintiff, and set off his judgment against that recov-
4 ered against himself and his co-defendants, the same as if the
5 latter judgment had been against himself alone.

R. S., c. 114, § 75.

SECT. 70. The writ, in such cross action, may be served
2 on the attorney of the plaintiff in the original action; and
3 such service shall be as valid and effectual, as if made on
4 the party himself in the state; and in the cases mentioned in
5 the two preceding sections, the court may order such contin-
6 uances as justice requires, for the defense of either of the
7 actions, or for setting off the demands, as therein provided.

R. S., c. 114, § 76.

SECT. 71. Goods and chattels, attached by an officer, in
2 case of his death, whether remaining in his custody or taken
3 from him by replevin or otherwise, and also all claims for
4 damages for goods so taken from him, shall remain subject to
5 the attachment, the same as if the officer had lived; and

6 shall not be considered as assets in the hands of his executors
7 or administrators. R. S., c. 114, § 77.

SECT. 72. All goods taken by replevin from an officer who
2 has attached them, shall be considered as remaining in his
3 custody and control, so far as to be liable to further successive
4 attachments, the same as if the goods had remained in his
5 possession; subject to the provisions in the three following
6 sections. R. S., c. 114, § 78.

SECT. 73. In case of judgment for a return of the goods so
2 replevied, the plaintiff in replevin and his sureties, shall be
3 liable for the whole of the goods, or the value thereof,
4 although the attachment for which they were eventually
5 held, was made after the taking of the goods by the replevin.
R. S., c. 114, § 79.

SECT. 74. If an officer, after making an attachment of
2 goods, dies or is removed from office whilst the attachment
3 remains in force, the same goods whether replevied or
4 remaining in the possession of the officer, or of his executors
5 or administrators, or other person having the possession or
6 care of them, may be further attached by any officer, so as
7 to bind the goods or the proceeds thereof, the same as if the
8 latter attachment was made by the first mentioned officer.
R. S., c. 114, § 80.

SECT. 75. The officer making the latter attachment, shall
2 not take the goods themselves, but the attachment shall be
3 made by a return, setting forth an attachment in the common
4 form, and stating by whom the goods were previously
5 attached; and if the goods have not been replevied, by leav-
6 ing a certified copy of the writ, omitting the declaration, and
7 of the return of that attachment, with the former officer, if
8 living, or if dead, with his executor or administrator, or if
9 none are appointed, then with the person having possession
10 of the goods; or if the goods have been replevied, and the
11 officer who made the original attachment is dead, such copy
12 shall be left with the plaintiff in replevin, or his executors or
13 administrators; and the attachment shall be considered as
14 made, when such copy is delivered in either of the modes
15 before described. R. S., c. 114, § 81.

SECT. 75. Goods that have been taken by replevin from an

2 attaching officer, shall not be further attached as the property
3 of the original defendant, in any other manner than that
4 provided in the four preceding sections, so long as they are
5 held by the person who replevied them, or by any one hold-
6 ing under him, unless the original defendant has acquired a
7 new title to the goods. R. S., c. 114, § 82.

SECT. 77. When any estate, or goods and chattels, are
2 attached, and the debtor dies before they are taken in execu-
3 tion, the attachment shall remain in full force, the same as if
4 the defendant were alive, unless the estate of the deceased is
5 represented insolvent, by his executors or administrators, and
6 a commission of insolvency issues within one year next after
7 the defendant's death. R. S., c. 114, § 83.

SECT. 78. After the decease of any defendant, and before
2 the issuing of a commission of insolvency, the executor or
3 administrator on the estate of the deceased may demand of
4 the officer who made the attachment of such estate or goods
5 and chattels, a certified copy of the return of said attach-
6 ment, and a description of such property, so particular as to
7 enable him to describe the same in the inventory of the estate
8 subject to such attachment, so far as is before mentioned;
9 and the appraisers may also demand of the officer a view of
10 the goods and chattels, so that they may know their value;
11 and if the officer refuses or neglects to comply with either of
12 such demands, he shall forfeit and pay to the executor or
13 administrator, a sum not exceeding thirty nor less than ten
14 dollars. R. S., c. 114, § 84.

SECT. 79. When a commission of insolvency is issued
2 within one year from the death of the debtor, such attach-
3 ment is thereby dissolved, and the officer on demand, shall
4 restore the goods and chattels attached, to the executor or
5 administrator, to be administered according to law, on pay-
6 ment of his legal fees and charges of keeping the goods.

R. S., c. 114, § 85.

SECT. 80. If, before any demand is made on the officer, as
2 above, he has sold on execution, the property so attached by
3 him, he shall not be deemed a trespasser in so doing, but be
4 liable only for the proceeds of the sale, after deducting his
5 legal fees and charges, for the keeping thereof; and such

6 proceeds may be recovered by the executor or administrator,
7 in an action for money had and received. R. S., c. 114, § 86.

SECT. 81. If the officer has paid over the proceeds to the
2 judgment creditor, before the demand, the executor or admin-
3 istrator may recover such sum from the creditor, by a similar
4 action. R. S., c. 114, § 87.

SECT. 82. In any such action, the defendant shall not set
2 off any demand that he has against the executor or adminis-
3 trator, or against the estate of the deceased.

R. S., c. 114, § 88.

SECT. 83. An action of replevin, trover or trespass brought
2 by an officer against any person, for taking away from
3 his possession any goods or chattels by him attached,
4 shall not abate by the death of either of the parties, but
5 may be prosecuted by or against the executors or administra-
6 tors of the deceased party, in the same manner as actions on
7 contracts. If judgment is recovered by the plaintiff, the
8 goods or money shall be held and appropriated as they would
9 and ought to be, by the officer, if he had lived and recovered
10 the same himself. R. S., c. 114, § 89, 90.

SECT. 84. If judgment is rendered against the executor or
2 administrator, he shall return the goods, or pay the damages
3 recovered in full, though the estate of the deceased is insol-
4 vent. R. S., c. 114, § 91.

SECT. 85. In case of the death of a sheriff, or any other
2 officer authorized to serve a precept, pending an action for
3 or against him, by reason of any act done or omitted by him
4 in his said office, if no administration is granted on his estate
5 within three months from his death, the party for whose
6 interest the suit is brought or defended, may be admitted to
7 prosecute or defend the suit, in his own name, by entering
8 his appearance, and giving security for costs, as the court
9 directs. 1848, c. 59.

SECT. 86. When an attachment of real or personal property
2 is made, and the parties, by a rule of court submit the action
3 and all other demands between them, to the decision of refer-
4 ees, and judgment is rendered on their report, the attachment
5 shall be thereby dissolved. R. S., c. 114, § 92.

SECT. 87. If, by consent of parties, the declaration is

2 amended so as to embrace a larger demand than it originally
 3 contained, and judgment be thereon rendered for the plain-
 4 tiff, the attachment made on the mesne process shall be
 5 thereby dissolved, unless it appears by the record, that no
 6 claims were allowed to the plaintiff, except those originally
 7 stated in the writ. R. S., c. 114, § 93.

SECT. 88. No person shall be arrested in any civil action,
 2 on mesne process or execution, or on any warrant of distress
 3 for taxes, on the fourth day of July, on Christmas day, or on
 4 the day of the annual fast or thanksgiving.

R. S., c. 114, § 101.

SECT. 89. On the day of any military training, inspection,
 2 review or election, no officer, whose duty it is to attend, and
 3 no soldier who is enrolled as such, liable to do military duty,
 4 and duly notified to attend on said days, shall be arrested
 5 on mesne process or execution, or for taxes.

R. S., c. 114, § 102.

SECT. 90. No elector shall be arrested except for treason,
 2 felony, or breach of the peace, on the days of election of
 3 United States, state and town officers. R. S., c. 114, § 103.

SECT. 91. No person shall serve or execute any civil process
 2 from midnight preceding to midnight following Sunday;
 3 but such service shall be void, and the person executing such
 4 process shall be liable in damages to the party aggrieved, the
 5 same as if he had no process. R. S., c. 114, § 104.

Limitation of personal actions.

SECT. 92. The following actions shall be commenced within
 2 six years next after the cause of action accrues, and not after-
 3 wards.

4 *First*—All actions of debt, founded upon any contract or
 5 liability, not under seal, except such as are brought upon the
 6 judgment or decree of some court of record of the United
 7 States, or of this, or some other of the United States, or of
 8 some municipal or police court or justice of the peace in this
 9 state.

10 *Second*—All actions upon judgments of any court, not a
 11 court of record, except municipal and police courts, and jus-
 12 tices of the peace in this state.

13 *Third*—All actions for arrears of rent.

14 *Fourth*—All actions of assumpsit, or upon the case, founded
15 on any contract or liability, express or implied.

16 *Fifth*—All actions for waste, of trespass on land, and of
17 trespass, except those for assault and battery, and false
18 imprisonment.

19 *Sixth*—All actions of replevin, and other actions for taking,
20 detaining, or injuring goods or chattels.

21 *Seventh*—All other actions on the case, except actions for
22 slanderous words and for libels. R. S., c. 146, § 1.

SECT. 93. All actions for the escape of prisoners committed
2 on execution, shall be actions on the case, and commenced
3 within one year after the cause of action accrues; but all
4 actions against a sheriff for the negligence or misconduct of
5 himself or his deputies, shall be commenced within four years
6 next after the cause of action accrues. R. S., c. 146, § 2, 4.

SECT. 94. All actions of assault and battery, false impris-
2 onment, for slanderous words and for libels, shall be com-
3 menced within two years next after the cause of action
4 accrues. R. S., c. 146, § 3.

SECT. 95. No scire facias shall be served on bail, unless
2 within one year next after judgment rendered against the
3 principal. R. S., c. 146, § 4.

SECT. 96. All actions against an indorser of a writ must be
2 commenced within one year next after judgment entered in
3 the original action. R. S., c. 146, § 5.

SECT. 97. None of the foregoing provisions shall apply to
2 any action upon a promissory note signed in the presence of
3 an attesting witness, nor upon any bills, notes or other evi-
4 dences of debt issued by a bank. R. S., c. 146, § 7.

SECT. 98. Nor shall any of the provisions in this chapter
2 apply to any case or suit, which by any particular statute is
3 limited to be commenced within a different specified time.

R. S., c. 146, § 8.

SECT. 99. In all actions of debt or assumpsit, to recover the
2 balance due upon a mutual and open account current, the
3 cause of action shall be deemed to accrue at the time of the
4 last item proved in such account. R. S., c. 146, § 9.

SECT. 100. If any person entitled to bring any of the afore-
2 said actions, at the time when the cause of action accrues is

3 a minor or married woman, insane, imprisoned, or without
4 the limits of the United States, he may bring his action within
5 the times limited in this chapter, after the disability is re-
6 moved. R. S., c. 146, § 10.

SECT. 101. All personal actions on any contract not limited
2 by any of the foregoing sections, or other law of the state,
3 shall be brought within twenty years after the cause of action
4 accrues. R. S., c. 146, § 11.

SECT. 102. When a writ fails of a sufficient service or
2 return, by unavoidable accident, or default, or negligence of
3 any officer, to whom it was delivered or directed; or when
4 the writ is abated, or the action otherwise defeated for any
5 matter of form, or by the death of either party; or if a judg-
6 ment for the plaintiff is reversed on a writ of error, the
7 plaintiff may commence a new action on the same demand,
8 within six months after the abatement or determination of
9 the original suit, or reversal of the judgment; and if the
10 cause of action survives, his executor or administrator, in case
11 of his death, may commence such new action within said
12 six months. R. S., c. 146, § 12.

SECT. 103. If any person entitled to bring any action before
2 mentioned, or liable to such action, dies before the expiration
3 of the time herein limited therefor, or within thirty days after
4 the expiration of said time, if the cause of action survives,
5 the action may be commenced by or against the executor or
6 administrator at any time within two years after administra-
7 tion or letters testamentary are granted; and not afterwards,
8 if barred by the other provisions of this chapter.

R. S., c. 146, § 13.

SECT. 104. If any person is disabled to prosecute an action
2 in this state, by reason of his being an alien, subject or citi-
3 zen of any country at war with the United States, the time
4 such war continues shall not be any part of the period herein
5 limited for the commencement of any of said actions.

R. S., c. 146, § 14.

SECT. 105. All actions and suits for any penalty or forfeit-
2 ure on any penal statute, brought by any person, to whom
3 the penalty or forfeiture is given in whole or in part, shall be
4 commenced within one year next after the offense was com-

5 mitted ; and if no individual so prosecutes, the same may be
6 recovered by suit, indictment or information, in the name
7 and for the use of the state, at any time within two years
8 next after the offense was committed, and not afterwards.

R. S., c. 146, § 15, 16.

SECT. 106. The time when a writ is actually made with
2 an intention of service, shall be deemed the commencement
3 of the suit.

R. S., c. 146, § 17.

SECT. 107. If any person liable to any action mentioned in
2 this chapter, fraudulently conceals the cause of such action
3 from the person entitled thereto, or if a fraud is committed,
4 which entitles any person to an action, the action may be
5 commenced at any time within six years after the person
6 entitled thereto, discovers that he has just cause of action.

R. S., c. 146, § 18.

SECT. 108. In actions of debt, or upon the case, founded
2 upon any contract, no acknowledgment or promise shall be
3 allowed to take the case out of the operation of the pro-
4 visions of this chapter, unless the acknowledgement or
5 promise is an express one in writing, signed by the party
6 chargeable thereby. No such acknowledgment or promise
7 made by a joint contractor shall affect the liability of the
9 other contractors.

R. S., c. 146, § 19, 20.

SECT. 109. In actions against two or more joint contract-
2 ors, if it appears on trial, or otherwise, that the plaintiff is
3 barred by the provisions of this chapter, as to one or more of
4 the defendants, but entitled to recover against the others by
5 virtue of a new acknowledgement, promise or otherwise,
6 judgment shall be rendered for the plaintiff, as to the defend-
7 ant against whom he has a right to recover, and for the other
8 defendants against the plaintiff.

R. S., c. 146, § 21.

SECT. 110. In any action on contract, if the defendant
2 pleads in abatement, that any other person ought to have
3 been jointly sued, and issue is joined thereon, and it appears
4 on the trial, that the action was barred by the provisions of
5 this chapter, against such person, the issue shall be found
6 for the plaintiff.

R. S., c. 146, § 22.

SECT. 111. Nothing herein contained shall alter, take away
2 or lessen the effect of payment of any principal or interest,

3 made by any person ; but no indorsement or memorandum
4 of such payment, written or made on any promissory note,
5 bill of exchange or other writing, by or on behalf of the
6 party to whom such payment is made, or purports to be
7 made, shall be deemed sufficient proof of payment to take the
8 case out of the operation of the provisions of this chapter ;
9 and no such payment made by a joint contractor or his execu-
10 tor or administrator shall affect the liability of any other.

R. S., c. 146, § 23, 24.

SECT. 112. Every judgment and decree of any court of
2 record of the United States, or of this or any other state, or
3 of a justice of the peace in this state, shall be presumed to be
4 paid and satisfied, at the expiration of twenty years after any
5 duty or obligations accrued by virtue of such judgment or
6 decree.

R. S., c. 146, § 25.

SECT. 113. All the provisions of this chapter shall apply to
2 any debt or contract filed by way of set-off, on the part of
3 the defendant ; and the time of such limitation of such debt
4 or contract shall be computed in the same manner, as if an
5 action had been commenced therefor, at the time when the
6 plaintiff's action was commenced, unless the defendant is
7 deprived of the benefit of the set-off, by the nonsuit or other
8 act of the plaintiff ; and when the party so filing the set-off,
9 is thus defeated of a judgment on the merits of such debt or
10 contract, he may commence an action thereon, within the
11 time limited, as provided in the twelfth section of this chap-
12 ter, for bringing a new action for the reasons therein
13 mentioned.

R. S., c. 146, § 26.

SECT. 114. When any cause of action, mentioned in this
2 chapter, accrues against any person, if he is out of the state,
3 the action may be commenced within the time herein limited
4 therefor, after such person comes into the state ; and if after
5 any cause of action has accrued, the person against whom it
6 has accrued, is absent from and resides out of the state, the
7 time of his absence shall not be taken as any part of the time
8 limited for the commencement of the action.

R. S., c. 146, § 28.

SECT. 115. No executor or administrator, after giving bond
2 and notice of his appointment, as provided by law, shall be

3 held to answer to the suit of any creditor of the deceased,
 4 unless it is commenced within four years from the time of
 5 his giving bond as aforesaid, except in cases specially provi-
 6 ded for by law. R. S., c. 146, § 29.

Chapter 82.

PROCEEDINGS IN CIVIL ACTIONS IN COURT.

Sect. 1. Actions, when to be entered.

2. Default of defendant, assessment of damages and judgment.
3. Defendant out of state, action continued.
4. " " execution stayed one year, unless bond is first given
5. " " bond to be left with clerk, who is to judge of the sureties.
6. " " right of review in one year.
7. " " right of review further extended.
8. Appeal on rejected claims against insolvent estates, omitted by mistake, may be entered.
9. Appeal from judgment of justice of the peace, &c., not entered by mistake or accident, may be entered on petition.
10. Petition must be entered within a year; attachment and bail discharged.
11. Appeal; what papers must be produced on.
12. Abatement; want of form or circumstantial errors, no cause of.
13. Amendment of such errors provided for.
14. Loss of writ or process provided for.
15. Amendment by striking out defendant's name.
16. " by inserting new defendant's name; mode of service on such.
17. Distinction between trespass and case abolished.
18. Treasurers of state, counties, towns, &c., may sue in their own names.
19. Assignment of breaches in actions on bonds, covenants, &c.
20. Covenants in deeds; certain actions on, regulated.
21. Covenants not to be released by grantee, after conveying his interest in the land.
22. Defendant may plead specially, or the general issue and brief statement, and counter brief statement.
23. Libel; truth of the words spoken in justification of.
24. Demurrer and joinder allowed and provided for.
25. Penalties recovered by action of debt.
26. Default for specified amount; offer of; how made; effect if accepted; if not accepted; costs, how affected by; not an admission of the cause of action.
27. Tender of amends in involuntary trespass on lands; effect of; tender in actions against towns for damages by reason of defective ways; tender after suit brought; tender made to attorney.
28. Joint contractor sued as a several contractor, on the death of his co-contractor.

SET-OFF.

29. Set-off of mutual debts and demands.
30. " statement of, to be filed first day of the term; to be sufficiently certain, and notice entered on the docket.
31. " demands that may be filed, described; trial of, on general issue.
32. " must be due from all the defendants to all the plaintiffs; in case of dormant partner.
33. " in case of demands assigned to defendant.
34. " " " to plaintiff.
35. " of action brought in trust for another.
36. " of bond or contract with a penalty.
37. " of actions by executors.
38. " balance found for defendant, what proceedings.
39. " demands against executors; what may be filed.
40. " how defendants may plead in.
41. " plaintiff's defence in case of.
42. " statute of limitation, how applied in.
43. " no balance for either, what judgment.
44. " in justice, municipal and police courts.
45. " after filed, plaintiff not to discontinue his suit.

AUDITORS.

46. Auditors; when may be appointed; shall give notice; may summon and swear witnesses.
47. " all must hear, majority decide; compensation, how allowed and taxed; court may discharge, and appoint others; may recommit the report.
48. " report of, used as evidence, may be impeached.
49. Account; action of; proceedings in.

JURIES.

50. Juries; how empannelled and sworn.
51. " supernumeraries; transfers; excuses.
52. " form of oath administered to.
53. " choice of foreman.
54. " talesman; when and how returned.
55. " new; when summoned in term time.
56. " challenge of juror, how tried.
57. " may find special or general verdicts.
58. " proceedings, if do not agree.
59. " not disqualified by residence in a town interested in a penalty.
60. " objections to; when made.
61. " irregularities in constituting, not to affect verdict.
62. " improper practices with jurors, cause to set aside a verdict.

WITNESSES.

63. Witnesses; summons for, how issued.
64. " religious belief of; affects credibility, not competency.
65. " interest of in suit; affects credibility, not competency.
66. " assignor of the cause of action may be, and if examined, the adverse party may be also.

67. Witnesses; members of corporations may be, in suits in which the corporation are parties.
68. " liability if summoned, and do not attend.
69. " if present, and refuse to answer.
70. " oath to; how administered.
71. " scrupulous of swearing, may affirm.
72. " persons convicted of infamous crimes, not competent, unless pardoned.
73. " conviction in another state, affects credibility only.
74. " not compelled to attend as witness or deponent, without payment of fees.
75. Judges not disqualified by residence in a town interested in suit.
76. Damages in suits on bonds, recognizances, &c., regulated.
77. " interest allowed on debt or judgment.
78. Arrest of judgment in civil actions not allowed.
79. Death of a party pending an action; what proceedings follow.
80. Death of a party to a bill pending; what proceedings.
81. Marriage of a female plaintiff, what proceedings.
82. General verdict is sustained, if any count is good.
83. Insane party becoming, court may appoint a guardian.

COSTS.

84. Costs taxed to the prevailing party.
85. " limited if plaintiff appeals, and does not increase the damages.
86. " in replevin, how taxed, if plaintiff does not recover more than twenty dollars.
87. " double and treble; meaning of.
88. " on unsuccessful application for mandamus, certiorari, &c.
89. " taxed in former suit, paid before a new one can be prosecuted.
90. " the suit in the name of the state, who liable for.
91. " the suit in the name of the state, how paid when state is liable.
92. " no fees taxed for attorney general.
93. " how secured in suit in name of assignor; judgment for, against plaintiff of record and assignee.
94. " by special action against assignee, if the name of assignee is not known.
95. " subject to equitable set-off.
96. " restricted in case of divers actions that might be joined.
97. " not allowed when execution might issue.
98. " for travel of a corporation; how taxed.
99. " power of the court over, in imposing terms not restricted.
100. " damages reduced by set-off; how taxed.
101. " motion to set aside a verdict; proceedings on; double or treble taxed if the motion is frivolous or for delay only.

EXECUTIONS.

102. Execution; when to issue; when returnable.
103. " no first, after one year, except, &c.
104. " alias or pluries may issue within three years, &c.
105. " when scire facias may be sued; or on debt on judgment.
106. " lost or destroyed, a new one may be issued.
107. " interest to be collected on.

MISCELLANEOUS PROVISIONS.

108. Days on which courts are not to be holden.
 109. Wilful trespass found by court or jury, to be noted on execution.
 110. Damages on bills of exchange regulated.
 111. Surveyors appointed by the court; resisted, to be aided by the sheriff.
 112. Subsequent attaching creditors admitted to defend, &c.
 113. “ “ to give bond or recognizance; entry to be made on record.
 114. Judgment and execution, if petitioner fails.
 115. Judgment and costs if he prevails.
 116. First attachment; if fraudulent, void.
 117. Actions by public officers, not to abate by vacating the office.
 118. No action maintainable on a claim settled and discharged.
 119. No court to exercise jurisdiction under the naturalization laws.
 120. Records of other states; how to be authenticated.
 121. Printed copies of statutes of the state, evidence.
 122. “ “ of other states, prima facie evidence.
 123. Unwritten laws of other states and countries proved by parol evidence.

SECT. 1. No action shall be entered in the supreme judicial court, after the first day of the session thereof, without the special permission of the court. No suit, process, or proceedings, pending in any court, shall be discontinued by the failure to hold any stated term of said court, or any adjournment thereof; but they shall be respectively returned to and have day in the term or session held next after such failure.

R. S., c. 115, § 1.

SECT. 2. When the defendant is duly served with process and return thereof made, according to the mandate of the writ, or the order of a judge of the court, indorsed thereon, and does not appear by himself or attorney, his default shall be recorded, and the charge in the declaration shall be taken to be true; and the court shall give such damages, as they find on inquiry, the plaintiff has sustained, unless he moves to have a jury, to inquire into the damages, in which case the court shall enter up judgment for such damages as the jury assess. But such default shall be taken off by leave of court on motion for sufficient cause, or as of right, without such leave, if the defendant appears in court, in person or by attorney, at any time before the jury are dismissed, and pays to the plaintiff such costs as the court shall order. And if, by the return of the officer or otherwise, it appears to the

16 court that the defendant has not had sufficient notice, they
17 may order such further notice as they may think proper.

R. S., c. 115, § 2. 1841, c. 1, § 19.

SECT. 3. If the defendant was an inhabitant of the state at
2 the time of the service of the writ, but absent therefrom, and
3 it does not appear that he had actual notice of the suit, or
4 that he had returned to the state, on suggestion of the fact,
5 the court may continue the action from time to time, not
6 exceeding twice, unless for some special cause; or at their
7 discretion, they may enter judgment on default; but if
8 defendant was not an inhabitant of the state, nor within the
9 same at the time of such service, but had actual notice of the
10 suit, the court may in their discretion, order a continuance
11 of the action, though he does not appear, in season to answer
12 to the suit at the return term. R. S., c. 115, § 3, 4.

SECT. 4. When judgment in any personal action is ren-
2 dered, as above provided in the third section, upon the default
3 of an absent defendant, the plaintiff shall not take out executi-
4 on thereon, within one year thereafter; unless he first gives
5 bond to the defendant with one or more sufficient sureties, in a
6 sum equal to double the amount of the judgment for damages
7 and costs, with condition to repay the said amount to the defend-
8 ant, if the judgment is reversed upon a review to be brought
9 by the original defendant, within one year after rendition of
10 the original judgment, or as much of the amount first recov-
11 ered, as shall be recovered back upon such review.

R. S., c. 115, § 5.

SECT. 5. The bond shall be deposited with the clerk of the
2 court, for the defendant's use, and the clerk shall decide on
3 the sufficiency of the sureties; saving a right of appeal from
4 his decision to any justice of the court, in which the judg-
5 ment was rendered. R. S., c. 115, § 6.

SECT. 6. When judgment is so rendered upon default, as
2 mentioned in the third section, the defendant shall be entitled
3 to a review of the action, as of right, to be commenced and
4 prosecuted in the same court, within one year next after the
5 judgment was rendered, in the manner provided in the
6 eighty-ninth chapter. R. S., c. 115, § 7.

SECT. 7. If such review of right is not prosecuted within one
 2 year as aforesaid, the defendant may, at any time within one
 3 year after he first has notice of the judgment, apply by peti-
 4 tion to the court, in which it was rendered, for a review of
 5 the action; and if it appears to the court that justice requires
 6 it, they may grant a review thereof, on such terms as they
 7 deem reasonable. R. S., c. 115, § 8.

SECT. 8. When any person, whose claim on an insolvent
 2 estate has been rejected in whole or in part, by accident or
 3 mistake has omitted to give notice at the probate office, within
 4 the time by law prescribed, of his intention to have his claim
 5 determined at law, the court may, after due notice to the
 6 executor or administrator on the estate, if they think that
 7 justice requires it, give such applicant leave to institute a suit
 8 for the recovery of his claim, at the next supreme judicial
 9 court in the county where the executor or administrator
 10 resides; but such application must be made within two years
 11 after the return of the commissioners; and leave shall not be
 12 granted after the lapse of four years from the time administra-
 13 tion was granted; and no distribution shall be disturbed by
 14 any judgment, which may be recovered in such action.

R. S., c. 123, § 9.

SECT. 9. When an appeal is claimed from the judgment of
 2 a justice of the peace, or a municipal or police court, in any
 3 civil action, and by reason of any mistake or accident, the
 4 appellant shall not duly enter his appeal, or the appellee shall
 5 not duly enter his complaint for affirmation of judgment, in
 6 the supreme judicial court, the court may on the petition of
 7 the appellant or of the appellee, as the case may be, allow
 8 the appeal or the complaint to be entered at any other term
 9 of the court, held for the same county, upon such terms as
 10 they may deem just and reasonable; and if the appeal or the
 11 complaint be so entered, the court shall proceed therein, as if
 12 it had been entered at the proper term. 1841, c. 1, § 22.

SECT. 10. No petition for the entry of any such appeal or
 2 complaint shall be sustained, unless it be presented to the
 3 court or filed in the clerk's office, within one year after the
 4 term at which it ought to have been entered; and no attach-
 5 ment made, and no bail taken, shall be revived or continued

6 in force, by the entry of any such appeal or complaint by the
7 original plaintiff, as provided in the preceding section; but
8 such attachment and bail shall remain discharged.

1841, c. 1, § 22.

SECT. 11. In all cases carried from a justice, municipal,
2 police or probate court to a higher court, all depositions and
3 other original papers, except the writ, complaint, summons,
4 citation or other process by which the action is commenced,
5 and the return of the officer or other person serving the same,
6 and the pleadings, shall be certified by the justice, recorder,
7 clerk or register, and be carried up, without leaving copies,
8 unless for special reason, otherwise ordered by the court
9 having the original jurisdiction. R. S., c. 151, § 24.

SECT. 12. No summons, writ, declaration, plea, process,
2 judgment or other proceedings in courts of justice shall be
3 abated, arrested or reversed for any kind of circumstantial
4 errors or mistakes, which by law might have been amended,
5 when the person and case may be rightly understood by the
6 court; nor for want of form only. R. S., c. 115, § 9.

SECT. 13. All such errors, imperfections and defects, may,
2 on motion, be amended by either party, on such terms as the
3 court may direct. R. S., c. 115, § 10.

SECT. 14. When in an action pending, it is proved to the
2 satisfaction of the court, by the affidavit of the plaintiff or
3 otherwise, that the writ or process, after proper service, is lost
4 or destroyed by accident, the plaintiff may file a new writ
5 corresponding as nearly as may be, with the one so lost or
6 destroyed, and proceed in the action in the same manner as
7 if the original writ had been preserved. 1848, c. 57, § 1.

SECT. 15. In all actions, where there are two or more
2 defendants, the plaintiff may amend the writ by striking out
3 the names of one or more of the defendants, on paying him
4 or them their costs up to that time. R. S., c. 115, § 11.

SECT. 16. In any action on contract, express or implied, the
2 plaintiff may on motion, amend his writ, by inserting therein
3 the names of any additional defendants, and the court may
4 order a copy of the writ with the order of the court thereon,
5 to be served on him, and his property to be attached in the
6 same manner, as in case of original writs; and on return of

7 such service and attachment, if any is made, he shall be
8 deemed a party to the suit, and may plead to the action
9 accordingly; but shall not be liable to any costs before such
10 service. R. S., c. 115, § 12.

SECT. 17. In all actions of trespass, and trespass on the
2 case, the declaration shall be equally good and valid, whether
3 it is in form a declaration in trespass, or trespass on the case.

R. S., c. 115, § 13.

SECT. 18. The treasurer of state, and treasurers of coun-
2 ties, towns, parishes and other corporations, may bring
3 actions in their own names and capacities as treasurers, on
4 any bonds, notes or other securities given to them or their
5 predecessors, and prosecute any suits commenced by their pre-
6 decessors, and pending when they left such offices.

R. S., c. 115, § 14.

SECT. 19. In all actions on any bond or contract in a penal
2 sum, for the performance of any covenants or agreements,
3 and in all actions of covenant, the plaintiff may assign as many
4 breaches as he thinks fit, to which the defendant may answer
5 generally, that he has kept and performed all said covenants,
6 whether they are affirmative or negative.

R. S., c. 115, § 15.

SECT. 20. In all cases where real estate is conveyed abso-
2 lutely, to any person, his heirs and assigns, with a covenant
3 that the grantor is seized in fee thereof, and that it was free
4 of all incumbrances at the time of the conveyance, the estate
5 then being under mortgage or other incumbrance, or the
6 grantor not being then seized thereof, the assignee of the
7 grantee, his executors or administrators, after having been
8 evicted of the estate by the elder and better title, may main-
9 tain an action of covenant broken against the first grantor,
10 on any of the covenants in such absolute deed, in his or their
11 own names, and recover such damages as the grantee might,
12 if he had been evicted and had brought the action in his own
13 name; provided he files in court at the first term, for the
14 use of the grantee, a release of the covenants in said grantee's
15 deed to said assignee, and of all causes of action thereon.

R. S., c. 115, § 16.

SECT. 21. When a person conveys real estate to another,

2 and covenants in his deed, that he is seized in fee of the
3 premises, and that they are free from all incumbrances, at
4 the time of the conveyance, and such grantee afterwards con-
5 veys the same premises to a third person in fee, such grantee
6 shall have no power to release the covenants contained in the
7 deed first mentioned, so as to bar or in any way affect the right
8 of such third person to maintain an action against the first
9 grantor, for breach of the covenants of seizin, and freedom of
10 the premises from incumbrance. R. S., c. 115, § 17.

SECT. 22. The defendant may in all cases, plead the gene-
2 ral issue, which shall be joined by the plaintiff, and he may
3 give in evidence any special matter in defense, when the
4 issue is to be tried by the jury, if he at the same time files in
5 the cause a brief statement of such special matter; to which
6 the plaintiff may, within such time as the court directs, file
7 any counter brief statement of any matter on which he relies
8 and give it in evidence by way of avoidance of the matter
9 contained in the brief statement of the defendant; or the de-
10 fendant may, at his election, plead such matter specially,
11 after the general issue is pleaded, in bar of the action, and by
12 leave of court, plead double. R. S., c. 115, § 18.

SECT. 23. In every suit for writing and publishing a libel,
2 the defendant may give in evidence on the trial thereof, the
3 truth of the matter charged as libelous; and the truth of the
4 matter being established, shall be a justification, unless it
5 appears that the publication thereof originated in corrupt or
6 malicious motives. R. S. c. 115, § 19.

SECT. 24. When the defendant does not deny the fact sta-
2 ted in the declaration, he may file a general demurrer thereto,
3 and in any stage of pleading, either party may demur, and
4 the demurrer shall be joined. R. S., c. 115, § 20.

SECT. 25. All penalties may be recovered by action of debt,
2 where no other form of action or proceedings is prescribed in
3 the statute imposing them. R. S., c. 115, § 21.

SECT. 26. In any action founded on judgment or contract,
2 the defendant may offer and consent in writing, to be defaulted,
3 and that judgment be entered against him for a specified sum
4 as damages, which offer and the time when it was made,
5 shall be entered on record; and if the plaintiff proceeds to

6 trial, and recovers no greater sum for his debt or damages,
7 up to the time when the offer was made, the defendant shall
8 recover his costs from the time of such offer, up to the time of
9 trial; and such costs shall be set off against the sum so
10 offered and the plaintiff's costs, and judgment shall be ren-
11 dered and execution issued for the balance, for either party;
12 such offer to be defaulted, if the same be not accepted by the
13 plaintiffs, shall in no case be held to be an admission of the
14 cause of action, or of any promise or indebtedness on the
15 part of the defendant; nor shall such offer be used as evi-
16 dence before the jury on trial of the action.

R. S., c. 115, § 22. 1847, c. 31, § 1, 2.

SECT. 27. In all actions of trespass upon lands, wherein
2 the defendant by his plea or brief statement, disclaims all
3 right, title and interest in the land upon which the trespass
4 is alleged to have been committed, and declares that the tres-
5 pass was involuntary, or by negligence or mistake, and that
6 he has tendered or offered sufficient amends therefor, before
7 the action was commenced, or brings money into court to
8 satisfy the damages the plaintiff has sustained, with costs, if
9 upon trial it appears that such trespass was involuntary, or
10 by negligence or mistake, and the jury do not assess greater
11 damages for the trespass than the money tendered or brought
12 into court therefor, the defendant shall recover of the plain-
13 tiff his costs. Any person after the commencement of a suit
14 against him, and before the entry thereof in court, shall have
15 the same right to tender payment of the amount due, to the
16 plaintiff or his attorney in the action, and legal costs to the
17 time of such tender, and with the same effect, as before the
18 commencement of the suit. In actions brought against towns,
19 under the provisions of the ninety-eighth section of chapter
20 nineteen, the defendant towns shall have the same right to
21 avail themselves of a tender, before the commencement or
22 entry of the action, or an offer of judgment in court, for any
23 specified sum as damages, as is by law provided in cases of
24 contract. 1841, c. 1, § 19.

SECT. 28. The goods and estate of each deceased debtor in
2 every joint contract, express or implied, or in any judgment
3 on any contract, shall be liable in the hands of his executor

4 or administrator for payment thereof, in the same manner as
 5 in case of a contract, joint and several; and the creditor shall
 6 have the same remedy against any of the survivors, or against
 7 the executor or administrator, as on a joint and several con-
 8 tract. R. S., 115, § 23.

Set-off.

SECT. 29. When there are mutual debts or demands be-
 2 tween the plaintiff and defendant, in any actions founded on
 3 demands which could be the subject of set-off, according to
 4 law, one demand may be set off against the other, as is pro-
 5 vided in the following sections. R. S., c. 115, § 24, 32.

SECT. 30. The defendant shall file a statement of his
 2 demand, on the first day of the term at which the writ is
 3 returnable, as certain in substance as would be required in a
 4 declaration, which may be amended by leave of court; and
 5 the clerk shall enter thereon the date of the filing thereof, and
 6 previous to the calling of the new entries, shall enter on the
 7 docket, under the action, a notice that the defendant has filed
 8 a demand in set off. R. S., c. 115, § 25, 26. 1847, c. 20.

SECT. 31. Any demand originally payable to the defendant
 2 in his own right, may be set off, whether founded on a judg-
 3 ment or on a contract, express or implied, for the price of
 4 real or personal estate sold, for money paid, money had and
 5 received, or for services done, if it is a liquidated sum, or one
 6 that may be ascertained by calculation. All cases of set-off
 7 may be tried upon the issue joined, without any further
 8 plea. R. S., c. 115, § 27, 28, 29, 42.

SECT. 32. The demand set off must be due from all the
 2 plaintiffs to all the defendants jointly; but when the person
 3 with whom the contract is made, has a dormant partner, and
 4 a suit is brought thereon; by or against the partners jointly,
 5 any debts due to or from the ostensible partner, the same as
 6 if the dormant partner was not joined therein.

R. S., c. 115, § 33, 44.

SECT. 33. A demand assigned to the defendant with notice
 2 to the plaintiff of the assignment before the action is com-
 3 menced, may be set-off the same as if originally payable to
 4 the defendant, if the plaintiff at any time previously agreed

5 to receive it in payment or part payment of his demand, or
6 to pay it to the defendant, and not otherwise.

R. S., c. 115, § 30.

SECT. 34. If the demand on which the action is brought,
2 was assigned, and the defendant had notice of the assign-
3 ment, he shall not set off any demand acquired against the
4 original creditor after such notice. R. S., c. 115, § 35.

SECT. 35. When an action is brought by one person in
2 trust for the use of another, the defendant may set off any
3 demand against the person, for whose use or benefit the
4 action is brought, in like manner as if he were the plaintiff
5 in the suit. R. S., c. 115, § 36.

SECT. 36. If the demand set off is a bond or other contract,
2 with a penalty, no more shall be set off than the sum equi-
3 tably due. R. S., c. 115, § 31.

SECT. 37. In actions by executors and administrators,
2 demands against their testators or intestates, belonging to the
3 defendant at the time of their death, may be set off the
4 same as if the action had been brought by the deceased.

R. S., c. 115, § 37.

SECT. 38. When upon such set-off against an executor or
2 administrator, a balance is found due to the defendant, the
2 judgment therefor shall be in the same form, and have the
4 same effect as if the suit had been originally commenced by
5 the defendant; but when the estate of the deceased is insol-
6 vent, no judgment shall be rendered therefor; and such bal-
7 ance shall be certified by the clerk of the court to be due from
8 the estate of the deceased, and laid before the commissioners
9 on such estate, like other claims of creditors.

R. S., c. 115, § 39, 39.

SECT. 39. In actions against executors, administrators,
2 trustees and others, in their representative character, the
3 defendants may set off any demands, which their testators,
4 intestates, or those whom they represent, might have done in
5 actions against themselves; but in actions by or against such
6 persons, no demand due to or from them in their own right,
7 shall be set off. R. S., c. 115, § 40, 41.

SECT. 40. When a set-off is filed, in all actions except
2 assumpsit, when an issue to the country is not otherwise

3 formed, the defendant may plead, that he does not owe the
4 sum demanded by the plaintiff, which shall be deemed a
5 good plea or general issue, for the purpose of trying the merits
6 of the cause, R. S., c. 115, § 42.

SECT. 41. The plaintiff shall be entitled to every ground of
2 defence against such set-off, of which he might have availed
3 himself by any form of pleading, in an action brought against
4 him on the same demand. R. S., c. 115, § 43.

SECT. 42. The statute limiting personal actions, if applica-
2 ble to the set-off, shall be applied in the same manner, as if
3 an action thereon had been commenced at the time when the
4 plaintiff's action was commenced. R. S., c. 115, § 44.

SECT. 43. If no balance is found due to either party, judg-
2 ment shall be entered without costs to either; if a balance is
3 found due to either, judgment shall be entered therefor with
4 costs, but no judgment shall be rendered against the plaintiff
5 when the demand sued, was assigned before the commence-
6 ment of the action, nor for any balance due from any other
7 person than the plaintiff. R. S., c. 115, § 45, 46.

SECT. 44. In actions in a municipal or police court, and
2 before a justice of the peace, similar proceedings shall be had
3 in respect to set-offs, as those before prescribed; the demand
4 in set-off shall be filed on the return day of the writ; but in
5 no case shall judgment be rendered for the defendant for
6 more than twenty dollars, exclusive of costs of suit.

R. S., c. 115, § 47.

SECT. 45. After a demand is filed in set-off, the plaintiff
2 shall not discontinue his action, unless by consent of the
3 defendant. R. S., c. 115, § 48.

Auditors.

SECT. 46. When a cause is at issue, and it appears that
2 the trial will require an investigation of accounts, or an
3 examination of vouchers, the court may appoint one or more
4 auditors to hear the parties, and examine the vouchers and
5 proofs, and state the accounts and make a report thereof to
6 the court. They shall give notice to the parties, of the time
7 and place of hearing, and may adjourn, as may be found

8 necessary. Witnesses may be summoned and compelled to
9 attend before them, and may be sworn by any auditor.

R. S., c. 115, § 49, 50, 52.

SECT. 47. If there is more than one auditor, all shall hear
2 the parties, but a majority may make the report; in which it
3 shall be stated whether all attended the hearing or not. The
4 court may discharge the auditors and appoint others, or may
5 recommit their report for revision. The court shall allow
6 reasonable compensation to the auditors, to be paid by the
7 plaintiff, and taxed in his bill of costs if he prevail in the
8 suit.

R. S., c. 115, § 51, 53, 55.

SECT. 48. If there is no legal objection to the report of the
2 auditors, it may be used by either party as evidence, on the
3 trial of the cause; but shall be open to be impeached or dis-
4 proved by other evidence.

R. S., c. 115, § 54.

SECT. 49. In actions of account, when any person against
2 whom judgment is rendered, that he shall account, unrea-
3 sonably delays or refuses to appear at the time and place
4 appointed by the auditors, appointed by the court, or after
5 appearing, shall refuse or neglect to render an account, the
6 auditors shall certify such refusal or neglect; and the court
7 shall cause the damages to be assessed by a jury, and enter
8 judgment on the verdict, or may enter a default and judg-
9 ment thereon.

R. S., c. 115, § 57.

Juries.

SECT. 50. When venires for jurors are returned to court, the
2 clerk shall prepare at the commencement of each term of the
3 court, separate alphabetical lists of the names of the several
4 persons returned as traverse jurors; and the court in empan-
5 neling the traverse jurors, shall cause the names of the first
6 two persons who attend, to be called, who shall be first
7 sworn, and then the others in succession, as they are named
8 on the list, and in such divisions as the court directs, or all
9 at the same time; and the first twelve shall compose the first
10 jury; and the next twelve on the same list, shall be empan-
11 nelled and sworn in like manner, and shall compose the
12 second jury.

R. S., c. 115, § 58.

SECT. 51. Supernumerary jurors may be excused from time
2 to time, till wanted, and they may be placed on either jury,
3 as occasion requires; and jurors may be transferred from one
4 jury to the other, when the convenience of business requires
5 it; and for good reason any juror may be excused.

R. S., c. 115, § 59.

SECT. 52. The following shall be the form of the oath,
2 administered to traverse jurors, in civil causes: "You and
3 each of you swear, that in all causes betwixt party and party,
4 that shall be committed to you, you will give a true verdict
5 therein, according to the law and the evidence given you.
6 So help you God;" and when a juror is conscientiously
7 scrupulous of taking an oath, the word "affirm," shall be
8 used instead of "swear," and the words, "this you do under
9 the pains and penalties of perjury," instead of the words, "so
10 help you God."

R. S., c. 115, § 60.

SECT. 53. Each jury shall retire, after having been thus
2 empaneled and sworn, and choose their foreman by ballot,
3 or make the choice upon retiring with the first cause with
4 which they shall be charged; and whenever a foreman is
5 absent or excused from service, a new foreman shall be cho-
6 sen, as aforesaid.

R. S., c. 115, § 61.

SECT. 54. When by reason of challenge or other cause, a
2 sufficient number of jurors, duly drawn and summoned, can-
3 not be obtained for the trial of any cause, the court shall
4 cause jurors to be returned from the by-standers, or from the
5 county at large, to complete the panel; provided that there
6 shall be on the jury not less than seven jurors, drawn and
7 returned as before provided. Such jurors shall be returned
8 by the sheriff or his deputy, or a coroner, or such other dis-
9 interested person as the court may appoint.

R. S., c. 115, § 62, 63.

SECT. 55. The court may in term time, issue venirens for as
2 many jurors as are wanted; to be drawn, notified and re-
3 turned forthwith, or on a day appointed; and when in any
4 county, the business requires a protracted session, the court
5 may during the term, excuse all or any of the jurors origi-
6 nally returned, and issue venirens for new jurors to supply

7 their places; who shall be drawn and notified to attend at
8 such time as the court directs. R. S., c. 115, § 64.

SECT. 56. The court on motion of either party in a suit,
2 may examine on oath, any person called as a juror therein,
3 whether he is related to either party, or has given or formed
4 any opinion, or is sensible of any bias, prejudice or particular
5 interest in the cause; and if it appears from his answers, or
6 from any competent evidence, introduced by the party object-
7 ing to the juror, that he does not stand indifferent in the
8 cause, another juror shall be called and placed in his stead,
9 for the trial of the cause. R. S., c. 115, § 65.

SECT. 57. The traverse jury may in all cases, find a special
2 or general verdict, subject to the opinion of the court, on a
3 case agreed by the parties and reserved, or on the facts
4 as reported by the judge presiding at the trial.

R. S., c. 115, § 66.

SECT. 58. When a jury, not having agreed, return into
2 court, stating the fact, the judge may in his discretion, explain
3 any questions of law, if proposed to him, or re-state any par-
4 ticular testimony, and send them out again for further con-
5 sideration; but they shall not be sent out a third time in
6 consequence of their disagreement, unless on account of some
7 difficulties not stated when they first came into court.

R. S., c. 115, § 67.

SECT. 59. In prosecutions for the recovery of any sum of
2 money or other thing forfeited, it shall not be a cause of chal-
3 lenge to any juror, that he is liable to pay taxes in any county,
4 town or plantation, which may be benefited by the recovery.

R. S., c. 115, § 68.

SECT. 60. If a party knows of any objection to a juror, in
2 season to propose it before trial, and omits so to do, he shall
3 not afterwards be allowed to make the same objection; unless
4 by leave of court for special reasons. R. S., c. 115, § 69.

SECT. 61. No irregularity in the venires, or drawing, sum-
2 moning, returning or empanneling jurors, shall be sufficient
3 to set aside a verdict; unless the party making the objection,
4 was injured by the irregularity; or unless the objection was
6 made before the return of the verdict. R. S., c. 115, § 70.

SECT. 62. If either party in a cause in which a verdict is
 2 returned, shall during the same term of the court, before or
 3 after the trial, give to any of the jurors, who try the cause,
 4 any thing by way of treat or gratuity, or purposely introduce
 5 among the papers in the case, which are delivered to the
 6 jury when they retire with the cause, any papers which have
 7 any connection with it, but were not offered in evidence, the
 8 court on motion of the adverse party, may set aside the ver-
 9 dict and order a new trial. R. S., c. 115, § 76.

Witnesses.

SECT. 63. The clerks of the several courts, and any justice
 2 of the peace, may issue summonses for witnesses to attend
 3 before such courts to give evidence concerning any matters
 4 there depending R. S., c. 115, § 71.

SECT. 64. No person shall be deemed an incompetent wit-
 2 ness on account of his religious belief, but shall be subject to
 3 the test of credibility; and any person who does not believe
 4 in the existence of a Supreme Being shall be permitted to
 5 testify under solemn affirmation, and shall be subject to all
 6 the pains and penalties of perjury.

R. S., c. 115, § 72. 1847, c. 34.

SECT. 65. No person offered as a witness, except a party to
 2 the suit, or a person for whose immediate benefit it is prose-
 3 cuted or defended, shall be excluded by reason of his interest
 4 in the event of the suit, but his interest may be proved to
 5 affect his credibility. 1855, c. 181, § 3.

SECT. 66. When an assignor of a thing in action or contract
 2 is examined as a witness, on behalf of any person deriving
 3 title through or from him, the adverse party may be a wit-
 4 ness and testify to the same matter in his own behalf; but
 5 but such assignor shall not be admitted to be examined in
 6 behalf of any person deriving title through or from him,
 7 against an assignee or an executor or administrator, unless
 8 the other party to the contract or thing in action, whom the
 9 defendant or plaintiff represents, is living, and his testimony
 10 can be procured for such examination. 1855, c. 181.

SECT. 67. In all suits at law, wherein any county, town,
 2 plantation, parish, school district, public corporation, charita-

3 ble, religious or literary incorporated society, or any mutual
4 fire insurance company, is a party, or interested in the event
5 of the suit, any inhabitant or member of any such corpora-
6 tion shall be admitted as a competent witness provided he has
7 no other interest therein, than as such inhabitant or member.

R. S., c. 115, § 75.

SECT. 68. If any person duly summoned, and obliged to
2 attend as a witness, in any cause or matter depending before
3 the supreme judicial court, or any justice of the peace, or
4 judge of any municipal or police court, fails so to do without
5 any reasonable excuse, he shall be liable to the aggrieved
6 party for all damages by him sustained by such default; and
7 any judge of such court, or such municipal or police judge,
8 or justice of the peace, may issue a *capias* directed to a proper
9 officer, to apprehend such witness and bring him before such
10 judge or justice, and to fine him at discretion, not exceeding
11 the sum of twenty dollars, and to order him to pay the cost
12 of such attachment, and to commit him until the same, and
13 all costs attending such commitment are paid.

R. S., c. 133, § 51. 1847, c. 9, § 1.

SECT. 69. If such witness, being present in court, refuses to
2 answer such questions as may be propounded to him under
3 the direction of the court, the court may fine such witness,
4 not exceeding twenty dollars, and commit him, until the fine
5 and all costs attending such commitment are paid.

R. S., c. 133, § 51. 1847, c. 9, § 2.

SECT. 70. In the administration of oaths, the deponent shall
2 hold up his hand, unless he is a person who believes that an
3 oath is not binding, if it is not taken in his accustomed man-
4 ner; in which case the oath may be administered in the
5 manner believed by him to be binding; and any person
6 believing in any other than the Christian religion, may be
7 sworn according to the peculiar ceremonies of his religion.

R. S., c. 115, § 73. R. S., c. 133, § 52, 53.

SECT. 71. Every person conscientiously scrupulous of taking
2 an oath, and who on any lawful occasion is required to take
3 one, shall make affirmation as follows: "I do affirm, under
4 the pains and penalties of perjury," which shall be deemed
5 of the same force and effect as an oath.

SECT. 72. No person convicted by any court of law in this state, of an infamous crime and sentenced therefor according to law, shall be admitted as a competent witness in the trial of any civil or criminal cause, unless his competency is restored by a pardon. R. S., c. 133, § 54.

SECT. 73. No witness shall be deemed incompetent by the commission of any crime, without a conviction in this state; but a conviction in a court out of the state, of a crime, the conviction of which in this state, would render him incompetent, may be given in evidence to affect his credibility.

R. S., c. 133, § 44.

SECT. 74. No person shall be obliged to attend as a witness in any court, in any civil suit, or that his deposition may be taken, unless his legal fees are paid or tendered to him for his travel to and from the place, and one day's attendance, and if he requests it, his fees for each subsequent day's attendance shall be paid him at the close of the preceding day.

R. S., c. 133, § 50.

SECT. 75. In any case pending in any court of record, in which any city, town or county is a party, or in any way interested, it shall be no legal or valid objection to any judge of said court upon the trial of said cause, that he is an inhabitant of such city, town or county, but it shall be his duty to proceed on the trial of said cause, notwithstanding such interest; provided the party adverse to the city, town or county, shall enter upon the docket a waiver of all objection to the judge on account of interest. 1853, c. 2.

SECT. 76. In all actions on any bond or contract, in a penal sum conditioned for the performance of any covenants or agreements, or on a recognizance to prosecute an appeal with effect, if the jury finds that any of the conditions thereof are broken, they shall estimate the damages the plaintiff has sustained; and judgment thereon shall be entered for the penal sum, and execution shall issue for the damages assessed and costs. R. S., c. 115, § 78. 1842, c. 31, § 9.

SECT. 77. In an action of debt on a judgment of any court of record, lawful interest shall be allowed on the damages and costs, or the balance thereof due. R. S. c. 115, § 79.

SECT. 78. No motion in arrest of judgment shall be sus-
2 tained in any civil action. R. S., c. 115, § 80.

SECT. 79. When either party in an action pending in the
3 supreme judicial court, or before a municipal or police court,
4 or any justice of the peace, dies, the executor or administra-
5 trator of the deceased, if the cause of action survives, may
6 become a party thereto, the death being suggested on the
7 record, and prosecute or defend it to final judgment, or the
8 surviving party may cause him to be served with a notice
9 from the court fourteen days before the first day of the term
10 to which it is made returnable, to appear and prosecute, or
11 defend such action; and upon his refusal or neglect so to
12 appear, the court may enter up judgment upon the nonsuit
13 or default, in the form prescribed in chapter eighty-seven.
14 Where any party dies, during the pendency of a bill in
15 equity, the administrators, executors or heirs at law of the
16 deceased may voluntarily or upon citation from the court,
17 become party or parties to said bill, where otherwise a bill
18 of revivor would be necessary.

R. S., c. 115, § 81. 1850, c. 155.

SECT. 81. If any action or suit is brought by an unmarried
2 woman, either alone or jointly with others, and she is mar-
3 ried before final judgment, her husband may, on his own
4 motion, be admitted as a party to prosecute the suit with
5 her, and with the other plaintiffs, if there be any, in like
6 manner as if he had originally joined in the suit.

R. S., c. 115, § 82.

SECT. 82. When a general verdict is entered for the plain-
2 tiff in any civil action, in which some of the counts in the
3 writ are bad, and any one of them is good, or in any suit in
4 which there is a wrong joinder of counts, no objection having
5 been made thereto by plea or motion in writing, before the
6 cause is committed to the jury, the judgment, for that reason,
7 shall not be reversed upon a writ of error.

R. S., c. 115, § 84.

SECT. 83. If during the pendency of an action or prosecu-
2 tion, either party becomes insane, it may be prosecuted or
3 defended by his guardian; and any justice of the court, in
4 term time or vacation, may on the application of the other

5 party, or a friend of the insane party, appoint a guardian ad
6 litem for the insane party, who shall have full power to
7 prosecute or defend to final judgment. He shall not be per-
8 sonally liable for costs, and shall have a reasonable compen-
9 sation for his services.

R. S., c. 115, § 86. 1849, c. 104, § 1, 2.

Costs.

SECT. 84. When the plaintiff, in any stage of the cause,
2 becomes nonsuit, or discontinues his suit, the defendant shall
3 recover his costs; and in all actions, the party prevailing
4 shall be entitled to his legal costs. R. S., c 115, § 56.

SECT. 85. In actions tried before a municipal or police
2 court, or a justice of the peace, if a plaintiff appeals from a
3 judgment in his favor, and in the appellate court does not
4 recover a greater sum for damages than he recovered by the
5 first judgment, he shall recover for his costs only a quarter
6 part of the sum finally recovered for damages.

R. S., c. 115, § 85.

SECT. 86. In all actions of replevin, whenever the jury
2 finds the property of part of the goods and chattels replevied,
3 to be in the plaintiff, and of the residue to be in the defend-
4 ant, they shall also, without reference to the estimated value
5 in the replevin bond, find and certify in their verdict, the
6 value of the part belonging to the plaintiff, as it was at the
7 time it was replevied; and if such value does not exceed
8 twenty dollars, the plaintiff shall recover for costs, only one
9 quarter part of such value. R. S., c. 115, § 77.

SECT. 87. When a party is by law entitled to recover dou-
2 ble or treble costs, the fees paid for witnesses, depositions,
3 copies and other evidence, shall be taxed and recovered singly,
4 and the remainder only of the taxable costs shall be doubled
5 or trebled. R. S., c. 115, § 86.

SECT. 88. On application for a writ of review, certio-
2 rari, mandamus, or quo warranto, on behalf of any private
3 person, or for any like process, the court in their discretion,
4 may allow costs to any person notified and appearing as a
5 respondent, and issue execution against the applicant.

R. S., c. 115, § 88.

SECT. 89. After a judgment for costs has been rendered
2 against a plaintiff, on nonsuit or discontinuance, and a second
3 suit for the same cause is brought, before the costs of the
4 former suit are paid, the court shall, on the same being made
5 to appear, stay all proceedings, until such costs shall be paid ;
6 and may dismiss the suit, unless they are paid at such time
7 as the court appoints. R. S., c. 115, § 89.

SECT. 90. When any suit is brought in the name of the
2 state, but for the use and benefit of any private person, his
3 name and place of residence shall be indorsed on the writ,
4 and if the suit is not maintained, judgment for the defend-
5 ant's cost shall be rendered against such person, and execution
6 issued in like manner, as if he were the plaintiff on record.

R. S., c. 115, § 90.

SECT. 91. In any civil suit, instituted by the state, and for
2 the use and benefit of the state, the state shall be liable for
3 the defendant's costs, and judgment shall be rendered there-
4 for against the state, and the treasurer of the county, in
5 which the trial is had, shall pay the amount to the defend-
6 ant, on his production of a certified copy of the judgment,
7 and the same shall be allowed to such treasurer, in his account
8 with the state. R. S., c. 115, § 91.

SECT. 92. When costs are recovered by the state in any
2 civil suit, no fees shall be taxed for the travel of the attorney
3 general, or any other attorney for the state.

R. S., c. 115, § 92.

SECT. 93. In any action in the name of the assignor of the
2 cause of action, prosecuted for the benefit of the assignee, his
3 name and place of residence, if known, shall at any time
4 during the pending of such suit, if thereto required by the
5 defendant, be indorsed upon the back of the writ or process,
6 and if not done further proceedings shall thereon be stayed ;
7 and if the suit is not sustained, judgment for the defendant's
8 cost shall be rendered against the plaintiff of record and
9 assignee, in the same manner as if both had originally joined
10 in the action. 1846, c. 223, § 1.

SECT. 94. When the name of the assignee, for whose benefit
2 the suit is prosecuted, is not known to the defendant until
3 after judgment for his cost is rendered against the plaintiff of

4 record, the defendant may maintain a special action on the
5 case against the assignee for such costs, at any time within
6 six years from the rendition of the judgment.

1846, c. 223, § 2.

SECT. 95. Such judgment shall be subject to all the equities
2 in set-off in any suit between such assignee and defendant in
3 the same manner and to the same extent as if said assignee
4 were the plaintiff of record in the suit. 1846, c. 223, § 3.

SECT. 96. When a plaintiff, at the same court, and at the
2 same term, brings divers actions against the same party,
3 which might have been joined in one, or brings more than
4 one suit upon a joint and several contract, he shall recover
5 costs in only one of such actions, unless the court certifies
6 that there was good cause for commencing them.

R. S., c. 115, § 93.

SECT. 97. No costs shall be allowed the plaintiff, in an
2 action, except upon trustee process, upon a judgment of any
3 court, or justice of the peace, on which an execution might,
4 at the time of commencing such action, have been issued and
5 duly served on the judgment debtor. R. S., c. 115, § 96.

SECT. 98. When an aggregate corporation is entitled to
2 costs, the travel shall be computed from the place where it is
3 situated, if it is local; otherwise, from the place where its
4 business is usually transacted, not exceeding forty miles
5 travel; unless the agent of such corporation travels a greater
8 distance to attend the court. R. S., c. 115, § 97.

SECT. 99. Nothing in this chapter shall take away or control
2 the power of the court, to require payment of costs, or with-
3 hold and refuse them, as condition of an amendment or
4 continuance. R. S., c. 115, § 98.

SECT. 100. In actions on contract, in which an account is
2 filed in set off, although the damages, found for the plaintiff,
3 shall not exceed twenty dollars, he shall be entitled to full
4 costs; provided, the jury shall certify, in their verdict, that
5 the damages were reduced as low as that sum, by means of
6 the amount allowed by them, on account of said set-off, and
7 as due upon it. R. S., c. 115, § 99.

SECT. 101. When a motion is filed in the supreme judicial
2 court, to set aside a verdict as against law, or the direction

3 of the court, or against evidence, the whole evidence shall be
 4 drawn up in form of a report, and signed by the presiding
 5 judge; and, if the motion is founded on any alleged cause,
 6 other than the rulings and instructions of the judge to the
 7 jury, the evidence as to the facts stated in the motion, shall
 8 be heard, examined and reported by the judge; and in either
 9 case, the action shall be continued to be heard in the law
 10 court. If the law court are of opinion that the motion was
 11 intended merely for delay, or for frivolous causes, they may
 12 award double or treble costs against the party filing the
 13 motion.

R. S., c. 115, § 101. 1841, c. 19 § 1. 1842, c. 31, § 10.

Executions.

SECT. 102. Execution may be issued on any judgment in
 2 the supreme judicial court, after the expiration of twenty-four
 3 hours from the rendition of the judgment, returnable within
 4 three months. R. S., c. 115, § 102.

SECT. 103. No first execution shall be issued after the
 2 expiration of one year from the time judgment was entered;
 3 except in the case provided for in the fourth section of this
 4 chapter. In which case, the first execution may be issued in
 5 not less than one year, and not more than two years, from
 6 the time judgment was rendered.

R. S., c. 115, § 104. 1841, c. 1, § 19.

SECT. 104. An alias or pluries execution may be issued,
 2 within three years next after the day on which the last
 3 preceding execution was returnable, and not afterwards.

R. S., c. 115, § 105.

SECT. 105. If the creditor, in the cases mentioned in the
 2 two preceding sections, neglects to sue out execution within
 3 the times therein prescribed, he may bring an action of debt
 4 on the judgment, or sue out a writ of scire facias against the
 5 debtor, to show cause why execution of the judgment should
 6 not be done; and if, after due notice, no sufficient cause is
 7 shown, the court shall award execution for the amount due
 8 on the judgment. R. S., c. 115, § 106.

SECT. 106. When any execution, unsatisfied in whole or in
 2 part, is accidentally lost or destroyed, the creditor or his

3 attorney, or any person interested therein, may apply to any
4 justice of the court in which the record of the judgment
5 remains, for a new execution; and, on proof by affidavit, or
6 otherwise, of the loss of the execution, and of the amount
7 remaining unsatisfied thereon, such justice may cause a new
8 execution to be issued. 1848, c. 59, § 2.

SECT. 107. On all executions, issued on judgments in civil
2 actions, or acknowledgments of debts, lawful interest shall
3 be allowed from the time judgment was rendered, or the debt
4 became payable, and the form of executions shall be varied
5 accordingly. R. S., c. 115, § 107.

Miscellaneous provisions

SECT. 108. No court shall be held on Christmas day, the
2 fourth day of July, second Monday in September, nor any
3 day designated, in this State, for the choice of electors of
4 president and vice president of the United States, or for the
5 annual fast or thanksgiving.

R. S., c. 115, § 108. 1849, c. 120.

SECT. 109. In all action of trespass on property, the court
2 and jury or magistrate shall inquire and determine, whether
3 the trespass was committed wilfully; and, if so, a record
4 shall be made thereof, and a new orandum shall be made on
5 the margin of the execution, that the judgment was rendered
6 for a trespass committed wilfully. R. S., c. 115, § 109.

SECT. 110. If a bill of exchange is drawn, accepted or
2 indorsed, in this state, for one hundred dollars or more, and
3 payable in this state, at a place seventy-five miles distant
4 from the place where drawn, if protested for non-acceptance
5 or non payment, the damages against the acceptor, drawer
6 or indorser, over and above the contents of the bill and
7 interest, shall be one per cent. on its amount; and on any
8 bill of exchange, so drawn, accepted or indorsed in this state,
9 if so protested, the damages shall be, if payable in New
10 Hampshire, Massachusetts, Vermont, Connecticut, Rhode
11 Island, or New York, three per cent.; if in New Jersey,
12 Pennsylvania, Delaware, Maryland, Virginia, South Caro-
13 lina, Georgia, or District of Columbia, six per cent.; and in
14 any other state, nine per cent. R. S., c. 115, § 111.

SECT. 111. The court may appoint a surveyor to run lines
2 and make plans of lands demanded in a real or mixed action
3 on motion of either party. If such surveyor is prevented by
4 force, menaces, or fear, from performing the duties assigned
5 him, the court may issue a warrant to the sheriff command-
6 ing him with suitable aid, to cause such opposition to the
7 surveyor to be prevented; and in the execution of such war-
8 rant, he may exercise all the power, appertaining to his office
9 as sheriff; and all persons refusing their aid when called for
10 by him, shall be liable to the same penalties as in other like
11 cases. R. S., c. 115, § 112.

SECT. 112. In all cases where the same property has been
2 attached on mesne process in two or more suits, the plaintiff
3 in any suit, after that in which the first attachment was
4 made, may petition the court in which the suits are pending,
5 for leave to defend against such first suit, in like manner as
6 the party therein sued might do; and shall set forth in his
7 petition the facts on which he relies, and make oath to the
8 truth thereof, or that he verily believes them to be true; and
9 the court may grant or refuse the prayer of the petition.

R. S., c. 115, § 113, 114.

SECT. 113. If the court admits the petitioner so to defend,
2 he shall give bond or enter into recognizance with sufficient
3 surety, in such sum as the court orders, to pay the plaintiff
4 in such previous suit, all the costs and damages adjudged
5 by the court to be occasioned to the plaintiff by such defence;
6 and it shall be entered on record, that the petitioner is
7 admitted to defend against such action.

R. S., c. 115, § 115, 116.

SECT. 114. In case a recognizance is entered into, and the
2 petitioner fails in his defence of the action, the court shall
3 award execution on the recognizance in favor of the plaintiff,
4 against the petitioner, and shall enter judgment in the origi-
5 nal suit between the parties, as though such defence had not
6 been made.

R. S., c. 111, § 117.

SECT. 115. If the petitioner prevails in the defence, by ver-
2 dict or otherwise, the court shall render judgment thereon,
3 and award execution to the petitioner for his reasonable costs;

4 and such judgment shall be rendered for costs, if any, to the
5 party sued in such action, as the court directs.

R. S., c. 115, § 118.

SECT. 116. If it appears by the verdict or otherwise, that
2 the plaintiff made his attachment with intent to defraud
3 or delay other creditors of the defendant, or that there was
4 collusion between the plaintiff and defendant, for the purpose
5 of defrauding or delaying such other creditors, such attach-
6 ment shall be void.

R. S., c. 115, § 119.

SECT. 117. No action brought by any public officer, in his
2 official capacity shall abate by reason of the death, resigna-
3 tion, removal or expiration of his term of office; but such
4 action may be prosecuted by his successors, to the uses for
5 which the action was originally commenced; and the court
6 may order such amendments of the process, and such notices
7 to said successors as are necessary to carry into effect the
8 provisions of this section.

R. S., c. 115, § 120.

SECT. 118. No action shall be maintained in any court of
2 this state, on any demand or claim which has been settled,
3 cancelled or discharged by the receipt of any sum of money
4 less than the amount legally due thereon, or for any good or
5 valuable consideration, however small, by the owner thereof
6 or by his agent or attorney, to whom the same has been
7 entrusted for collection or settlement, whether such agent or
8 attorney be generally or specially authorized. 1851, c. 213.

SECT. 119. No court of this state shall exercise any juris-
2 diction in the administration of the naturalization laws of
3 Congress, nor take cognizance of any application of an alien
4 to become a citizen, nor issue any certificate of naturaliza-
5 tion, except in cases in which the application was filed before
6 the sixteenth day of March, 1855. 1855, c. 176.

SECT. 120. The records and proceedings of any court of
2 another state, or the United States, authenticated by the
3 attestation of the clerk or other officer having charge thereof,
4 and seal of such court, shall be admissible in evidence in all
5 cases in this state.

R. S., c. 133, § 45.

SECT. 121. Printed copies published under the authority of
2 the government, of all statutes, acts and resolves of this

3 state, shall be admitted in all courts and on all occasions as
4 sufficient evidence thereof. R. S., c. 133, § 46.

SECT. 122. Printed copies of statutes of any other of the
2 United States, or territories, purporting to be published under
3 the authority of their governments, or commonly admitted as
4 evidence in their courts, shall be admitted in all our courts of
5 law, and on all occasions, as prima facie evidence of such
6 laws. R. S., c. 133, § 47.

SECT. 123. The unwritten law of any other state or terri-
2 tory of the United States, may be proved as facts by parol
3 evidence, and the books of reports of cases adjudged in their
4 courts; and all foreign laws may be proved as facts, by parol
5 evidence; but if it appears that the law in question is con-
6 tained in a written statute or code, the court may reject any
7 evidence of such law not accompanied by a copy thereof.
R. S., c. 133, § 48, 49.

SECT. 124. When a defendant pleads in defence of an action,
2 a discharge in bankruptcy obtained after the commencement
3 of the suit, he shall recover no cost before the time when the
4 certificate was so pleaded and proclaimed in court.
1848, c. 60.

SECT. 125. No action in the name of a party who has been
2 declared a bankrupt, shall be defeated, because it was not
3 brought in the name of his assignee, unless the objection is
4 made by a plea in abatement; provided, that before final
5 judgment, the written assent of the assignee to the bankrupt
6 is filed in the office of the clerk of the court in which the
7 action is pending. 1855, c. 170,

SECT. 126. No judge of any court in this state, shall take
2 cognizance of, or grant a certificate in cases arising under
3 the act of Congress, passed September eigeteenth, eighteen
4 hundred and fifty, or the act to which that was additional,
5 entitled "An act respecting fugitives from justice," to any
6 person who claims any other person as a fugitive slave within
7 the jurisdiction of this state. 1855, c. 182, § 1.

Chapter 83.**JUSTICES OF THE PEACE, THEIR JURISDICTION AND PROCEEDINGS IN CIVIL ACTIONS.**

- Sect.* 1. Jurisdiction in civil actions; not to exceed twenty dollars.
2. Title to real estate pleaded, case to be removed to supreme judicial court. Recognizance in such case; if not given, to be tried.
 3. Copy, &c., to be produced at appellate court; proceedings, if not entered, &c.
 4. Writs, forms and service of.
 5. Judgments on default, nonsuit or trial.
 6. Costs for defendant.
 7. Appeal, when and how claimed; effect of.
 8. " recognizance for, when and how given.
 9. " papers to be produced at appellate court; failure to enter, &c., effect of.
 10. Subpoenas for witnesses, in what case to issue.
 11. Adjournment of his court.
 12. If unable to attend, another justice may enter a case, and if he remains unwell, try it.
 13. Executions returnable in three months.
 14. " may be directed into other counties.
 15. Writs of scire facias, when he may issue.
 16. Writs, &c., when directed into other counties.
 17. Records, how to be kept; on his death may be transcribed into the book of another justice.
 18. Execution issued on the transcribed record.
 19. Removing from the state, must deposit his records with the clerk.
 20. Administrators of deceased justice also.
 21. Penalty on administrator for neglect.
 22. Duty of the clerk in such cases.
 23. Proceedings if his records are not completed. When an execution may be used in place of a copy of the record.
 24. Justice whose commission has expired may certify copies and issue new executions.
 25. Justice not to be of counsel in any case before himself; not to try any case commenced by himself.
 26. Justice may hold courts at his dwelling-house or office.
 27. " plea before to be the general issue.
 28. " costs, in action continued at plaintiff's request, limited.

SECT. 1. Every justice of the peace may hold a court in
 2 his county, and have original jurisdiction of all civil actions,
 3 including prosecutions for penalties in which his town is
 4 interested, when the debt or damages demanded do not exceed
 5 twenty dollars, excepting those in which the title to real estate
 6 according to the pleadings or brief statement filed in the case
 7 by either party, is in question; and excepting that in those
 8 towns in which a municipal or police court is established, his

9 jurisdiction shall be restricted to those cases provided there-
10 for in the act establishing said courts. R. S., c. 116, § 1, 2.

SECT. 2. When it appears by the pleadings or brief state-
2 ment in the case, that the title to real estate is in question,
3 it shall be removed on the request of either party, to the
4 supreme judicial court; and such party shall recognize to the
5 other party in a reasonable sum with sufficient sureties, to
6 enter the case at the next term of said court; and if he does
7 not so recognize, the justice shall hear and decide the case,
8 the same as if the request for removal had not been made.

R. S., c. 116, § 3, 4.

SECT. 3. The party so recognizing, shall produce at said
2 court a copy of the record and all such papers as are required
3 to be produced by an appellant; and, if he fails so to do, or
4 to enter the action as before provided, he shall upon the com-
5 plaint of the adverse party, be nonsuited or defaulted, as the
6 case may be; and such judgment shall be rendered as law
7 and justice require.

R. S., c. 116, § 5.

SECT. 4. The writ in civil actions, commenced before a
2 justice of the peace, shall be a summons, a capias and
3 attachment, or scire facias, of the form prescribed by law,
4 signed by the justice, and duly served not less than seven
5 nor more than sixty days before the return day thereof.

R. S., c. 116, § 6, 18.

SECT. 5. If any person duly served with process, does not
2 appear and answer thereto, his default shall be recorded, and
3 the charge in the declaration shall be taken to be true; and
4 on such default, and also when the action is on trial main-
5 tained, the justice shall enter judgment for such sum, not
6 exceeding twenty dollars, as he finds due to the plaintiff,
7 with costs, and issue execution.

R. S., c. 116, § 7.

SECT. 6. If the plaintiff fails to enter and prosecute his
2 action, or if on trial he does not maintain his action, the
3 defendant shall recover judgment for his costs, to be taxed by
4 the justice; and execution shall issue therefor.

R. S., c. 116, § 8.

SECT. 7. Any party aggrieved by the judgment of the jus-
2 tice may appeal to the next supreme judicial court in the
3 same county, and may enter such appeal at any time within

4 twenty-four hours, Sunday not included, after the judgment ;
 5 in which case no execution shall issue, and the case shall be
 6 entered and determined in the supreme judicial court.

R. S., c. 116, § 9.

SECT. 8 Before such appeal is allowed, the appellant shall
 2 recognize with sufficient surety or sureties to the adverse
 3 party, if required by him, in a reasonable sum with condition
 4 to prosecute his appeal with effect, and pay all costs arising
 5 after the appeal.

R. S., c. 116, § 10.

SECT. 9. The appellant shall, at the supreme judicial court,
 2 produce a copy of the record, and of all the papers filed in
 3 the cause ; except depositions or other written evidence or
 4 documents, the originals of which shall be produced at the
 5 supreme judicial court ; and if the appellant fails to produce
 6 such papers, and enter and prosecute his action, the court on
 7 complaint of the adverse party, may affirm the former judg-
 8 ment, with costs.

R. S., c. 116, § 11.

SECT. 10. Every justice may issue subpoenas for witnesses
 2 in civil actions pending before him or any other court or per-
 3 sons authorized to examine witnesses.

R. S., c. 116, § 12.

SECT. 11. He may adjourn his court by proclamation, from
 2 time to time, as justice requires.

R. S., c. 116, § 13.

SECT. 12. Whenever a justice of the peace is unable by rea-
 2 son of sickness, or other unforeseen cause, to attend at the
 3 time and place by him appointed for holding a court, any
 4 other justice in the county, who can legally try a cause
 5 between the parties in the pending suit, may continue such
 6 cause once, not exceeding thirty days, and note such contin-
 7 uance on the writ ; and in case the disability of the justice to
 8 whom the writ was returnable, is not removed at the expi-
 9 ration of the time of adjournment, such action may be
 10 entered before and tried by, any justice of the peace of
 11 said county, at the time and place to which it was so ad-
 12 journed, who may render judgment and issue execution
 13 accordingly.

R. S., c. 116, § 14.

SECT. 13. Executions issued by a justice of the peace shall
 2 be made returnable in three months from the day they were
 3 issued.

R. S., c. 115, § 103'

SECT. 14. When any debtor against whom judgment is rendered, before any justice of the peace, or municipal or police court, removes, or is out of the county in which such judgment is rendered, such justice or court may issue execution against him, directed to the proper officers in any county where he is supposed to be; and such execution shall have the same force as if issued by a justice or court of the county where such officers are empowered to act. 1842, c. 10, § 2.

SECT. 15. Every justice of the peace may issue writs of scire facias against executors or administrators, upon a suggestion of waste, after judgment against them, against bail, in civil actions, and indorsers of writs; and enter judgment, and issue execution, as any court might do in like cases. R. S., c. 116, § 16.

SECT. 16. In cases of scire facias against bail, indorsers of writs, executors or administrators, in all trustee processes, or original writs against two or more defendants; before a justice of the peace, or a judge of the municipal or police court, where the defendant or trustee resides out of the county where the proceedings are had, the justice or judge may direct the writ or execution to any proper officer of the county where the defendant or trustee resides, who shall charge fees of travel from the place of his residence to the place of service only, and postage paid by him. R. S., c. 116, § 17.

SECT. 17. Every justice of the peace shall keep a fair record of his proceedings; and if he dies, after having given judgment in a cause, and before it is satisfied, any other justice of the same county, may, on complaint of the creditor, issue a summons to the person, in whose possession the record of such judgment is, directing him to produce and deliver it to him; and if such person contemptuously refuses to produce it, or to be examined respecting it, on oath, the justice may commit him to prison, as punishment for the contempt, to be detained until he submits to such examination, and produces the record; and when the record is so delivered to him, he shall transcribe it upon his own book of records, and return the original to the person who produced it; and a copy thereof, attested by the transcribing justice, or otherwise

15 proved, shall be legal evidence in all cases, where an
16 authenticated copy of the original might be received.

R. S., c. 116, § 19, 20, 21.

SECT. 18. On such transcribed record, the justice may issue
2 execution the same as if the judgment was rendered by
3 himself, changing the form, as the case requires; but no
4 such first execution shall issue, after the expiration of one
5 year from the time the judgment was rendered, unless on
6 scire facias.

R. S., c. 116, § 22.

SECT. 19. Every justice who removes from the state, shall,
2 before his removal, deposit with the clerk of the judicial
3 courts in the county for which he was commissioned, all his
4 records and papers, appertaining to his office.

R. S., c. 116, § 23.

SECT. 20. The executor or administrator of any deceased
2 justice, shall deposite all the records and papers of such
3 deceased justice, relating to his office, which come into his
4 possession, in the clerk's office in the county for which the
5 justice was commissioned.

R. S., c. 116, § 24.

SECT. 21. Any person, neglecting to comply with the duty
2 required of him, in either of the two preceding sections, shall
3 forfeit and pay one hundred dollars, to be recovered on
4 indictment.

R. S., c. 116, § 25.

SECT. 22. The clerk shall receive and safely keep all such
2 records and papers, and may grant certified copies of them
3 which shall be as good evidence, as if certified by the justice.

R. S., c. 116, § 26.

SECT. 23. If any justice dies or removes from the state,
2 without recording and signing any judgment by him rendered
3 in an action before him, and his docket, original writ, and
4 papers appertaining thereto, and execution if any issued, are
5 so deposited in the office of the clerk, he shall, on payment of
6 usual fees make out and certify copies of all the papers in
7 such cause, and all facts appearing in such docket; and such
8 copies shall be legal evidence. But if such records have not
9 been deposited with the clerk, the plaintiff in any action may
10 use, in place of such certified copy, an execution issued on
11 any such judgment by the justice, with an affidavit thereon;

12 made by the plaintiff or his attorney, that it is not satisfied,
13 or satisfied in part only, as the case may be.

R. S., c. 116, § 27. 1852, c. 276.

SECT. 24. Any justice, whose commission expires and is
2 not renewed, may, during one year thereafter, issue and renew
3 executions on any judgment, by him rendered while in
4 commission, which shall be obeyed by the officer, as if the
5 commission of the justice had not expired; and certify copies
6 of judgment rendered by him. R. S., c. 116, § 28.

SECT. 25. No justice shall be of counsel for either party,
2 or give advice to either party in a suit before him, or be
3 subsequently employed as counsel or attorney in any case
4 tried before himself; nor hear nor determine any civil action
5 commenced by himself; and every action so commenced,
6 shall abate. R. S., c. 103, § 9. R. S., c. 116, § 15.

SECT. 26. Any justice may try cases at his dwelling-house
2 or office, or other suitable place, and the writ shall be made
3 returnable accordingly; except where the title to real estate
4 is in question, the defendant shall plead the general issue,
5 need not file any brief statements; and when an action,
6 in which the defendant does not appear, is continued, at the
7 request of the plaintiff, only one travel and attendance shall
8 be taxed for him, unless the defendant agrees, in writing, to
9 such continuance. R. S., c. 116, § 29, 30. 1842, c. 35.

Chapter 84.

LEVY OF EXECUTIONS ON PERSONAL PROPERTY,

- Sect. 1. Execution; what goods may be sold on.
2. " coin and bank notes, how levied on.
3. " goods, in what time sold on.
4. " how advertised.
5. " adjournment of sale, time.
6. " " " place.
7. Indemnity; officer may require.
8. Re-sale, if purchaser refuses to take; officer to account for proceeds, and for damages paid by such purchaser.
9. Return of sale on execution, how made. Penalty for fraud in sale or return.
10. Proceeds of sale, how disposed of.

11. Rents of buildings, how sale is to be made of.
12. Shares in incorporated companies, how sold.
13. Notice of seizure of, how given, if not attached.
14. If attached, mode of procedure.
15. Officers of the corporations to certify the number of shares, &c.
16. Shares sold to be transferred; new certificates to purchaser.
17. Notice of sale, how given.
18. Franchise of corporation, how sold; notice of sale of, how given.
19. Mode of sale.
20. Possession, what and how given to purchaser.
21. Rights and duties of the purchaser.
22. Rights of redemption by the corporation.
23. Proceeds of sales applied in order of attachment.
24. " " of equities of redemption in same way.
25. Notice of second attachment to be given to the first attaching officer.
26. Provisions of the three preceding sections applicable to all officers; provisions for second attachment by other officers.
27. Warrant against turnpike corporation for damages.
28. Sale of the franchise thereon may be adjourned.
29. In what county sale may be had.
30. In case of a prior attachment, how the lien by seizure on execution may be preserved.
31. Proceedings when such attachment is removed.
32. Execution to be set off against each other.
33. Cases in which it may be done.
34. Sale on execution of personal property under mortgage on tender of amount due.
35. Proceeds of, how applied.
36. Sale without tender.
37. Warrants of distress from county commissioners unsatisfied, may be sued.
38. Executions and warrants of distress against towns, how issued and enforced.
39. How levied on real estate.
40. Notice and incidents of the sale.
41. Remedy of owner of property sold.
42. Payment before levy, provision for and effect of.
43. Protection from subsequent claims.
44. Proportion to be paid, how ascertained.
45. Rights and remedies of the purchaser of a right to a conveyance of land.

SECT. 1. All chattels, real and personal, liable at common law to attachment, and not exempted therefrom by statute, shall be liable to be taken and sold on execution, as prescribed in this chapter. R. S., c. 117, § 2.

SECT. 2. Current gold or silver coin may be taken on execution and paid to the creditor, as money collected; and bank notes, and all other evidences of debts, issued by any moneyed corporation, and circulated as money, may be taken on execution, and paid to the creditor at their par value, if

6 he will accept them ; otherwise, they may be sold like other
7 chattels. R. S., c. 117, § 3.

SECT. 3. Goods and chattels, legally taken on execution,
2 shall be safely kept by the officer, at the expense of the
3 debtor, for the space of four days, at least, next after the
4 day on which they were taken, exclusive of Sunday ; and
5 they shall be sold within fourteen days next after the day of
6 seizure, except as hereinafter provided ; unless, before the
7 time of sale, the debtor redeems them by otherwise satisfying
8 the execution. R. S., c. 117, § 4.

SECT. 4. The officer shall post up public notice of the
2 time and place of sale, at least forty-eight hours before the
3 time of sale, in two or more public places in the town, or
4 place of sale. R. S., c. 117, § 5.

SECT. 5. If, at the time appointed for the sale, the officer
2 is prevented by sickness, or other casualty, from attending
3 at the place appointed ; or, is present and deems it for the
4 advantage of all concerned, to postpone the sale for want of
5 purchasers, or other sufficient cause, he may postpone the
6 sale, not exceeding six days, next after the day appointed ;
7 and so, from time to time, for like good cause, giving notice
8 of every adjournment, in like manner as required in the
9 preceding section. R. S., c. 117, § 6.

SECT. 6. For good reason, and for the purpose of obtaining
2 a better price for the goods to be sold, he may, if he should
3 deem it for the benefit of the debtor, adjourn the auction to
4 another place in the same town. R. S., c. 117, § 7.

SECT. 7. Where there is reasonable doubt, as to the owner-
2 ship of goods, or their liability to be taken in execution, the
3 officer may require sufficient security to indemnify himself.
R. S., c. 117, § 8.

SECT. 8. If the highest bidder, at such a sale, refuses to
2 take and pay for an article, the officer shall sell the same
3 again at auction, at any time within ten days, giving due
4 notice of the second sale ; and he shall account for what he
5 receives on the second sale, and for any damages he recovers
6 of the first bidder for a loss on the re-sale, as for so much
7 received on the execution. R. S., c. 117, § 9.

SECT. 9. He shall, in his return on the auction, particularly
 2 describe each article or lot of the goods sold, and the price at
 3 which it was sold; and, if he is guilty of any fraud in the
 4 sale or return, he shall be liable to the debtor, in an action
 5 of the case, to pay him five times the sum of which he is
 6 defrauded. R. S., c. 117, § 10.

SECT. 10. The money arising from the sale of any property
 2 on execution, shall be applied to pay the charges, and satisfy
 3 the execution; and the residue, if any, shall be returned to
 4 the debtor on demand, or otherwise legally applied, in the
 5 manner provided in section twenty-three.

R. S., c. 117, § 11.

SECT. 11. When a lessor of any lands, leased for the
 2 purpose of having any buildings erected thereon, commences
 3 an action against the lessee, and attaches the buildings within
 4 six months after the rent becomes due, and recovers such
 5 rent, he may, on execution, cause the rents and profits of
 6 such buildings to be sold for a term of time sufficient to pay
 7 the debt and costs; or cause such building to be sold, like
 8 any other personal estate; and, in the latter case, saving to
 9 the debtor, the right to redeem the same within one year, by
 10 payment, to the purchaser, of the full amount paid by him,
 11 and interest thereon. R. S., c. 117, § 12.

SECT. 12. Any share or interest of any stockholder or
 2 proprietor, in any incorporated company, may be taken on
 3 execution, and sold in the following manner; and in no
 4 other manner, notwithstanding anything in the charter of such
 5 company to the contrary. R. S., c. 117, § 13, 29.

SECT. 13. If the property was not attached on mesne
 2 process, in the same suit, the officer shall leave a copy of the
 3 execution with the treasurer, cashire, clerk or other recording
 4 officer of the company; and the property shall be considered
 5 as seized on execution, when the copy is so left. If it was
 6 so attached, and remains attached, the officer shall proceed
 7 in seizing and selling it on execution, in the same manner as
 8 in the seventeenth section.

R. S., c. 117, § 14, 15. 1841, c. 1, § 20.

SECT. 14. The officer of the company, having the care of
 2 the records, or account of shares or interest of the stock-

3 holders, shall, upon the exhibition to him of the execution,
4 give such officer holding the execution, a certificate of the
5 number of shares held by the judgment debtor, or of the
6 amount of his interest, under the same penalty as is prescribed
7 for refusal to give such certificate to an officer, exhibiting a
8 writ of attachment, as provided in chapter eighty-one, section
9 forty-two. R. S., c. 117, § 16.

SECT. 15. Within fourteen days after the day of sale, the
2 officer shall leave an attested copy of the execution and of the
3 return thereon, with the officer of the company, whose duty
4 it may be to record transfers of shares; and the purchaser
5 shall thereupon be entitled to a certificate or certificates of
6 shares bought by him, on paying the fees therefor, and for
7 recording the transfers. R. S., c. 117, § 17.

SECT. 16. If the shares or interest of the judgment debtor
2 were attached in the suit, in which the execution issued, the
3 purchaser shall be entitled to all dividends, which accrued
4 after the attachment. R. S., c. 117, § 18.

SECT. 17. In making sale of such shares, or interest, of any
2 stockholder or proprietor, the officer holding the execution
3 shall give notice in writing of the time and place of sale to
4 the debtor, by leaving the same at his last and usual place of
5 abode, if within the county where the officer dwells; and
6 public notice of such time and place of sale, by posting up
7 notice thereof in one or more public places in the town where
8 the sale is to be made, and in two adjoining towns, if there
9 are so many, thirty days, at least, before the day of sale;
10 and shall publish an advertisement of the same import, and
11 naming the judgment debtor, three weeks successively before
12 the day of sale, in some public newspaper printed in the same
13 county, if any, if not, in the state paper; and if the debtor
14 never lived in the county, the posting of the notification and
15 publishing the advertisement, as aforesaid, shall be sufficient.
R. S., c. 117, § 19.

SECT. 18. When judgment is recovered against any turn-
2 pike, bridge, canal, or other incorporated company with
3 power to receive toll, the franchise of such corporation may
4 be sold on execution at public auction; the officer giving

5 notice of the time and place of sale, by posting a notification
6 in any town in which the treasurer, clerk, or any officer of
7 the company, if there are any officers, if not, where any
8 stockholder resides, thirty days, at least, before the day of
9 sale, and by causing an advertisement, naming the creditor
10 therein, to be inserted three weeks successively in some
11 public newspaper printed in any county where either of said
12 officers, or if without officers, any stockholder resides, four
13 days before the day of sale; and if there be no newspaper
14 printed in any such county, then in the state paper.

R. S., c. 117, § 20.

SECT. 19. In the sale of such franchise, whoever will pay
2 and satisfy such execution, and all fees and incidental
3 expenses, in consideration of being entitled to receive to his
4 own use all such toll, as the corporation is entitled to demand
5 and receive, for the shortest period of time, shall be deemed
6 the highest bidder, and the purchaser for such period of time.

R. S., c. 117, § 21.

SECT. 20. Immediately after such sale, the officer shall
2 deliver to the purchaser, possession of the toll houses and
3 gates, in whatever county they may be situated, and he shall
4 state his doings therein in his return. R. S., c. 117, § 22.

SECT. 21. The purchaser of such franchise, and those
2 claiming under him, may receive to their own use the tolls
3 accruing within the time limited in the purchase, and shall
4 have all the powers necessary for the convenient use of the
5 property, which were before vested in the corporation, and
6 be bound to discharge the same duties, and be liable to the
7 same penalties and forfeitures, during the term of the said
8 purchase, as before were required of the corporation, and may
9 recover of said corporation any moneys paid, or expenses
10 incurred, in consequence of his said liability, and without
11 any fault or negligence on his part. R. S., c. 117, § 23.

SECT. 22. The corporation may, at any time within three
2 months after the day of sale, redeem said franchise, by paying
3 to the purchaser the sum he paid in satisfaction of the
4 execution, with twelve per cent. interest thereon, in addition
5 to the toll he has received. R. S., c. 117, § 24.

SECT. 23. If goods, or any other property sold on execution, 2 have been attached by any other creditor, or seized on any 3 other execution, by the same or any other officer, or if before 4 payment of the residue to the debtor, any other writ of 5 attachment or execution against him is delivered to the officer 6 who made the sale, the proceeds of the sale shall be applied 7 to the discharge of the several judgments, in the order in 8 which the writs of attachments or executions were served ; 9 and the residue, if any, shall be paid over to the debtor.

R. S., c. 117, § 25.

SECT. 24. When the right of redeeming mortgaged real 2 estate, is sold on execution, the proceeds of the sale, after 3 satisfying the same, shall be applied and disposed of in the 4 manner provided in the case of sale of goods.

R. S., c. 117, § 27.

SECT. 25. If an attachment or seizure is made, on execution, 2 of a share in any incorporated company, or of any other 3 property which has been attached without taking and keeping 4 exclusive possession thereof, and if the same property is 5 subsequently attached or taken on execution by any other 6 officer, he shall give notice thereof to the officer, who makes 7 the sale under the first attachment or seizure; and, if the 8 latter, without such notice, pays to the debtor the balance of 9 the proceeds of the sale, he shall not be liable therefor, to the 10 person claiming under such subsequent attachment or seizure.

R. S., c. 117, § 26.

SECT. 26. The provisions in the three preceding sections, 2 shall be equally applicable to sheriffs, deputy sheriffs, coro- 3 ners, and constables, and their official proceedings in the 4 cases mentioned in said sections; and personal property, 2 attached by a coroner may be again attached by a sheriff, 6 deputy sheriff or constable, subject to the former attachment, 7 by giving notice thereof, to the coroner, and furnishing him 8 with a copy of the precept within a reasonable time thereaf- 9 ter, and vice versa; and personal property attached by a 10 constable, may be again attached by a coroner, or by a dep- 11 uty, when necessary, in the same manner.

R. S., c. 117, § 28.

SECT. 27. Whenever any damages are assessed in favor of
2 any person, by the county commissioners, or by a committee
3 or a verdict of a jury, for any injury sustained by him, by
4 any acts of any of the corporations aforesaid, authorized to
5 demand and receive toll, and the damages shall not be paid
6 in thirty days after order, or the acceptance of such verdict,
7 or of the report of the committee, such person may have a
8 warrant of distress, against any such corporation, for the
9 damages assessed, and interest and costs. R. S., c. 117, § 30.

SECT. 28. The officer holding such warrant, shall have the
2 same right to adjourn the vendue, as in case of sale of goods
3 on execution. R. S., c. 117, § 31.

SECT. 29. All proceedings respecting the attachment and
2 sale on execution of the franchise of any corporation, entitled
3 to demand and receive toll, and sales on warrant of distress,
4 as mentioned in section twenty-seven, may be had in any
5 county in which the creditor, the president, clerk, treasurer,
6 or any director of said corporation, if there is any such officer,
7 if not, where any stockholder resides. R. S., c. 117, § 32.

SECT. 30. When any estate, real or personal, is seized on
2 execution, and further service of the execution is suspended,
3 by reason of any prior attachment thereof, such estate shall
4 be bound by seizure until it is set off or sold in whole or in
5 part, under the prior attachment, or until it is dissolved;
6 provided the officer making such seizure of real estate, within
7 five days thereafter, files in the office of the register of deeds
8 in the county or district in which the real estate is situated,
9 a copy of his return of the seizure, with the names of the
10 parties, the court at which judgment was recovered, and the
11 date and amount of the execution; and the register shall file
12 and enter the same of record, as in case of attachment of real
13 estate on writs; and like fees shall be allowed to the officer
14 and register therefor. R. S., c. 117, § 33. 1842, c. 31, § 11.

SECT. 31. If the estate is set off or sold in part, under the
2 prior attachment, or if it is dissolved, the estate or such part
3 thereof as remains undisposed of, shall continue bound for
4 thirty days thereafter, by such seizure on execution; and the
5 service of the execution may be completed in like manner as
6 if the estate had been first seized thereon, at any time within

7 thirty days, although the return day of the execution has
8 passed. R. S., c. 117, § 34.

SECT. 32. When a sheriff, deputy sheriff, coronor or other
2 officer, has in his hands executions wherein the creditor in
3 one is debtor in the other, he shall cause one execution to
4 answer and satisfy the other, so far as it will extend; if one
5 of such executions is in the hands of such officer, and the
6 creditor in the other tenders his execution to him, and
7 requests him so to do, he shall set off one against the other,
8 as aforesaid; provided the creditor in one execution is in the
9 same capacity and trust as the debtor in the other.

R. S., c. 117, § 1.

SECT. 33. Executions shall not thus be set off against each
2 other, when the sum due on one of them has been law-
3 fully and in good faith assigned to another person, before
4 the creditor in the other execution became entitled to the sum
5 due thereon; nor when there are several creditors or debtors
6 in one execution, and the sum due on the other is due to or
7 from a part of them only; nor shall it be allowed as to so
8 much of the first execution as may be due to the attorney in
9 the suit for his fees and disbursements therein.

R. S., c. 117, § 35, 36, 37.

SECT. 34. When a creditor of a mortgager or pledger of any
2 personal property elects to attach the property so mortgaged
3 or pledged, he may do so, first paying or tendering to such
4 mortgagee, pledgee or holder, the full amount of the debt for
5 which it is so mortgaged, or pledged; and any such property
6 so redeemed, may be sold on execution as any other personal
7 property. R. S., c. 117, § 38.

SECT. 35. The officer shall apply the proceeds of the sale,
2 after deducting his fees and charges of sale, to the payment
3 of the sum so paid or tendered to the mortgagee, pledgee or
4 holder, and the interest thereon from the time of such pay-
5 ment; and the residue of such proceeds shall be applied to
6 the satisfaction of the plaintiff's judgment, in manner by law
7 provided. R. S. c. 117, § 39.

SECT. 36. Such plaintiff may have the same seized and
2 sold on the execution, as in other cases, subject to the rights
3 and interest of such mortgagee, pledgee or holder, without

4 paying or tendering payment of the debt due to the mortga-
5 gee, pledgee or holder.

R. S., c. 117, § 46. 1842, c. 31, § 12.

SECT. 37. When a warrant of distress is issued by any
2 court of county commissioners, and returned in whole or in
3 part unsatisfied, and remains unsatisfied, the party for whose
4 benefit it was issued, may maintain an action of debt on the
5 judgment on which it is founded, before the proper court of
6 the same county, the same as on a judgment of any other
7 court; and interest shall be allowed on the sum due and
8 included in the new judgment. R. S., c. 117, § 41.

SECT. 38. All executions or warrants of distress against a
2 town, shall be issued against the goods and chattels of the
3 inhabitants thereof, and against the real estate situated
4 therein, whether owned by such town or not: and the officer
5 executing such precept shall satisfy it by distress and sale of
6 the goods and chattels of the inhabitants, in the manner pro-
7 vided by law. R. S., c. 117, § 42.

SECT. 39. For want of sufficient goods and chattels to sat-
2 isfy the same, after diligent search, which fact the officer
3 shall certify in his return, he shall levy upon and sell so
4 much of the real estate in said town, by lots, as the same are
5 owned, occupied, or lotted out on the plan thereof, as may
6 be necessary to satisfy said precepts and expenses of sale.

R. S., c. 117, § 43.

SECT. 40. He shall advertise in the state paper, and also in
2 one of the newspapers printed in the county, where the lands
3 lie, if any, three weeks successively, the names of such
4 proprietors as are known to him, of the lands which he
5 proposes to sell, together with the amount of the execution or
6 warrant of distress; and, where the names of the proprietors
7 are not known, he shall publish the numbers of the lots or
8 divisions of said land; the last publication to be three months
9 before the time appointed for the sale. If necessary to
10 complete the sale, he may adjourn it from day to day, not
11 exceeding three days. He shall give a deed to the purchaser
12 of said land in fee, expressing in said deed the cause of sale.
13 The proprietor of the land, so sold, shall have a right to
14 redeem it at any time within one year from the time of sale,

15 on paying the sum for which it was sold, and the necessary
16 charges and interest thereon. R. S., c. 117, § 44.

SECT. 41. The owner of any real or personal estate so sold,
2 shall be entitled to recover against the town, in an action
3 of assumpsit, the full value thereof, with interest, at the rate
4 of twelve per cent. yearly, with costs of suit; and may prove
5 and recover the real value thereof, whatever was the price
6 at which it was sold. R. S., c. 117, § 45.

SECT. 42. When any such warrant of distress or execution
2 is issued against a town, any inhabitant thereof, or proprietor
3 of lands therein, may, before it is levied, or the sale is made,
4 pay his part or proportion thereof, to be ascertained by an
5 assessment thereof, made by the assessors of the town, which
6 they are required to make at the request of any inhabitant or
7 proprietor, or on notice given them by the county commis-
8 sioners. R. S., c. 117, § 46.

SECT. 43. Every person so paying his proportion to the
2 officer holding the warrant or execution, for the use of the
3 person interested, or to such person himself, shall be
4 discharged, both as to his person and his property, from such
5 warrant or execution. R. S., c. 117, § 47.

SECT. 44. If any such warrant or execution is levied on
2 the property of any person, who at the time has not paid his
3 proportion, every person having so paid, or that shall so pay
4 his part, as aforesaid, shall be discharged from all executions
5 that may be issued on any judgment against the inhabitants
6 of such town, on account of said levy, and his person and
7 estate shall forever be discharged. R. S., c. 117, § 48.

SECT. 45. The certificate of the major part of the assessors
2 of the town, shall be conclusive evidence of any person's
3 proportion thereof; and, being delivered to the officer, he
4 shall, on payment thereof, return the warrant or execution
5 satisfied for that sum, with the name of the person who
6 paid it. R. S., c. 117, § 49.

SECT. 46. The purchaser at auction of the right of any person
2 to a deed of lands on condition in a written contract to be

3 performed, shall have the same remedy by bill in equity to
 4 compel a conveyance of it, as mortgagers have against
 5 mortgagees. R. S., c 117, § 50.

Chapter 85.

BAIL IN CIVIL ACTIONS.

- Sect.* 1. Bail shall be by bond to the sheriff or other officer; bond returned with the writ.
 2. What bail he may require.
 3. In what cases the obligers shall be holden.
 4. Surrender of principal before entry; how to be done and effect thereof.
 5. Bastardy bond, sureties on may surrender principal.
 6. Names of bail to be entered on execution.
 7. Officer to notify bail; his fees to be paid.
 8. Surrender of principal in court.
 9. In case of avoidance, officer's duty, and liability of bail.
 10. Scire facias against bail.
 11. Pleadings and defense by bail.
 12. Surrender of principal on scire facias.
 13. Proceedings when bail is taken in a justice action.
 14. Surrender and commitment of principal in such case.
 15. Officers' fees and duty.
 16. Surrender in such case after judgment.
 17. Surrender before judgment.
 18. Remedy of bail against principal.

SECT. 1. When bail is taken on mesne process, it shall be
 2 by bond to the sheriff, if the process be served by him, or
 3 his deputy, otherwise to the officer making the arrest, with
 4 condition that the defendant shall appear and answer to the
 5 suit, and that he will abide the final judgment thereon, and
 6 not avoid. It shall be returned with the writ, and the clerk
 7 shall note on the writ that a bail bond is so filed.

R. S., c. 114, § 95, 98.

SECT. 2. No officer shall be obliged to accept a bail bond,
 2 unless signed by two sureties, at least, having sufficient
 3 property in the the county in which the principal is arrested,
 4 or held in custody; and if he takes a bail bond, with only
 5 one surety, he shall be liable to the plaintiff for any deficiency
 6 thereof. R. S., c. 114, § 96.

SECT. 3. A bail bond shall bind the obligors, though signed
2 by only one surety, or when signed by two or more sureties,
3 when all or any of them had not sufficient property in the
3 county. R. S., c. 114, § 97.

SECT. 4. Any bail may, before the action is entered,
2 exonerate himself from all liability, by surrendering his
3 principal to the common jail, in the county where the arrest
4 was made, or in the county where the writ is returnable, and
5 within fifteen days thereafter leaving with the jailer an
6 attested copy of the writ in process, whereby the arrest was
7 made, and of the return endorsed thereon, and of the bail
8 bond; and notifying, in writing, the plaintiff or his attorney
9 of the time and place of the commitment; and the jailer
10 shall receive him into custody, in the same manner as if the
11 officer who made the arrest had committed him.

R. S., c. 114, § 99.

SECT. 5. The sureties in a bond given by a person charged
2 as the father of a bastard child, may surrender the principal
3 at any time, as well before the entry of the prosecution, as
4 after, the same as bail in civil actions; and shall thereby be
5 discharged from their liability. R. S., c. 114, § 100.

SECT. 6. If judgment is rendered against the principal in the
2 action, in which the bail is taken, the clerk of the court or
3 justice of the peace, issuing the execution on the judgment,
4 shall, on the margin thereof insert the names of the persons
5 who became bail, their addition and place of abode, if they
6 are inserted in the bail bond; and, if the debtor is committed
7 to jail, the clerk or justice shall note, in like manner, the jail
8 to which he is committed. R. S., c. 118, § 2.

SECT. 7. The officer, holding the execution, fifteen days, at
2 least, before its expiration, whether the debtor has given bail
3 to the arresting officer, or to the jailer, shall notify the bail
4 personally, or by leaving a notice, in writing, by him signed,
5 at his usual place of abode, if in the officer's county, certifying
6 that he cannot find the principal debtor, nor property where-
7 with to satisfy the execution, for which he may demand and
8 receive of the bail the usual fee for the service of a writ, and
9 for travel from the dwelling house of the officer, to the
10 dwelling house of the bail, and shall minute in said notice

11 the amount of the fees, which the bail shall pay in twenty
 12 days, unless, one day, at least, before the execution is
 13 returnable, the bail shall produce and deliver to the officer the
 14 principal debtor. R. S., c. 118, § 3

SECT. 8. If the bail does not commit the principal to prison
 2 in the manner mentioned in the fourth section, they may at
 3 any time before final judgment in the original suit, bring the
 4 principal into court, where the action is pending, and deliver
 5 him into the custody thereof, and be thereby discharged of
 6 their suretyship. R. S., c. 118, § 4.

SECT. 9. In case of the avoidance of the principal, and
 2 return on the execution by the officer that he has had the
 3 same execution in his hands at least thirty days before the
 4 expiration thereof, and that the principal is not found, his
 5 bail shall be obliged to satisfy the judgment with interest
 6 thereon, from the time when it was rendered, unless they
 7 shall discharge themselves by surrendering the principal,
 8 before final judgment against them on the writ of scire facias,
 9 or by other sufficient defence. R. S., c. 118, § 5.

SECT. 10. When the principal so avoids, and his goods,
 2 and chattels, or lands cannot be found to satisfy the execu-
 3 tion, the original creditor shall have a writ of scire facias in
 4 his own name from the same court, against the bail, in vaca-
 5 tion, or in term time, to be sued out within one year from
 6 the time when judgment was rendered against the principal,
 7 and need not declare on the bail bond, but may merely allege
 8 that the defendants became bail in the original action.

R. S., c. 118, § 6, 7, 8.

SECT. 10. The bail may plead jointly or severally, that
 2 they never became bail, as alleged in the writ, and under
 3 that plea may avail themselves of every defence, which
 4 would avail them in an action of debt on the bond, upon the
 5 plea that it is not their bond; or may shew any special mat-
 6 ter of discharge, filing a brief statement thereof as by law
 7 provided. R. S., c. 118, § 9.

SECT. 12. The bail may surrender the principal in court,
 2 before final judgment on the scire facias, and deliver him
 3 to the order of court, and on paying all the costs on the scire
 4 facias, they shall be discharged, and the principal shall be

5 committed to the county jail, there to remain for the space of
6 fifteen days; and if the creditor does not within that time,
7 take him in execution, the sheriff shall discharge him on pay-
8 ment of the legal prison fees. R. S., c. 118, § 10, 11, 12.

SECT. 13. When bail is taken on mesne process, in an
2 action triable before a justice of the peace, and there is a
3 return on the execution issued on the judgment in such suit,
4 that the principal is not found, the justice may issue a scire
5 facias thereon against the bail to be served seven days before
6 the day of trial; and if no sufficient cause is shown to the
7 contrary, he may render judgment for the debt and costs
8 recovered, with interest thereon, from the time judgment was
9 rendered against the principal; and issue execution accord-
10 ingly, notwithstanding the debt and costs on the original
11 judgment, when added together, exceed the sum of twenty
12 dollars. R. S., c. 118, § 13.

SECT. 14. If the bail at any time before final judgment in
2 the original suit on scire facias, brings the principal before
3 the justice, and procures the attendance of the sheriff, his
4 deputy or a constable of the town in which the court is
5 holden, to receive him, the justice shall make a record of the
6 surrender, and shall order him into the custody of such officer,
7 to be committed to jail, to be proceeded with as mentioned in
8 the preceding sections; and on payment of costs arising on
9 the scire facias, the bail shall be fully discharged.

R. S., c. 118, § 14.

SECT. 15. Such officer shall attend before such justice for
2 such purpose aforesaid, when so requested; and shall be
3 allowed therefor, the same fees as for arresting and commit-
4 ting a defendant on mesne process; and for neglect of official
5 duty in the above case, he shall be answerable for all dama-
6 ges to the party injured thereby. R. S., c. 118, § 15.

SECT. 16. When the principal is surrendered to such jus-
2 tice, after final judgment in the original action, the bail shall
3 deliver to the officer a copy attested by the justice, of the
4 entry of the surrender, and the officer shall deliver it to the
5 jailer, on committing the prisoner to his custody; and this
6 shall be a sufficient warrant to the officer, for receiving and

7 conveying him to jail, and to the jailer for holding him in
8 custody. R. S., c. 118, § 16.

SECT. 17. If the principal is surrendered before final judg-
2 ment in the original suit, the bail shall deliver to the officer
3 a copy of the original writ, with the return indorsed thereon,
4 attested by the justice, and the officer shall deliver the same
5 copy to the jailer; and this shall be a sufficient warrant to
6 the officer and jailer, as mentioned in the preceding section.

R. S., c. 118, § 17.

SECT 18. Bail may have their remedy against their prin-
2 cipal, by an action on the case, for all damages sustained by
3 them, by reason of their suretyship. R. S., c. 118, § 18.

Chapter 86.

TRUSTEE PROCESS.

- Sect.* 1. In what actions trustee process may be used.
2. Form of the writ.
 3. Mode of service.
 4. Effect of service on the trustee.
 5. In what county the action shall be commenced.
 6. Insertion of additional names of trustees.
 7. Notice to principal, if absent from the state. Trustee may appear for him.
 8. What corporations may be summoned as trustees.
 9. Trustee, about to leave the state, may disclose before a justice.
 10. Course of proceeding in such case.
 11. Any trustee may so disclose, by consent.
 12. An inhabitant of another state may be adjudged trustee.
 13. Costs, if the trustee be discharged, the first term. If adjudged trustee, he may retain his costs.
 14. Disclosure to be sworn to.
 15. Lien for costs on specific articles in his hands.
 16. Proceedings against the principal, if the trustees be all discharged.
 17. Additional compensation, if trustee dwell in another county.
 18. Liability of trustee for not appearing at the first term.
 19. Joint liability for costs if several fail to appear.
 20. Exception in favor of trustees residing out of the county, or absent from the state, at the time of service.
 21. If the action fails, costs for defendant and trustee.
 22. No costs to trustee on discontinuance, unless he appear.
 23. Trustee living out of the county may appear by attorney.
 - 24, 25. Proceeding in such case.
 26. Disclosure, how sworn to.
 27. Trustee not appearing, to be defaulted.

28. Trustee may submit a statement of facts to the court.
29. Plaintiff may prove other facts, not stated nor denied in the disclosure.
30. Such proof may be submitted to the court or a jury.
31. Testimony to be in writing.
32. Proceedings, if trustee disclose an assignment of the principal's claim. Assignee may be summoned. If he appears, his title to be tried, If he does not appear his claim to be void.
33. Principal defendant may be a witness.
34. Form of judgment against principal and trustee.
35. Trustee may appear by consent, at a subsequent term, as of the first.
36. Executor or administrator liable as trustee for a debt or legacy.
37. If a person dies, after being adjudged trustee, the goods and effects are held in the hands of the administrator.
38. If trustee dies before judgment, his administrator may be cited.
39. If administrator do not appear, judgment may be rendered.
40. If he does not pay, scire facias to issue.
41. Proceedings if trustee dies within thirty days after judgment is rendered.
42. Manner of issuing execution if administrator is adjudged trustee.
43. Remedy on his bond if he neglects to pay.
44. Specific articles in trustee's hands to be delivered to the officer.
45. Remedy, if trustee refuses.
46. Mode of settling the value, as between the principal and trustee.
47. If part only is taken, balance to be delivered to the principal.
48. Officer to restore surplus proceeds of sale.
49. Trustee process, after commitment of the debtor. Effect thereof.
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54. Trustee not prevented from selling the property mortgaged.
55. Cases in which a person shall not be adjudged trustee.
56. Effect, if defendant in a suit is summoned as trustee of the plaintiff.
57. Costs in such cases.
- 58, 59, 60. Proceedings, if defendant in an action pending is summoned as trustee of the plaintiff.
61. Money or goods may be attached by trustee process before they are payable.
62. Proceedings, if trustee does not pay costs, when liable.
63. Goods fraudulently conveyed, may be held by trustee process.
64. Trustee may retain in his hands pay for any demand justly due him; but not for unliquidated damages.
65. Form of judgment against a trustee.
66. Discharge of trustee no bar to the claim of principal.
67. Scire facias against trustee.
- 68, 69, 70. Judgment on scire facias.
71. Liability for costs, if discharged on scire facias, not having been before examined.
72. If examined in the original suit, he may be examined again on scire facias.
73. Goods and effects liable to another attachment, if not demanded in thirty days. Exception.
74. If there is no second attachment, principal may recover them.
75. Demand, how made, if trustee is out of the state; how if he has no dwelling-place in the state.
76. Effect of judgment against trustee.

- 77. Penalty, if trustee discloses falsely.
- 78. Trustee exempt from costs on scire facias in certain cases.
- 79. In case of exception, the whole case may be re-examined and remanded.
- 80. Form and service of trustee process for justice courts.
- 81. In what county to be brought.
- 82. Default, if trustee does not appear.
- 83. Costs, if discharged.
- 84. May retain costs, if adjudged trustee.
- 85. Costs, on discontinuance.
- 86. Subsequent proceedings. Discharge of trustee, if judgment is less than five dollars. Exception.
- 87. How execution shall issue, if defendant or trustee removes from the county.
- 88. Proceedings, if trustee is discharged, living in a county different from plaintiff and defendant.

SECT. 1. All personal actions, except those of detinue, replevin, actions on the case for malicious prosecution, slander by writing or speaking, and those for assault and battery, may be commenced by trustee process, in the supreme judicial court; or when the amount demanded in damages is not less than five dollars, nor more than twenty dollars, before a municipal or police court, or a justice of the peace.

R. S., c. 119, § 1.

SECT. 2. The writ shall be in the form established by law, authorizing an attachment of goods and estate of the principal defendant in his own hands, and in the hands of the trustees; and may be varied from time to time, as the supreme judicial court may order.

R. S., c. 119, § 2.

SECT. 3. The officer serving the writ shall attach the goods and estate of the principal, of the value required, if so much can be found by him, and read the writ to him, or leave a copy of it at his last and usual place of abode; which shall be a sufficient service on the principal, whether any trustee is holden or not.

R. S., c. 119, § 3.

SECT. 4. Such service on the trustee, shall bind all goods, effects or credits of the principal defendant, entrusted and deposited in his hands or possession, to respond the final judgment in the action in like manner as goods or estate, when attached by the ordinary process.

R. S., c. 119, § 4.

SECT. 5. If all the trustees live in the same county, the action shall there be brought, and if they reside in different counties, the action shall be commenced in any county in

4 which one of them resides ; and in a trustee process against
5 a corporation aggregate, its residence shall be deemed to be
6 the county in which it has its established or usual place of
7 business, held its last annual meeting, or usually holds its
8 meetings.

R. S., c. 119, § 5.

SECT. 6. The plaintiff may insert the names of as many
2 persons, as trustees, as he may deem necessary at any time
3 before the process is served on the principal, but not after ;
4 and he may cause a further service to be made on any of the
5 trustees, if found expedient, if the service is afterwards made
6 or renewed on the principal ; but no costs for services shall
7 be taxed for the plaintiff in such case, except for that last
8 made.

R. S., c. 119, § 6.

SECT. 7. When the principal is out of the state at the time
2 of the service, and has no agent therein, the same notice
3 shall be given as is provided in the eighteenth section of
4 chapter eighty-one ; or the same proceedings may be had, as
5 is provided in section three, of chapter eighty-two, as they
6 may be severally applicable, unless, in the mean time, he
7 shall come into the state before the sitting of the court ; and,
8 when he does not appear in his own person, or by attorney,
9 any one or more of the trustees, having goods, effects or
10 credits in their hands, and having been adjudged trustees,
11 may appear in his behalf, and in his name plead and defend
12 the cause.

R. S., c. 119, § 7.

SECT. 8. All corporations, except counties, towns, school
2 districts and parishes, may be summoned as trustees, and the
3 writ served on them, as other writs on such corporations ;
4 and they may answer by attorney or agent, and make
5 disclosures, which shall be signed and sworn to by such
6 attorney or agent ; and the same proceedings shall thereupon
7 be had throughout, except necessary changes in form, as in
8 other cases of foreign attachment.

R. S., c. 119, § 8.

SECT. 9. When any person, summoned as trustee, is about
2 to depart from the state, or go on a voyage and not return
3 before the term of the court where he is summoned to appear,
4 he may apply to a justice of the peace and quorum of the
5 county, where he resides, for a notice to the plaintiff in the

6 suit, to appear before said justice at a place and time
7 appointed for taking his disclosure. R. S., c. 119, § 9.

SECT. 10. On service made and returned, according to the
2 order of the justice, the examination and disclosure shall be
3 taken and sworn to before the justice, and, being certified
4 and returned to court, the same proceedings may be had
5 thereon, as if it had been in court. R. S., c. 119, § 10.

SECT. 11. In any case, where a person has been summoned
2 as trustee, his examination and disclosure may be so taken,
3 when the plaintiff and trustee consent thereto.

R. S., c. 119, § 11.

SECT. 12. Any person, on whom a trustee process is served,
2 in any mode by law prescribed, shall be liable to be adjudged
3 trustee by the court, though he was not then, and never had
4 been, an inhabitant of this state; and the writ may be made
5 returnable in the county, in which either the plaintiff or
6 principal defendant resides. R. S., c. 119, § 12.

SECT. 13. If any supposed trustee comes into court at the
2 first term, and submits himself to examination, on oath, after
3 having in writing declared, that at the time of the service of
4 the trustee process upon him, he had not any goods, effects
5 or credits of the principal in his hands or possession, he shall
6 be entitled to his costs, in the same manner as in civil actions,
7 where issue is joined for trial; and if adjudged a trustee,
8 may deduct his costs from the amount in his hands.

R. S., c. 119, § 16, 17.

SECT. 14. The disclosure, when completed and subscribed
2 by the trustee, shall be sworn to by him in open court, or
3 before some justice of the peace. R. S., c. 119, § 19.

SECT. 15. Where any person is adjudged trustee for specific
2 articles in his hands, he shall have a lien thereon for his
3 costs; and the officer who disposes thereof on execution,
4 shall pay the trustee the amount due him for costs, and
5 deduct the same from the amount of sale, and account to the
6 creditor for the balance; the amount of such fees shall be
7 indorsed on the execution by the clerk, and shall be evidence
8 of the lien. R. S., c. 119, § 18.

SECT. 16. If all the persons, summoned as trustees, are
2 discharged, or the suit against them is discontinued, the

3 plaintiff shall not proceed against the principal defendant,
4 unless there has been sufficient personal service of the original
5 writ upon him ; but he may assume the defence of the suit.

R. S., c. 119, § 20.

SECT. 17. When the trustee, at the time the writ was
2 served on him, dwells in any county, other than that in which
3 the writ is returnable, the court shall, in case of his discharge,
4 allow him, in addition to his legal fee, a reasonable com-
5 pensation for his time and expenses, in appearing and
6 defending himself.

R. S., c. 119, § 21.

SECT. 18. If any person, resident in the county in which the
2 writ is returnable, is summoned, and neglects to appear and
3 submit to examination, at the return term, having no
4 reasonable cause to the contrary, he shall be liable for all
5 costs afterwards arising in the suit, to be recovered and paid
6 out of his own goods or estate, if judgment is rendered for
7 the plaintiff; unless recovered out of the goods or effects in
8 his hands, belonging to the principal.

R. S., c. 119, § 22.

SECT. 19. When several trustees, resident in the county
2 where the action is pending, being summoned, neglect to
3 appear, the judgment for costs shall be rendered against them
4 jointly.

R. S., c. 119, § 23.

SECT. 20. Persons summoned as trustees, resident out of
2 the county where the suit is pending, shall not be liable for
3 any costs, arising on the original process herein provided ;
4 and, if the person, summoned as trustee, is out of the state
5 at the time the writ is served on him, and appears at the
6 first term of the court, after his return, he shall be allowed
7 for his costs and charges in the same manner as if he had
8 appeared at the term when the action was entered.

R. S., c. 119, § 24.

SECT. 21. When the plaintiff does not support his action,
2 the court shall award costs against him, as well in favor of
3 the principal, as in favor of the persons summoned as trustees,
4 severally, who have appeared and submitted to examination
5 on oath ; and several executions shall issue accordingly.

R. S., c. 119, § 25.

SECT. 22. When a person, summoned as trustee, does not
2 come into court, and declare he had no property or credits of

3 the principal in his hands, when the writ was served, and
 4 submit himself to examination on oath, the court shall not
 5 award costs in his favor, though the suit is discontinued.

R. S., c. 119, § 26.

SECT. 23. A person, summoned as trustee, and then living
 2 in a county other than that where the writ is returnable,
 3 shall not be required to appear in person in the original suit,
 4 or in a suit on scire facias; but he may appear by attorney,
 5 and declare whether he had any goods or effects of the prin-
 6 cipal in his hands, when the writ was served; and thereupon
 7 offer to submit himself to examination on oath.

R. S., c. 119, § 27.

SECT. 24. If the plaintiff proceeds no further, the declara-
 2 tion shall be considered as true. R. S., c. 119, § 28.

SECT. 25. If the plaintiff thinks proper to examine such
 2 supposed trustee on oath, the answers may be taken in the
 3 county in which the trustee dwells, before a judge of the
 4 supreme judicial court, or any justice of the peace of the
 5 county. R. S., c. 119, § 29.

SECT. 26. In all cases, when a trustee has submitted him-
 2 self to examination on oath, in court, the answers to such
 3 examination may be sworn to before a judge of the court, or
 4 a justice of the peace; and being filed in court, shall have
 5 the same effect as if sworn to in open court.

R. S., c. 119, § 30.

SECT. 27. When any person is duly summoned as trustee,
 2 and neglects to appear and answer to the suit, he shall be
 3 defaulted, and thereupon adjudged trustee, as alleged.

R. S., c. 119, § 31.

SECT. 28. If any person, summoned, admits that he has, in
 2 his hands, goods, effects or credits, of the principal, or wishes
 3 to refer that question to the court upon the facts, he may,
 4 instead of the declaration before mentioned, make a declara-
 5 tion of such facts as he may deem material, and submit
 6 himself thereupon to a further examination on oath; and
 7 such declaration and further examination, if any, shall be
 8 sworn to as before provided. R. S., c. 119, § 32.

SECT. 29. The answers and statements, sworn to by any
 2 person, summoned, as a trustee, shall be considered as true,

3 in deciding how far he is chargeable, until the contrary is
 4 proved; but the plaintiff or trustee may allege and prove
 5 any other facts, not stated nor denied by the supposed trustee,
 6 which may be material in deciding that question.

R. S., c. 119, § 33. 1842, c. 31, § 13.

SECT. 30. Any question of fact, arising upon such ad-
 2 ditional allegations, may, by consent, be tried and determined
 3 by the court, or may be submitted to a jury, in such manner
 4 as the court directs. R. S., c. 119, § 34.

SECT. 31. All testimony, relating to the additional allega-
 2 tions of any party in such trials, shall be given by depositions,
 3 taken and filed in the usual manner. R. S., c. 119, § 40.

SECT. 32. When it appears, by the answers of any person,
 2 summoned as a trustee, that any effects, goods or credits in
 3 his hands, are claimed by a third person, in virtue of an
 4 assignment from the principal debtor, or in some other way,
 5 the court may permit such claimant if he sees cause, to appear
 6 and become a party to the suit, and maintain his right. If
 7 he does not appear voluntarily, notice may be issued and
 8 served on him, as the court directs; and if he appears, he
 9 may be admitted as a party to the suit, so far as respects his
 10 title to the goods, effects or credits in question; and allege
 11 and prove any facts not stated or denied in the disclosure by
 12 the supposed trustee, and such allegations shall be tried and
 13 determined, as in section thirty-four; but if, after due notice,
 14 he does not appear in person, or by attorney, the assignment
 15 shall have no effect to defeat the plaintiff's attachment.

R. S., c. 119, § 35, 36, 37, 38.

SECT. 33. Upon the trial between the attaching creditor
 2 and the person claiming as before mentioned, the principal
 3 defendant may be examined as a witness for either party, if
 4 there is no other objection to his competency except his
 5 being a party to the original suit. R. S., c. 119, § 39.

SECT. 34. When the plaintiff recovers judgment against
 2 the principal, and any person is summoned as trustee, who
 3 has not appeared and discharged himself, and against whom
 4 the suit has not been discontinued, the court shall award

5 judgment and execution against the goods, effects, and credits
6 in his hands, as well as against the principal in the usual
7 form.

R. S., c. 119, § 41.

SECT. 35. If there is any agreement between the plaintiff
2 and supposed trustee, that he may appear at a subsequent
3 term of the court, instead of the first term, saving to him the
4 advantages he would have on appearing and answering at
5 the first term, the same shall be allowed him by the court.

R. S., c. 119, § 42,

SECT. 36. Any debt or legacy, [due from an executor or
2 administrator, and any goods, effects and credits in his hands
3 as such, may be attached by trustee process.

R. S., c. 119, § 43.

SECT. 37. If any person summoned as a trustee in his own
2 right, dies before the judgment recovered by the plaintiff is
3 satisfied, the goods, effects and credits in his hands at the
4 time of attachment, shall remain bound thereby; and his
5 executors or administrators shall be liable therefor, in like
6 manner as if the writ had been originally served on them.

R. S., c. 119, § 44.

SECT. 38. If the person so summoned dies before judgment
2 in the original suit, his executor or administrator may appear
3 voluntarily, or may be cited to appear, in the same manner
4 as is provided in the case of the death of a defendant in a
5 common action; and the further proceedings shall then be
6 conducted in the same manner as if the executor or admin-
7 istrator had been originally summoned as a trustee; except,
8 that the examination of the deceased, if any had been taken
9 and filed, shall have the same effect as if he were living.

R. S., c. 119, § 45.

SECT. 39. If in such case, the executor or administrator
2 does not appear, the plaintiff, instead of suggesting the death
3 of the testator or intestate, may take judgment against him
4 by default or otherwise, as if he were living, and the execu-
5 tor or administrator shall pay on the execution the amount
6 which he would have been liable to pay to the principal
7 defendant; and he shall be thereby discharged from all de-
8 mands on the part of the principal defendant in the suit, for

9 the amount so paid, in like manner as if the executor or
10 administrator had been himself adjudged trustee.

R. S., c. 118, § 46.

SECT. 40. If the executor or administrator in the case last
2 mentioned, does not voluntarily pay the amount in his hands
3 the plaintiff may proceed by writ of scire facias, in like man-
4 ner as if the judgment in the first suit had been against the
5 executor or administrator himself as trustee; but if such
6 executor or administrator is discharged, he may recover costs
7 or not, at the discretion of the court. R. S., c. 119, § 47.

SECT. 41. If any person against whom execution issues as
2 trustee, is not living at the expiration of thirty days after final
3 judgment in the trustee suit, the demand to be made by force
4 of the execution, for continuing the attachment, as provided
5 in the seventy-third section, may be made on the executor or
6 administrator of the deceased person at any time within thirty
7 days after his appointment; and shall have the same effect
8 as if made within thirty days after the judgment.

R. S., c. 119, § 48.

SECT. 42. When an executor or administrator is adjudged
2 trustee, on account of goods, effects or credits in his hands or
3 possession, merely as executor or administrator, whether in a
4 suit originally commenced against him as a trustee, or against
5 the deceased, and whether in the original suit, or on a writ
6 of scire facias, the execution shall not be served on his own
7 goods or estate, nor on his person; but he shall be liable for
8 the amount in his hands, in like manner, and to the same
9 extent only, as he would have been to the principal defend-
10 ant, if there had been no trustee process.

R. S., c. 119, § 49.

SECT. 43. If, after final judgment against an executor or
2 administrator, for any certain sum due from him as trustee,
3 he neglects to pay it, the original plaintiff, in the foreign
4 attachment, shall have the same remedy for recovering the
5 amount, either upon a suggestion of waste, or by a suit on
6 the administration bond, as the principal defendant in the
7 foreign attachment would have had, upon a judgment recov-
8 ered by himself, for the same demand against the executor
9 or administrator.

R. S., c. 119, § 50.

SECT. 44. When any person, summoned as a trustee, is bound to deliver to the principal defendant any specific articles, he shall deliver them, or so much thereof as may be necessary, to the officer holding the execution; and they shall be sold by the officer, and the proceeds applied and accounted for, in the same manner, as if they had been taken on execution in common form. R. S., c. 119, § 51.

SECT. 45. If the trustee neglects or refuses to deliver them, or sufficient to satisfy the execution, the judgment creditor may have his remedy on a scire facias, as provided in sections from sixty-seven to seventy-two inclusive, of this chapter; and the debtor, his remedy for an overplus belonging to him, as at common law. R. S., c. 119, § 52.

SECT. 46. When, by the terms of the contract between the trustee and the principal debtor, any mode of ascertaining the value of the property to be delivered to the officer, is pointed out, the officer shall, on the application of the trustee, notify the principal debtor, previously to the delivery, that the value may be thus ascertained, as far as it may affect the performance of the contract; and, in other cases, the value of the property, as between the principal and the trustee, shall be estimated and ascertained by the appraisal of three disinterested men, chosen one, by the trustee, one by the officer, and one by the principal, if he see cause; and if he neglects or refuses, by the officer; and they shall all be duly sworn to appraise the same, and the officer, justice and appraisers, shall certify their respective doings on the execution. R. S., c. 119, § 53.

SECT. 47. When a part of such goods and articles is taken in execution as aforesaid, the trustee may deliver the residue to the principal, or tender it to him within thirty days after satisfaction of the execution, in the same manner as he might have delivered the whole. R. S., c. 119, § 54.

SECT. 48. Any surplus money, remaining in the hands of the officer, after satisfying the execution and fees, shall be paid to the principal, if within his precinct; and if not, to the trustee. R. S., c. 119, § 55.

SECT. 49. When a judgment creditor has caused the debtor to be committed in execution, and afterwards discovers goods,

3 effects, or credits of the debtor, not attachable by the ordinary
4 process of law, he may have the benefit of the trustee pro-
5 cess provided in this chapter, in the like manner as any
6 other creditor, if within seven days after the service of the
7 process, he discharges the body of the debtor from prison, by
8 a written direction to the jailer, stating the occasion and
9 reason of the discharge; but such discharge shall not annul
10 or affect the judgment. R. S., c. 119, § 56, 57.

SECT. 50. When any person summoned as a trustee, in his
2 disclosure states, that he had at the time the process was
3 served on him, in his possession, property not exempted by
4 law from attachment, mortgaged, pledged or delivered to him
5 by the principal defendant, to secure the payment of a sum
6 of money due to such supposed trustee, and that the princi-
7 pal defendant has a subsisting right to redeem the same by
8 payment of such money, the court or justice before which the
9 action is pending, shall order that on payment or tender of
10 such money, by the plaintiff to said alleged trustee, within
11 such time as the court orders; and while the right of
12 redemption exists, the person, so summoned, shall deliver
13 over the property to the officer serving the process, to be held
14 and disposed of in like manner, as if it had been attached on
15 mesne process; and in default thereof, that he shall be
16 charged as the trustee of the principal debtor; which order
17 shall be entered on the records of the court or justice.

R. S., c. 119, § 58.

SECT. 51. On the return of the scire facias against such
2 alleged trustee, if it appears that the plaintiff has, on his part,
3 complied with the order of the court or justice, and that such
4 alleged trustee has refused or neglected to comply therewith,
5 the court or justice shall enter up judgment against him, for
6 the amount so due, and returned unsatisfied on the execution,
7 if there should appear to be in his hands such an amount of
8 the property mortgaged, over and above the sum received by
9 him; but if not, then for the amount of said property, so
10 exceeding the above sum, if any; which amount of excess
11 shall, on the trial of the scire facias, be determined by the
12 court or jury.

R. S., c. 119, § 59.

SECT. 52. If, by the disclosure, it appears that the property
2 in the hands of the supposed trustee, was mortgaged, pledged

3 or subject to a lien to indemnify him against any liability, or
4 to secure the performance of any contract or condition, and
5 that the principal defendant has a subsisting right of redeem-
6 ing it, the court may order, that, upon the discharge of such
7 liability, or performance of such contract of condition, by the
8 plaintiff, within such time as the court or justice may order,
9 and while the right of redeeming exists, such alleged trustee
10 shall deliver over the property to the officer, to be by him
11 held and disposed of, as if it had been attached.

R. S., c. 119, § 60.

SECT. 53. The officer having sold on execution any personal
2 property delivered to him in virtue of this chapter, after
3 deducting the fees and charges of sale, shall pay the plaintiff
4 the sum by him paid or tendered to the trustee, or applied
5 in the performance of the contract or condition, or discharge
6 or extinguishment of the liability before mentioned, and the
7 interest from the time of such payment, tender or application
8 to the time of sale; and so much of the residue as is required
9 therefor, he shall apply in satisfaction of the plaintiff's
10 judgment, according to law; and he shall pay the balance, if
11 any, to the debtor, first paying the trustee his costs, accruing
12 before the service of the scire facias, as provided in the
13 thirteenth section of this chapter. R. S., c. 119, § 61.

SECT. 54. Nothing, contained in this chapter, shall prevent
2 the trustee from selling the goods in his hands, for the pay-
3 ment of the sum for which they were mortgaged, pledged or
4 otherwise liable, at any time before the amount due to him
5 is paid or tendered, as before mentioned, if the sale would
6 be authorized by the terms of the contract between him and
7 the principal defendant. R. S., c. 119, § 62.

SECT. 55. No person shall be adjudged a trustee,

First. By reason of any negotiable bill, draft, note or other
3 security, drawn, accepted, made or indorsed by him, except
4 in the cases provided in the sixty-third section of this
5 chapter;

Second. By reason of any money or other thing, received
7 or collected by him, as a sheriff or other officer, by force of
8 an execution or other legal process in favor of the principal

9 defendant in the trustee process, although the same has
10 been demanded of him, previously, by the defendant ;

Third. By reason of any money in his hands, as a public
12 officer, and for which he is accountable, as such merely, to
13 the principal defendant ;

Fourth. By reason of any money or other thing, due from
15 him to the principal defendant, unless it is, at the time of the
16 service of the writ upon him, due absolutely, and without
17 depending on any contingency ;

Fifth. By reason of any debt due from him on a judgment,
19 so long as he is liable to an execution thereon ;

Sixth. By reason of any amount due from him to the
21 principal defendant, as wages for his personal labor, or that
22 of his wife or minor children, for a time not exceeding one
23 month, next preceding the service of the process ;

Seventh. Where service was made on him by leaving a
25 copy, and, before actual notice of such service, or reasonable
26 ground of belief, that it has been made, he has paid the debt
27 due to the principal defendant, or given his negotiable security
28 therefor. R. S., c. 119, § 63. 1854, c. 85.

SECT. 56. When an action is brought for the recovery of a
2 demand, and the defendant is summoned as a trustee of the
3 plaintiff, the action shall be continued to await the disclosure
4 of the trustee, unless the court otherwise orders, and if the
5 defendant is adjudged trustee, the disclosure and the proceed-
6 ings thereon may be given in evidence on the trial of the
7 action, between the trustee and his creditor.

R. S., c. 119, § 13.

SECT. 57. If the amount disclosed is as large as the sum
2 recovered in the action, the trustee shall be liable to no costs
3 after the service of the trustee process upon him ; otherwise,
4 he shall be liable to legal costs. R. S., c. 119, § 14, 15.

SECT. 58. If during the pendency of an action, the defend-
2 ant is summoned as the trustee of the plaintiff, the first suit
3 may nevertheless proceed so far as to ascertain by a verdict
4 or otherwise, what sum, if any, is due from the defendant ;
5 but the court may, on motion of the plaintiff in the trustee
6 suit, continue it for judgment, until the termination of the
7 trustee suit, or until the attachment therein is dissolved by

8 the discharge of the trustee, or satisfaction of the judgment
9 otherwise. R. S., c. 119, § 64.

SECT. 59. If the first suit is not continued, and judgment is
2 rendered therein, the defendant shall not be adjudged after-
3 wards a trustee on account of the demand thus recovered
4 against him, so long as he is liable to an execution thereon.

R. S., c. 119, § 65.

SECT. 60. If before final judgment is rendered in the first
2 suit, the defendant in that suit is adjudged trustee in the
3 other, and pays thereon the money demanded in the first suit,
4 or any part of it, the fact shall be stated on the record of the
5 first suit, and judgment therein shall be rendered for the costs
6 due to the plaintiff, and for such part of the debt or damages
7 if any, as remains due and unpaid. R. S., c. 119, § 66.

SECT. 61. Any money or other thing due to the principal
2 defendant, may be attached before it has become payable, if
3 it is due absolutely and without any contingency, as before
4 mentioned; but the trustee shall not be compelled to pay or
5 deliver it before the time appointed therefor by the contract.

R. S., c. 119, § 67.

SECT. 62. If the person summoned as trustee, and liable for
2 costs as provided in the eighteenth section of this chapter,
3 shall not voluntarily pay them when demanded by the officer
4 serving the execution, he shall state the fact in his return on
5 the execution; and if it appears by the return that they have
6 not been paid by any one, the court shall award execution
7 against the person so summoned as a trustee, for the amount
8 of such costs.

R. S., c. 119, § 68.

SECT. 63. If any person summoned as trustee has in his
2 possession any goods, effects or credits of the principal
3 defendant, which he holds under a conveyance fraudulent
4 and void, as to the creditors of the defendant, he may be
5 adjudged a trustee on account of such goods, effects and
6 credits, although the principal defendant could not have
7 maintained an action therefor against him.

R. S., c. 119, § 69.

SECT. 64. Every trustee shall be allowed to retain or de-
2 duct out of the goods, effects and credits in his hands, all his
3 demands against the principal defendant, of which he could
4 have availed himself, if he had not been summoned as trust-

5 tee, whether by way of set-off on trial, or by a set-off of
6 judgments or executions between himself and the principal
7 defendant, except unliquidated damages for wrongs and inju-
8 ries; and he shall be liable for the balance only, after their
9 mutual demands are adjusted. R. S., c. 119, § 70, 71.

SECT. 65. When any person is adjudged trustee, it shall
2 not be necessary to specify in the judgment the sum for which
3 he is chargeable; but if on a writ of scire facias against him,
4 it appears that he is chargeable as trustee, the sum for which
5 he is chargeable, shall be expressed in the judgment.

R. S., c. 119, § 72.

SECT. 66. If any person summoned as a trustee, is dis-
2 charged; the judgment shall be no bar to an action brought
3 by the principal defendant against him for the same demand.

R. S., c. 119, § 73.

SECT. 67. When any person adjudged a trustee in the
2 original action, does not on demand of the officer holding the
3 execution, pay over and deliver to him the goods, effects and
4 credits in his hands, and the execution is returned unsatis-
5 fied, the plaintiff may sue out a writ of scire facias against
6 such trustee from the same court, or before the justice that
7 rendered the judgment, to show cause why judgment and
8 execution should not be awarded against him, and his own
9 goods and estate, for the sum remaining due on the judg-
10 ment against the principal defendant. R. S., c. 119, § 74.

SECT. 68. When such trustee, after such writ has been duly
2 served on him, neglects to appear and answer thereto, he
3 shall be defaulted; and if he has not been duly examined in
4 the original suit, judgment shall be rendered against him for
5 the whole sum, remaining due on such judgment against the
6 principal defendant.

R. S., c. 119, § 75.

SECT. 69. When all the defendants, in a writ of scire facias,
2 are defaulted, not having been examined in the original suit,
3 the court may enter up joint or several judgments, as the case
4 requires, and issue execution in common form.

R. S., c. 119, § 76.

SECT. 70. If any trustee, defaulted on the scire facias, was
2 examined in the original suit, judgment shall be rendered on
3 the facts stated in his disclosure, or proved at the trial, for

4 such part, if any remains in his hands, of the goods, effects
5 and credits, for which he is chargeable as trustee, or so much
6 thereof as is then due and unsatisfied on the judgment against
7 the principal defendant; but if it appears that such person
8 paid and delivered the whole amount thereof on the execu-
9 tion, issued on the original judgment, he shall not be liable
10 for any costs on the scire facias. R. S., c. 119, § 77.

SECT. 71. If the trustee appears, and answers to the
2 scire facias, and if he was not examined in the original suit,
3 he shall be liable to be examined in the same manner as he
4 might have been on the original suit; and if, on such
5 examination, he appears not to be chargeable, the court shall
6 render judgment against him for costs only, if resident in the
7 county, where the original process was returnable; but, if
8 not resident in such county, then he shall not be liable to
9 costs, nor shall he recover any costs. R. S., c. 119, § 78.

SECT. 72. If he had been examined in the original suit, the
2 court may permit or require him to be examined anew in the
3 suit of scire facias, and, in such case, he may prove any
4 matter proper for his defence, and the court may enter such
5 judgment, as law and justice require, upon the whole matter
6 appearing on such examination and trial.

R. S., c. 119, § 79.

SECT. 73. When any person is adjudged a trustee, if the
2 goods, effects and credits, in his hands, are not demanded of
3 him by virtue of the execution, within thirty days next after
4 final judgment, the attachment of them by the original
5 process shall be dissolved; and they shall be liable to
6 another attachment in like manner, as though the prior
7 attachment had not been made; but in those cases, where
8 the debt due from the trustee to the principal defendant is
9 payable at a future day, or specific property is in the hands
10 of the trustee, which he is bound to deliver at a future day,
11 the attachment shall continue until the expiration of thirty
12 days after such debt is payable in money, or the property
13 aforesaid is demanded of the trustee. R. S., c. 119, § 80.

SECT. 74. If there is no second attachment, the principal
2 defendant in the suit may recover the goods, effects and

3 credits, if not demanded, as aforesaid, within thirty days, in
4 like manner, as if they had not been attached.

R. S., c. 119, § 81.

SECT. 75. When the officer, holding the execution, cannot
2 find the trustee in the state, a copy of the execution may be
3 left at his dwelling-house, or last and usual place of abode,
4 with notice to the trustee, indorsed thereon, and signed by
5 the officer, signifying that he is required to pay and deliver
6 towards satisfying such execution, the goods, effects and
7 credits for which he is liable; when such trustee has no such
8 dwelling-house, or place of abode, in this state, such copy
9 and notice may be left at his dwelling-house, or place of
10 abode, without the state, or be delivered to him, personally,
11 by the officer, or any other person, by his direction; and
12 such notice, in either case, shall be deemed a sufficient
13 demand for all the purposes mentioned in the two preceding
14 sections.

R. S., c. 119, § 82. 1845, c. 136.

SECT. 76. The judgment against any person as trustee
2 shall discharge him from all demands by the principal
3 defendant, or his executors or administrators, for all goods,
4 effects and credits, paid, delivered, or accounted for by the
5 trustee thereon; and, if he is afterward sued for the same by
6 the defendant, or his executors or administrators, such judg-
7 ments and disposition of the goods, effects and credits as
8 above stated, being proved, shall be a bar to the action for
9 the amount so paid or delivered by him.

R. S., c. 119, § 83, 84.

SECT. 77. If any person, summoned as a trustee, upon his
2 examination, wilfully and knowingly answers falsely, he
3 shall, on due conviction, be adjudged guilty of perjury; and
4 shall pay, to the plaintiff in the suit, so much of the judgment
5 recovered against the principal defendant, as remains unsat-
6 isfied, with interest and costs, to be recovered in an action on
7 the case.

R. S., c. 119, § 85.

SECT. 78. If any person, summoned as trustee, is prevented
2 from appearing in the original suit, by absence from the
3 state, or any other reason, deemed sufficient by the court,
4 and a default is entered against him, he shall not be liable
5 for any costs on the scire facias; but, on his disclosure, the

6 court may allow him his reasonable costs and charges, to be
7 retained or recovered in like manner, as if he had appeared
8 in the original suit. R. S., c. 119, § 86.

SECT. 79. In all cases under the trustee process, in the
2 supreme judicial court, where exceptions are taken to the
3 ruling and decision of a single judge, as to the liability of the
4 trustee to be charged, the whole case may be re-examined
5 and determined by the law court, and remanded for further
6 disclosures or other proceedings, as, in the opinion of the
7 court, justice requires. 1849, c. 117.

SECT. 80. When a trustee process is issued by a municipal
2 or police court, or a justice of the peace, the writ shall be
3 in the form now in use, and may contain a direction to attach
4 property of the principal in his own hands, as well as in the
5 hands of the person named as trustee, and be served in like
6 manner, as a trustee process issued by a judicial court, seven
7 days before the return day. R. S., c. 119, § 87.

SECT. 81. The action may be brought in the county where
2 either of the supposed trustees resides; and if brought in any
3 other county, the action shall be dismissed, and the trustees
4 recover their costs. R. S., c. 119, § 88.

SECT. 82. When the person, summoned, does not appear
2 and answer to the suit, he shall be defaulted, and adjudged
3 trustee; and be liable to costs on scire facias.

R. S., c. 119, § 89.

SECT. 83. If he appears at the return day, and submits
2 himself to examination on oath, and shall thereupon be
3 discharged, he shall be allowed his legal costs.

R. S., c. 119, § 90.

SECT. 84. If, on such disclosure, he is adjudged trustee, he
2 may retain the amount of his costs. R. S., c. 119, § 91.

SECT. 85. When the plaintiff discontinues his suit against
2 the principal or trustee, the trustee shall be allowed his costs.

R. S., c. 117, § 92.

SECT. 86. All subsequent proceedings in such causes shall
2 be had, as is prescribed in this chapter in trustee processes;
3 the supreme judicial court varying forms as circumstances
4 require; but when, in such trustee process before a municipal
5 or police court, or a justice of the peace, the debt recovered

6 against the principal, shall be a less sum than five dollars,
7 the trustee shall be discharged; unless the judgment be so
8 reduced, by means of a set-off filed in the case.

R. S., c. 119, § 93, 94.

SECT. 87. If, after a judgment is rendered in a trustee
2 process before a municipal or police court, or justice of the
3 peace, the principal defendant or trustee removes out of the
4 county in which it was rendered, such court or justice may
5 issue execution against such debtor or trustee, directed to the
6 proper officer of any other county, where he is supposed to
7 reside.

R. S., c. 119, § 95.

SECT. 88. When an action is brought against a trustee in
2 a county, where the trustee resides, but where neither the
3 plaintiff nor defendant reside, and such trustee is discharged,
4 or the action discontinued as to him, the action shall still
5 proceed, unless it appears by plea in abatement, that such
6 trustee was collusively included in the writ for the purpose
7 of giving the court, in such county, jurisdiction; provided
8 there was a legal service on the principal defendant.

R. S., c. 119, § 96.

Chapter 87.

ACTIONS BY OR AGAINST EXECUTORS AND ADMINISTRATORS.

- Sect.* 1. Writs and executions to run against the estate of the deceased.
2. Executor or administrator personally liable for costs after becoming a party.
3. Execution; how awarded for damages and costs, and for costs.
4. Costs paid, chargeable against the estate.
5. Proceedings, if execution be returned unsatisfied.
6. Administrator de bonis non to prosecute or defend suits commenced by or against his predecessor.
7. Proceedings, in case of judgment recovered whilst the predecessor was in office.
8. Writs of error in such cases.
9. Executor or administrator to prosecute or defend actions commenced by or against the deceased.
10. Suggestion of death on record, and appearance by him.
11. Citation to appear; nonsuit or default, if he does not appear; not personally liable for costs in such case.
12. Certain actions survive, which do not at common law.
13. How prosecuted after decease of a party.
14. Measure of damages for trespass committed by the deceased.
15. Goods taken from an administrator by judgment in replevin, not assets.

16. If one of several plaintiffs or defendants dies, action to proceed by or against the survivor.
17. When all die, to proceed by or against the administrator of the last.
18. No executor or administrator bound to defend a suit within a year; such suit to be continued.
19. Limitation of actions against them.
20. Proceedings, if assets are received after four years.
- 21, 22. Uncertain or future claims, how preserved.
23. Action therefor, how commenced. Judgment and execution thereon.
24. Liability for unfaithful administration.
25. Liability of heirs and legatees in certain cases.
26. Actions for legacies not hereby barred.
27. Proceedings, if administrator dies, before completing administration.
28. Limitation of actions against new administrator.
29. Further liability if his predecessor gave no notice.
30. Notice by new administrator.

SECT. 1. All writs of attachment and execution, against
 2 executors and administrators for debts due from the deceased,
 3 shall run against his goods and estate in their hands.

R. S., c. 120, § 1.

SECT. 2. When a judgment for costs is rendered against an
 2 executor or administrator in any action commenced by or
 3 against him, or by or against the deceased, wherein the
 4 executor or administrator has appeared he shall be person-
 5 ally liable for the costs after he assumed the prosecution or
 6 defence.

R. S., c. 120, § 2.

SECT. 3. When the judgment is for debt or damages and
 2 costs, an execution for the debt or damages shall be awarded
 3 against the goods and estate of the deceased, in the hands of
 4 the executor or administrator, and an execution for the costs;
 5 and also in case judgment is for costs only, shall be awarded
 6 against the goods and estate of the executor or administrator,
 7 and also against his body, as if it were for his own debt.

R. S., c. 120, § 3, 4.

SECT. 4. All costs paid by executors or administrators, and
 2 for which they are made personally liable, shall be allowed
 3 to them in their administration account; unless the judge of
 4 probate decides that the suit was prosecuted or defended
 5 without reasonable cause.

R. S., c. 120, § 5.

SECT. 5. When an execution against an executor or admin-
 2 istrator, for a debt due from the estate of the deceased, is
 3 returned by the officer to whom it was delivered for service,

4 unsatisfied by reason of his being unable to find any goods
 5 or other personal estate of the deceased, the plaintiff may,
 6 upon a suggestion of waste, sue out a writ of scire facias
 7 against the executor or administrator; and if he does not
 8 appear after due service of the writ and shew cause to the
 9 contrary, execution shall issue against him for the full amount
 10 of the original judgment and interest thereon, not exceeding
 11 the full amount of the waste, if it can be ascertained.

R. S., c. 120, § 6.

SECT. 6. When an executor or administrator dies, resigns,
 2 or is removed from office, or when an unmarried woman,
 3 sole administrator or executor marries, pending an action
 4 brought by or against him, it may be prosecuted by or against
 5 any administrator de bonis non, after due notice given to him
 6 for this purpose; and if after such notice he he does not
 7 appear and become a party to the suit, judgment may be
 8 rendered against him in the same manner, as if he had
 9 voluntarily appeared; or as if the suit had been originally
 10 commenced by or against him, and he had afterwards been
 11 nonsuited or defaulted.

R. S., c. 120, § 7. 1852, c. 280. 1852, c. 275.

SECT. 7. When such vacancy happens after judgment has
 2 been rendered for or against the executor or administrator, a
 3 scire facias may be sued out by or against the administrator
 4 de bonis non; and after due service thereof, an execution
 5 may issue accordingly upon such judgment, in like manner
 6 as it may be done against an executor or administrator, in
 7 case of the death of a testator or intestate; except that the
 8 judgment against the first executor or administrator for costs,
 9 for which he was personally liable, shall be enforced against
 10 his executor or administrator, and not against the adminis-
 11 trator de bonis non.

R. S., c. 120, § 8.

SECT. 8. A writ of error, to correct any errors in such judg-
 2 ments may be brought by or against the administrator de
 3 bonis non, if any there be, in the same manner as it might
 4 have been brought by or against the original executor or
 5 administrator who was a party to such suit.

R. S., c. 120, § 9

SECT. 9. In all personal actions, the cause of which by law survives, when there is only one plaintiff or one defendant, and he dies after the commencement of the action and before judgment, his executor or administrator may prosecute or defend the action as hereafter mentioned in this chapter.

R. S., c. 120, § 10.

SECT. 10. When the action or appeal is entered, the death of the party shall be suggested on the record, and his executor or administrator may appear voluntarily, and prosecute or defend the action, as though it had been commenced by or against him.

R. S., c. 120, § 11.

SECT. 11. If he does not appear at the second term after the death of the party is suggested on the record, or after his appointment, the court, on motion of the surviving party, shall issue a citation to him to appear and take on himself the prosecution or defense of the suit. If he does not appear at the time mentioned in the citation, after service thereof on him, according to the order of court, he shall be nonsuited or defaulted, and judgment may be rendered against him; but if he does not take on himself the prosecution or defense of the suit, he shall not be personally liable for any costs in the action; but judgment shall be rendered for such costs, against the estate of the deceased in his hands.

R. S., c. 120, § 12, 13, 14. 1854, c. 98, § 1.

SECT. 12. In addition to actions, which survive, according to the principles of the common law, the following also shall survive, namely: actions of replevin, of trover, assault and battery, of trespass for goods taken and carried away, of trespass, and trespass on the case, for damage done to real or personal property, and actions for false representation made with intent to defraud applications for review, of actions and actions of review. R. S., c. 120, § 15. 1841, c. 1, § 21.

SECT. 13. All such actions may be originally commenced by or against executors and administrators; and, if commenced by or against the original party in his lifetime, they may be prosecuted or defended by his executor or administrator.

R. S., c. 120, § 16.

SECT. 14. In actions of trespass, and trespass on the case, commenced or prosecuted against the executor or the adminis-

3 trator of the trespasser, the plaintiff shall be entitled to
 4 recover only for the value of the goods taken, or for the
 5 damage actually sustained. R. S., c. 120, § 17.

SECT. 15. When judgment for a return, in an action of
 2 replevin, is rendered against an executor or administrator,
 3 the goods, returned by him, shall not be considered as assets
 4 in his hands, and if they had been inventoried, such judgment
 5 and return shall be a discharge for the executor or adminis-
 6 trator. R. S., c. 120, § 18.

SECT. 16. When there are several plaintiffs or defendants
 2 in a personal action, the cause of which survives, and any of
 3 them dies, the death shall be suggested on the record, and
 4 the cause shall proceed, at the suit of the surviving plaintiff,
 5 or against the surviving defendant. R. S., c. 120, § 19.

SECT. 17. When all the plaintiffs, or all the defendants die,
 2 the action may be prosecuted, or defended, by the executor
 3 or administrator of the last surviving plaintiff, or defendant.
 R. S., c. 120, § 20.

SECT. 18. No executor or administrator shall be compelled,
 2 in any court, to defend a suit commenced against him in his
 3 said capacity, within one year next after taking on him such
 4 trust; except actions brought for recovery of a demand, not
 5 affected by the insolvency of the estate, or by way of appeal
 6 from the decision of the commissioners of insolvency on the
 7 estate, for the purpose of a trial at common law; but such
 8 actions shall be continued at the expense of the plaintiff, till
 9 the year has expired; and any tender of a debt to a creditor,
 10 within such year, shall bar any such suit.

R. S., c. 120, § 21, 22.

SECT. 19. No executor or administrator, who has given
 2 bond and notice of his appointment, according to law, shall
 3 be held to answer to the suit of any creditor of the deceased,
 4 unless commenced within four years from the time of his
 5 giving bond, as aforesaid; except in the cases hereinafter
 6 mentioned. R. S., c. 120, § 23.

SECT. 20. When assets come to the hands of an executor
 2 or administrator, after the expiration of said four years, he
 3 shall account for, and apply the same, or be answerable at
 4 law, or to any process in the probate court, on account

5 thereof, for the benefit of any creditor in like manner, as if
6 received within four years; provided such action or process
7 be commenced within one year after the creditor has notice
8 of the receipt of such new assets, and not more than four
9 years after the same shall be actually received.

R. S., c. 120, § 24.

SECT. 21. When the demand of any creditor against the
2 estate of any person deceased, founded on any covenant,
3 contract or agreement, shall not accrue within the said four
4 years, the claimant may file such demand in the probate
5 office within said term; and the judge of probate shall direct
6 the executor or administrator, to retain in his hands assets,
7 if they are sufficient to satisfy such demand, unless the heirs
8 to such estate, or devisees thereof, shall give bond, with
9 sufficient surety or sureties in the opinion of the judge of
10 probate, to such executor or administrator, to respond the
11 same.

R. S., c. 120, § 25.

SECT. 22. When such bond is given, the executor or
2 administrator shall not retain in his hands assets for such
3 purpose; but the estate shall be liable in the hands of the
4 heirs and devisees, or those claiming under them, to answer
5 the said demand.

R. S., c. 120, § 26.

SECT. 23. When no bond is given, the action founded on
2 such claim, shall be brought against the executor or ad-
3 ministrator; and when such bond is given, the action shall
4 be brought on the bond; and if any thing is found due to
5 the claimant, he shall have judgment and execution therefor,
6 with costs.

R. S., c. 120, § 27, 28.

SECT. 24. When an executor or administrator is guilty of
2 unfaithful administration, he shall be liable to an action on
3 his administration bond, for all damages occasioned thereby.

R. S., c. 120, § 29.

SECT. 25. Where a creditor has a demand against the estate
2 of a person deceased, on any covenant, contract or agreement,
3 which could not be claimed until after the said term of four
4 years, such claimant, if he has not filed the same in the pro-
5 bate court, as mentioned in the twenty-first section, may have
6 his remedy against those who inherit the estate, or the devi-
7 sees thereof, against whom the demand lies, if such claim be

8 made within one year after the same becomes due ; and not
9 against the executor or administrator. R. S., c. 120, § 30.

SECT. 26. Nothing in this chapter shall bar any action
2 against an executor with the will annexed, for the recovery
3 of any legacy ; but the same may be commenced in the same
4 manner, as they might otherwise have been.

R. S., c. 120, § 31.

SECT. 27. When a vacancy happens in the office of execu-
2 tor or administrator, and the estate has not been fully
3 administered, and a new administrator thereon is appointed,
4 the time allowed for creditors of the deceased, for bringing
5 their actions, shall be enlarged, as follows, viz: to so much
6 of the four years, provided for the limitation of said actions,
7 as expired, while the former executor or administrator con-
8 tinued in office, shall be added so much time after the
9 appointment of the new administrator, as shall make five
10 years in the whole ; and the new administrator shall not be
11 held to answer to the suit of any creditor, commenced after
12 the expiration of said five years, except as provided in the
13 following section.

R. S., c. 120, § 32.

SECT. 28. Every such new administrator shall, in all cases,
2 be liable to the actions of the creditors, for the space of two
3 years after he has given bond for the discharge of his
4 trust, although the whole time allowed to the creditors, is
5 thereby extended beyond the five years.

R. S., c. 120, § 33.

SECT. 29. If the former executor or administrator, did not
2 give notice of his appointment, according to law, the new
3 administrator shall be liable to the actions of the creditors
4 for the space of four years from the date of his bond.

R. S., c. 120, § 34.

SECT. 30. Such new administrator shall give notice of his
2 appointment in the same manner as an original administrator ;
3 and, failing so to do, he shall have no benefit from the
4 limitations contained in this chapter. R. S., c. 120, § 35.

Chapter 88.

PARTITION OF REAL ESTATE BY THE SUPREME JUDICIAL COURT.

- Sect.* 1. Tenants in common, &c., bound to make partition.
2. Petitions for partition. Estate to be described.
3. Cotenants to be named, if known.
4. In such case, petition may be filed and served in vacation.
5. If cotenants are not named, court to order notice.
6. Notice returnable in the county where the lands lie.
7. New notice, in case of failure.
8. Persons not notified may appear, and contest, at any time before final judgment.
9. Guardians for the suit.
10. Pleadings or brief statements by respondents.
11. Replications.
12. Costs for respondent, if petition fails.
13. Costs, if petitioner holds all, or a part only, of what he alleges.
14. Pleadings and costs on writs of partition.
15. Who may join in a petition. Proceedings, if a petitioner dies, or his share is alienated.
16. Death of a party, not to abate a suit.
17. Interlocutory judgment.
18. Appointment of Commissioners.
19. Shares to be set off in severalty or in common.
20. Improvements made by tenant, to be included in his share.
21. Commissioner to be sworn.
22. Appointment of guardians or agents for persons absent or incapacitated.
23. Commissioners to give notice.
24. All must act; a majority may decide.
25. Proceedings, if it cannot be equally divided.
26. Payment of expenses of partition.
27. New partition in certain cases, if a part owner is out of the state, and not notified by the commissioners.
28. Mode of proceeding.
29. Return of the commissioners. Acceptance and record thereof.
30. Recommitment.
31. Final judgment, how far conclusive.
32. Part owner out of the state, during the pendency of the partition, may petition for new partition in certain cases.
33. Persons claiming in severalty, who do not appear, not concluded by judgment for partition.
34. How far concluded, if claiming a share set off to another person.
35. Mode of proceeding to recover such share.
36. Proceedings by a part owner, for whom no share was left, to recover the same.
37. New partition, if one shall be evicted of the part assigned to him.
38. Mortgage, or other lien, attaches to the part set off in severalty.
39. Lots reserved for public uses to be set off by commissioners in making partition.

Partition of Real Estate.

SECT. 1. All persons seized of any lands or other real estate, 2 in fee simple or for life, or into which they have a right of 3 entry, as tenants in common, joint tenants, or coparceners, 4 may be compelled by writ of partition at common law, to 5 divide the same. Persons seized as tenants in common of a 6 saw-mill or grist-mill, may have partition of the time each shall 7 occupy the mill, in the same manner as of real estate, as in 8 this chapter is provided; and the court making such partition 9 of time of occupancy, may make all necessary decrees and 10 orders in relation to the rights of the parties, that law or 11 justice require. R. S., c. 121, § 1. 1848, c. 56.

SECT. 2. Any person seized, in fee simple or for life, of any 2 lands or other real estate, or, into which he has a right of 3 entry, as tenant in common, joint tenant or coparcener, 4 and any person, possessed thereof, or having a right of entry 5 for a term of years, as tenant in common with others, may 6 apply to the supreme judicial court, held in and for the 7 county where such real estate is situated; describing in his 8 petition, in a clear and intelligible manner, the estate whereof 9 he claims partition, and stating what proportion he claims to 10 be interested in. R. S., c. 121, § 2.

SECT. 3. Such petitioner must allege, in his petition, 2 whether he claims partition of his proportion, as a fee simple 3 estate, or an estate for life, or a term of years, and who are the 4 cotenants of the estate, and their place of residence, so far 5 as known to him; and if any or all the cotenants are un- 6 known to him, he must so state in his petition.

R. S., c. 121, § 3, 4.

SECT. 4. When the cotenants, alleged, are all named in the 2 petition, it may be filed in vacation, in the clerk's office; and 3 a copy thereof, duly attested, served on each of the alleged 4 cotenants in person, or left at his usual place of abode, twenty 5 days before the session of the court to which it is addressed, 6 shall be one sufficient mode of notice. When any such co- 7 tenant is not resident in the state, any justice of the court 8 may, in vacation and before entry of the process, make his 9 order, by him signed on the petition, directing in what

10 manner he shall be notified; and the order complied with,
11 shall be a sufficient service to such cotenant.

R. S., c. 121, § 5. 1848, c. 43.

SECT. 5. When the cotenants are not all named in the
2 petition, the court to which it is presented, shall order what
3 kind of notice shall be given to the parties interested as co-
4 tenants; and such notice shall be given accordingly.

R. S., c. 121, § 6.

SECT. 6. Such a petition, as is mentioned in the preceding
2 section, may be presented to the supreme judicial court in any
3 county, but the order of notice shall be made returnable to
4 the court, when held in the county in which the lands lie;
5 and the cause shall be heard and determined in such county.

R. S., c. 121, § 7.

SECT. 7. The court may order such further notice, as they
2 may deem proper, when the order of notice has not been
3 complied with, or the notice was imperfect or insufficient.

R. S., c. 121, § 8.

SECT. 8. When a person interested is not named in the
2 petition, or is out of the state, and has not had notice and an
3 opportunity to appear and answer to the suit, he may, on
4 motion to the court, at any time before final judgment, appear
5 and defend.

R. S., c. 121, § 9.

SECT. 9. The court shall assign a guardian for the suit, for
2 any infant or insane person, interested in the premises.

R. S., c. 121, § 10.

SECT. 10. Any person interested in the premises, may
2 appear and allege jointly with the other respondents, or
3 separately, any matter tending to show that the petitioner
4 ought not to have partition, as prayed for, in whole or in
5 part; and this may be done in form of a brief statement,
[6 without formally pleading any general issue.

R. S., c. 121, § 11.

SECT. 11. To such brief statement, the petitioner may
2 reply in the form of a counter brief statement, that such
3 respondent has no interest in the premises, or right to be
4 heard; and any other matter, to show the insufficiency of
5 his brief statement.

R. S., c. 121, 12.

SECT. 12. If it appears that the respondent has no estate or
2 interest in the lands, he shall be no farther heard, and the
3 petitioner shall recover of him the costs, attending the trial.

R. S., c. 121, § 13.

SECT. 13. If, on trial, it appears that the petitioner holds a
2 less share or proportion in common, than he has alleged in
3 his petition, the respondent shall recover his costs, though
4 judgment is rendered for the petitioner to have an assignment
5 in severalty of the part, which he in fact holds in common ;
6 but, if it appears that the petitioner is entitled to have
7 partition, and an assignment of the part, described in his
8 petition, he shall recover costs of the respondent.

R. S., c. 121, § 14.

SECT. 14. In all actions, at common law, for partition, the
2 like rules of proceeding shall be observed in the trial, as to
3 the filing of brief statements and counter statements, as in
4 cases of petition for partition ; and costs shall be taxed upon
5 like principles.

R. S., c. 121, § 15.

SECT. 15. Tenants in common, joint tenants, and coparce-
2 ners, may, all or any of them, join, or sever, in petitions for
3 partition ; and when they join, and either petitioner dies or
4 conveys his share, pending the petition, the court may allow
5 an amendment of the petition ; and his name may be erased,
6 and the names of his heirs, devisees or grantees, inserted in
7 his stead ; and they, with the other petitioners, may proceed
8 in the cause for their [shares ; and the heirs devisees, or
9 grantees of a several petitioner, may be inserted as petitioners
10 in his stead.

R. S., c. 121, § 16. 1842, c. 31 § 14.

SECT. 16. The death of a party to the petition, shall not
2 abate it ; but the court may cite in the heirs at law, or exec-
3 utor or administrator of the deceased party, and cause due
4 notice to be served upon them ; and they shall thereupon be
5 made parties to the process, and the court may render such
6 judgment, with costs, in such case, as the law and facts may
7 require.

1854, c. 97.

SECT. 17. When it appears, on trial or default, that the
2 petitioner is entitled to have partition for the share by him

3 claimed, or a less share, the court shall enter the interlocu-
4 tory judgment, that partition be made. R. S., c. 121, § 17.

SECT. 18. The court having entered the interlocutory judg-
2 ment shall appoint three or five disinterested persons, as
3 commissioners, to make the partition, and to set off to the
4 petitioners the shares belonging to them; which shall be
5 expressed in the warrant. R. S., c. 121, § 19.

SECT. 19. When there are several petitioners, they may
2 have their shares set off together, or in one body; or each one
3 may have his assigned in severalty, at his election.

R. S., c. 121, § 20.

SECT. 20. In all cases of partition, when there has been a
2 sole and exclusive possession and occupation of the real
3 estate to be divided, by any tenant in common, by mutual
4 consent, and improvements have by him been made thereon,
5 by buildings, or otherwise, the commissioners shall assign to
6 such tenant his share out of the portion on which his im-
7 provements have been made; and in all cases of partition,
8 the commissioners shall take into consideration the value of
9 improvements made by any tenant in common, and make
10 their assignments in conformity therewith. 1855, c. 157.

SECT. 21. The commissioners before proceeding to the dis-
2 charge of their duty, shall be sworn before a justice of the
3 peace, faithfully and impartially to perform it; and the jus-
4 tice administering the oath, shall make his certificate thereof
5 on the warrant. R. S., c. 121, § 21.

SECT. 22. Where any person, insane or incapacitated to
2 take care of his own business, is interested, a guardian shall
3 be appointed for him, if living in the state; and an agent or
4 agents for all those interested, who had been out of the state
5 one year at the time the petition was presented, and had not
6 returned when partition is ordered. R. S., c. 121, § 22.

SECT. 23. The commissioners shall give sufficient notice of
2 the time and place for making the partition, to all concerned,
3 who are known and within the state, that they may be pres-
4 ent at the making thereof. R. S., c. 121, § 23.

SECT. 24. All the commissioners shall be present at the
2 performance of the duties assigned them; but the acts of a
3 majority of them shall be valid. R. S., c. 121, § 24.

SECT. 25. When any message, tract of land or other real estate is of greater value than either party's share of the estate to be divided, and cannot at the same time be subdivided without great inconvenience, it may be assigned to one of the parties, by his paying such sum of money to the parties who thereby shall have less than their share of the real estate, as the commissioners award; but in such case the partition shall not be established by the court until the sums so awarded, are paid to the parties entitled thereto, or secured to their satisfaction. R. S., 121, § 25.

SECT. 26. When partition is made, if any of the petitioners neglects or refuses to pay his proportion of the charges attending the partition, an account of such charges shall be laid before the court, and all just proportions settled after notice to all concerned; and the court may issue execution against the delinquents interested. R. S., c. 121, § 26.

SECT. 27. If any part owner shall have a larger share set off to him than his true and real interest, or more than equal in value to the proportion it was set off for, then any aggrieved part owner who at the time the partition was made was out of the state, and not notified in season to prevent it, or his heirs or assigns may at any time within three years after the same was made, apply to the court which made the partition, and the court shall cause partition thereof to be made anew. R. S., c. 121, § 27. 1852, c. 235.

SECT. 28. In such new partition, the commissioners need not make a new division of the premises; but so much and no more, shall be taken off from any share, as the same is considered more than the proportion of the whole it was designed for, estimating such lands or real estate, as in the state they were in when first divided; and in case any improvements have been made on the part that may by such new partition be taken off as aforesaid, the part owner who made such improvements, shall have reasonable satisfaction made him by the part owners to whose share it is added, by the estimation of the commissioners; and the court which ordered the partition may issue execution for such satisfaction and the costs of the new partition, taxed and allowed by the court. R. S., c. 121, § 28.

SECT. 29. The commissioners shall make return of their
2 proceedings under their hands, with their warrant, to the
3 court which appointed them; and if their doings are con-
4 firmed by the court, judgment shall be thereupon rendered,
5 that the partition be firm and effectual forever; and the
6 return shall then be recorded in the clerk's office, and also in
7 the registry of deeds for the county or registry district where
8 the lands lie. R. S., c. 121, § 29.

SECT. 30. For good and sufficient reasons, the report of the
2 commissioners may be recommitted or set aside; whereupon
3 the same proceedings shall be had as before directed.

R. S., c. 121, § 30.

SECT. 31. Such final judgment, confirming the partition,
2 shall be conclusive as to all rights both of property and pos-
3 session of all parties and privies to the judgment; including
4 all persons who might by law have appeared and answered
5 to the petition, except as hereinafter provided.

R. S., c. 121, § 31.

SECT. 32. If any person who was a part owner with the
2 petitioner, and for whom a share is left upon the partition,
3 was out of the state when the notice to him was served,
4 and did not return in time to appear and answer to the par-
5 tition, he may at any time within three years after final
6 judgment, apply to the same court for a new partition of the
7 premises; and if it appears to the court, that the share left
8 for the applicant was less than he was entitled to, or that the
9 part left was not at the time of the partition, equal in value
10 to his share in the premises, they may order a new partition,
11 which shall be made in the manner before provided.

R. S., c. 121, § 32.

SECT. 33. If any person who has not appeared and
2 answered to the petition for partition, claims to hold in sev-
3 erally the premises described therein, or any part thereof, he
4 shall not be concluded by the judgment for partition; but
5 may bring his action for the land claimed, against any or all
6 of the petitioners or respondents, or of the persons holding
7 under them, as the case may require, within the same time
8 in which he might have brought it, if no such judgment for
9 partition had been rendered. R. S., c. 121, § 33.

SECT. 34. When any person who has not appeared and answered as aforesaid, claims the share assigned or left for any of the supposed part owners in the judgment for partition, he shall be concluded by the judgment, so far as it respects the partition and the assignment of shares, in like manner as if he had been a party to that suit; still, he shall not be prevented thereby from bringing his action for the share claimed by him, against the person to whom it was assigned, or for whom it was left. R. S., c. 121, § 34.

SECT. 35. Such action shall be brought against the tenant in possession, in like manner as if the demandant had originally claimed the particular piece demanded, instead of an undivided part of the whole land; and it may be brought in the same time in which it might have been brought, if no judgment for partition had been rendered.

R. S., c. 121, § 35.

SECT. 36. If any person who has not appeared and answered as aforesaid, claims any part of the premises described in the petition, as a part owner with those who were parties to the suit, or any of them, and if the part or share so claimed, was not known, or not allowed or left for him in the partition process, he shall be concluded by the judgment, so far as it respects the partition; but he shall not be prevented from bringing an action for the share claimed by him, against each of the persons who hold any part of the premises under the judgment; and if he prevails in such action, instead of his being entitled to a new partition of the whole premises, he shall recover against each of the persons holding under the judgment for partition, the same proportion held by him, that the demandant was entitled to claim out of the whole premises, before partition was made. R. S., c. 121, § 36.

SECT. 37. If any person to whom a share has been assigned, or left, is evicted thereof by any person, who at the time of the partition, had an elder and better title, than those who were parties to the judgment, he shall be entitled to a new partition of the residue, in like manner as if no partition had been made. R. S., c. 121, § 37.

SECT. 38. Any person, having a mortgage, attachment, or other lien on the share in common, of any part owner, shall

3 be bound by the judgment, so far as it respects the partition ;
 4 but his lien shall remain in full force upon that part, which
 5 is assigned to, or left for such owner. R. S, c.. 121, § 38.

SECT. 39. In any process for the partition of a tract of
 2 land, in which certain lots or proportions of such tract are
 3 reserved for public uses, the court shall also order the com-
 4 missioners, appointed to make the partition, first to set off,
 5 by metes and bounds, such reserved lots, or proportions, of
 6 an average quality and situation of the lands of said tract,
 7 and make return of such location into the land office, of the
 8 state, with a description of its quality and location, and
 9 then proceed to execute the other duties, assigned them by
 10 the court ; and the return, being accepted by the court, and
 11 recorded as before provided, shall be valid, as a location of
 12 such reserved lands. R. S., c. 121, § 40.

Chapter 89.

GRANTING REVIEWS, AND ACTIONS OF REVIEW.

- Sect.* 1. In what cases the supreme judicial court may grant reviews.
2. Notice and application, where filed.
 3. Only one review, to be granted; limitation of application.
 4. Mode of petitioning, on the ground of newly discovered evidence.
 5. Court may stay execution, on bond being filed.
 6. In what court a writ of review shall be prosecuted. Entry and filing papers.
 7. Form of the writ.
 8. Mode of service.
 9. Attachment of property.
 10. 11. Pleadings. and issue.
 12. Evidence and proceedings.
 13. Judgment.
 14. Costs.
 15. Original attachment of bail, not continued by review.
 16. Form of judgment, if damages are reduced.
 17. Form, if damages are increased.
 18. Provision, in cases of replevin and set-off.

SECT. 1. The justices of the supreme judicial court may
 2 grant a review in all the civil actions, including petitions for
 3 partition, proceedings in court for the location of reserved
 4 lands, prosecutions for the maintenance of bastard children,
 5 actions wherein judgment has been rendered by a justice of

6 the peace, or judge of a municipal or police court, whenever
7 they judge it to be reasonable and for the advance of justice,
8 without being limited to particular cases. The trial, when
9 a review is granted, shall be in the supreme judicial court.

R. S., c. 123, § 1, 2, 10. 1850, c. 183, § 1.

SECT. 2. No review shall be granted, until due notice has
2 been given to the adverse party. The application for a
3 review may be filed in any county, and the order of notice
4 made returnable in the county where the judgment was
5 rendered.

R. S., c. 123, § 3, 4.

SECT. 3. Not more than one review shall be granted in
2 the same action. No review shall be granted, unless appli-
3 cation is made therefor, within three years next after the
4 rendition of the judgment, complained of.

R. S., c. 123, § 5, 6.

SECT. 4. When an application for a review is filed, if one
2 of the grounds thereof, is the alleged discovery of new evi-
3 dence, the substance of such new evidence, and the names
4 of all the witnesses by whom the allegation is intended to
5 be proved, must be stated in the application, under oath.

R. S., c. 123, § 7.

SECT. 5. On application for a review by a defendant in a
2 personal action, the court may, in their discretion, in term
3 time or in vacation, stay execution on the judgment com-
4 plained of, or grant a supersedeas, upon his filing in court
5 his bond, with sureties to be approved by the court, or such
6 person as they may appoint, in a penal sum, equal to double
7 the amount of the damages and costs, conditioned to pay said
8 amount, if such should be the final judgment on the review,
9 with interest thereon, from the date of the bond up to the
10 time of rendition of judgment in the action on the bond, at
11 the rate of twelve per cent. annually.

R. S., c. 123, § 8. 1844, c. 95, § 3.

SECT. 6. When a person is entitled, as a matter of right, to
2 a review of an action, as is provided in section six of chapter
3 eighty-two, or when a review is granted by the court, a writ
4 of review shall be sued out and prosecuted in the supreme
5 judicial court, in the county in which the action reviewed,
6 was brought. The action shall be entered at the next term

7 after the review is granted, unless, for special reasons, the
8 court grants leave to enter it at the second term. The
9 plaintiff shall produce in court, there to be filed, certified
10 copies of the writ and judgment, and all proceedings in the
11 former suit, and the originals or copies of all depositions,
12 used and filed therein. R. S., c. 124, § 1, 5.

SECT. 7. It shall not be necessary, in the writ of review, to
2 recite at length the writ and proceedings in the original suit,
3 but it may merely contain a summons to the defendant to
4 appear and answer to the plaintiff in the review of an action
5 which was brought by the plaintiff; and such suit, and the
6 judgment therein, may be described and identified in a con-
7 densed form, so as to render it intelligible and sufficiently
8 certain. R. S., c. 124, § 2.

SECT. 8. The writ of review may be served in the same
2 manner as other writs; or, when the defendant is not an
3 inhabitant of, or found in the state, it may be served on the
4 person who appeared as his attorney, in the original suit.
R. S., c. 124, § 3.

SECT. 9. If the writ of review is sued out by the original
2 plaintiff, he may cause the defendant's property to be attached
3 as might have been done in the original suit, and the form
4 of the writ may be varied accordingly. R. S., c. 124, § 4.

SECT. 10. The cause shall be tried on the issue joined in
2 the former suit; but the court may allow amendments in
3 any of the pleadings, as they might have done in the original
4 action, or they may admit additional issues, or brief state-
5 ments. R. S., c. 124, § 6.

SECT. 11. If the former judgment was rendered on default
2 or without any issue joined, the proper pleadings shall be
3 made on the trial of the review, and the cause be tried
4 thereon. R. S., c. 124, § 7.

SECT. 12. Each party may introduce any legal evidence,
2 whether produced on the former trial or not; and the cause
3 shall be disposed of by verdict, nonsuit, default or otherwise,
4 as if it were an original suit. R. S., c. 124, § 8.

SECT. 13. Judgment on the review shall be given, as the
2 merits of the cause, upon law and evidence, require, without

3 any regard to the former judgment except as is hereinafter
4 mentioned. R. S., c. 124, § 9.

SECT. 14. The party, prevailing in the review, shall recover
2 his costs, but this shall not prevent the court, when granting
3 a review on petition, from imposing on him reasonable terms,
4 as to costs. R. S., c. 124, § 10.

SECT. 15. No attachment made, or bail taken, in the original
2 action, shall be holden to satisfy the judgment rendered on
3 the review. R. S., c. 124, § 11.

SECT. 16. If the sum recovered by the plaintiff in the original
2 action, is reduced on the review, the original defendant shall
3 have judgment and execution for the difference, with his
4 costs; or, if the former judgment is not satisfied, one judg-
5 ment may be set off against the other, and an execution shall
6 issue for the balance. R. S., c. 124, § 12.

SECT. 17. If the original plaintiff recovers on the review a
2 greater sum for debt or damage, than was awarded to him
3 on the original judgment, he shall have judgment and exe-
4 cution for the excess, and costs on the review.

R. S., c. 124, § 13.

SECT. 18. In review of actions of replevin, and in actions
2 where an offset is filed, the defendant shall be considered, so
3 far as it respects the damages, that may be awarded to him,
4 in the original action, or on a review, like a plaintiff in other
5 actions. R. S., c. 124, § 14.

Chapter 90.

MORTGAGES OF REAL ESTATE.

- Sect.* 1. How mortgages of real estate are made.
2. Mortgagee may enter before breach, unless otherwise agreed.
3. Modes of obtaining possession for foreclosure.
4. Foreclosed in three years.
5. Mode of foreclosing without taking possession.
6. Mortgager may redeem within three years.
7. Form of declaring in a suit to obtain possession on mortgage. Conditional judgment, and judgment as at common law, in certain cases.
8. Form of conditional judgment; form of judgment when condition is for some act other than payment of money.
9. Judgment for defendant if nothing be due.

10. Action for foreclosure by executor or administrator.
11. Mortgages to be assets in the hands of administrators, who are to be seized to to the use of heirs.
12. Against whom action on a mortgage shall be brought.
- 13, 14. Proceedings in equity to redeem a mortgage.
15. Courts to order notice, if mortgagee be out of the state.
16. Provisions for redemption when the mortgagee is out of the state.
17. Limitation of such bill in equity.
18. Court may allow other persons joined as defendants, and notified.
19. Award of execution on decree of court.
20. Deduction of rents and profits from the sum brought into court for redemption.
21. State treasurer may discharge or foreclose mortgagees made or assigned to the stato.
22. Bill in equity for redemption may be filed against the state.
23. Where to be filed, and proceedings thereon.
24. On decease of a person entitled to redeem, his administrator or heir may redeem.
25. Tender to guardian of mortgagee, if under guardianship.
26. How mortgages may be discharged.
27. Redemption of mortgaged estate from purchaser of the equity of redemption.

Mortgages of Real Estate.

SECT. 1. Mortgages of real estate mentioned in this chapter, 2 include not only those made in the usual form in which the 3 condition is set forth in the deed, but also those made by a 4 conveyance appearing on its face to be absolute, with a sep- 5 arate instrument of defeasance executed at the same time, 6 or a part of the same transaction. R. S., c. 125, § 1.

SECT. 2. Any mortgagee or person claiming under him, 2 may enter on the premises, or recover possession thereof, 3 before any breach of the condition of the mortgage, when 4 there is no agreement to the contrary; but in such case, if the 5 debt is afterwards paid or the mortgage redeemed, the amount 6 of the clear rents and profits, from the time of the entry shall 7 be accounted for, and deducted from the amount due on the 8 mortgage. R. S., c. 125, § 2.

SECT. 3. After breach of the condition, if the mortgagee, or 2 any one claiming under him, desires to obtain possession of 3 the premises, for the purposes of foreclosure, he may proceed 4 in either of the following ways, viz :

First—He may commence an action at law, and obtain 6 possession under a writ of possession, issued on the judgment 7 in the action as provided in the ninth section, duly executed 8 by an officer.

Second—He may enter into possession, and hold the same
10 by consent in writing, of the mortgager or the person holding
11 under him.

Third—He may enter peaceably and openly, if not opposed,
13 in the presence of two witnesses, and take possession of the
14 premises; and a certificate of the fact and time of such entry
15 shall be made and signed, and sworn to by such witnesses,
16 before any justice of the peace; and such written consent, or
17 such certificate, shall be recorded in each registry of deeds,
18 in which the mortgage is or by law ought to be recorded;
19 and no such entry shall be effectual unless such certificate or
20 consent in writing shall be recorded within thirty days next
21 after the entry is made. S. R., c. 125, § 3.

SECT. 4. Possession obtained in either of these three modes
2 continued for the three following years, shall forever foreclose
3 the right of redemption. R. S., c. 125, § 4.

SECT. 5. If after breach of the condition, the mortgagee or
2 any person claiming under him, is not desirous of taking and
3 holding possession of the premises, he may proceed for the
4 purpose of foreclosure, in either of the following modes:

First—He may give public notice in a newspaper printed
6 in the county where the premises are situated, if any, or in
7 the state paper, three weeks successively, of his claim by
8 mortgage on such real estate, describing the premises intelli-
9 gibly, and naming the date of the mortgage, and that the
10 condition in the same is broken, by reason whereof he claims
11 a foreclosure; and cause a copy of such printed notice, and
12 the name and date of the newspaper in which it was last
13 published, to be recorded in each registry of deeds, in which
14 the mortgage deed is or by law ought to be recorded, within
15 thirty days after such last publication.

Second—He may cause a copy of such notice to be served,
17 and attested as a true copy, by the sheriff or his deputy, of
18 the county in which the mortgager or his assignee lives, if in
19 this state, by a delivery to him in hand, or by leaving it at
20 his place of last and usual abode; and shall cause the original
21 notice and the sheriff's return thereon, to be recorded within
22 thirty days after such service in manner aforesaid; and in all
23 cases, the certificate of the register of deeds shall be prima

24 facie evidence of the fact of such entry, notice, publication of
25 foreclosure, and of the sheriff's return. When the foreclo-
26 sure is by an action at law, an abstract of the writ of
27 possession, with the time of obtaining possession, certified by
28 the clerk of the courts where judgment was rendered, shall
29 be recorded within thirty days after possession is obtained, in
30 the registry of deeds in which the mortgage is or ought to be
31 recorded. R. S., c. 125, § 5. 1849, c. 105.

SECT. 6. The mortgager or person claiming under him,
2 may redeem the mortgaged premises within three years next
3 after the first publication, or the service of the notice, men-
4 tioned in the preceding section, and if not so redeemed, his
5 right of redemption shall be forever foreclosed.

R. S., c. 125, § 6.

SECT. 7. The mortgagee, and, where the mortgage has
2 been assigned, the person claiming under him, in an action
3 for possession, may declare on his own seizin in a writ of
4 entry, without naming the mortgage or assignment; and, if
5 it appears to the court on default, demurrer, verdict or other-
6 wise, that the plaintiff is entitled to the possession of the
7 premises for breach of the condition of the mortgage, the
8 court shall, on the motion of either party, award the con-
9 ditional judgment hereinafter mentioned, unless it appears
10 that the tenant is not the mortgager, nor a person claiming
11 under him, in which case, judgment may be entered as at
12 common law, unless the plaintiff consents that the conditional
13 judgment shall be entered. R. S., c. 125, § 7, 8.

SECT. 8. The conditional judgment shall be that, if the
2 mortgager, his heirs, executor or administrator, pays to the
3 mortgagee, his executor or administrator, the sum the court
4 adjudges to be due, within two months from the time of
5 entering up judgment, with interest, no writ of possession
6 shall issue; otherwise, it shall issue in due form of law.
7 When the condition is for doing some other act than the
8 payment of money, the court may vary such conditional
9 judgments as the circumstances require, and the writ of pos-
10 session shall issue, if the terms of the conditional judgment
11 are not complied with, within the two months.

R. S., c. 125, § 9, 15. 1844, c. 10, § 4.

SECT. 9.. If it appears that nothing is due on the mortgage,
2 judgment shall be rendered for the defendant and for his
3 costs, and he shall hold the land discharged of the mortgage.

R. S., c. 125, § 10.

SECT. 10. When a mortgagee, or person claiming under
2 him, is dead, the same proceedings to foreclose the mortgage
3 may be had by his executor or administrator, declaring on
4 the seizin of the deceased, as he might have done, if living.

R. S., c. 125, § 11.

SECT. 11. Lands mortgaged to secure the payment of debts,
2 or the performance of any collateral engagement, and the
3 debts so secured, in case of the decease of the mortgagee, or
4 person claiming under him, shall be assets in the hands of
5 his executors or administrators; and they shall have the same
6 control of them as of a personal pledge; and, when they
7 recover seizin and possession thereof, it shall be to the use
8 and behoof of the widow and heirs, or devisees of the
9 deceased, or his creditors, as the case may be; and, when
10 redeemed, they may receive the money, and give effectual
11 discharges therefor, and releases of the mortgaged premises.

R. S., c 125, § 13.

SECT. 12. An action on a mortgage deed may be brought
2 against any person in possession of the mortgaged premises;
3 and the mortgager, or person claiming under him, may, in
4 all cases, be joined with him as a cotenant, whether he then
5 has any interest or not in the premises; but he shall not be
6 liable for costs, when he has no estate in the premises, and
7 makes his disclaimer thereto upon the records of the court.

R. S., c. 125, § 14.

SECT. 13. Any mortgager, or other person having a right
2 to redeem lands mortgaged, may demand of the mortgagee,
3 or person claiming under him, a true account of the sum due
4 on the mortgage, and of the rents and profits, and money
5 expended in repairs and improvements, if any; and if he
6 unreasonably refuses or neglects to render such account, in
7 writing, or in any other way by his default prevents the plain-
8 tiff from performing, or tendering performance of the condition
9 of the mortgage, he may bring his bill in equity for the redemp-
10 tion of the mortgaged premises, within the time limited in

11 the sixth section of this chapter ; and therein offer to pay the
12 sum found to be equitably due, or to perform any other
13 condition, as the case may require ; and such offer shall have
14 the same force as a tender of payment, or performance, before
15 the commencement of the suit ; and the bill shall be sustained
16 without such tender, and thereupon he shall be entitled to
17 judgment, for redemption and costs. R. S., c. 125, § 16.

SECT. 14. When the amount due on a mortgage, has been
2 paid or tendered to the mortgagee, or person claiming under
3 him by the mortgager, or the person claiming under him,
4 within the time limited as before mentioned, he may have a
5 bill in equity for the redemption of the mortgaged premises,
6 and compel the mortgagee, or person claiming under him, by
7 a decree of the supreme judicial court, to release to him all
8 his right and title therein ; though such mortgagee, or his
9 assignee, has never had actual possession of the premises for
10 breach of the condition, or without having made a tender
11 before the commencement of the suit, he may have his bill in
12 the manner prescribed in the sixteenth section, and the cause
13 shall be tried in the same manner. R. S., c 125, § 17, 18.

SECT. 15. When the bill to redeem, is brought before an
2 actual entry for breach of the condition, and before payment
3 or tender, if the mortgagee, or the person claiming under him,
4 is out of the state, and has not had actual notice, the court shall
5 order proper notice to be given to him, and continue the cause
6 as long as necessary. R. S., c. 125, § 19.

SECT. 16. When the mortgagee, or person claiming under
2 him, has commenced proceedings for foreclosure, under the
3 fifth section, if he resides out of the state, or if his residence
4 is unknown to, the party having the right to redeem, he may
5 file his bill, as is prescribed in section thirteen, and pay, at
6 the same time, to the clerk of the courts the sum due, which
7 payment shall have the same effect as a tender before the
8 suit ; and the court shall order such notice to be given of the
9 pendency of the suit, as they judge proper. 1841, c. 1, § 23.

SECT. 17. No bill in equity shall be brought for redemption
2 of mortgaged premises, founded on a tender of payment or
3 performance of the condition, made before the commence

4 ment of the suit, unless within three years next after making
5 such tender. R. S., c. 125, § 20.

SECT. 18. In any suit brought for redemption of mortgaged
2 premises, when it is necessary to the attainment of justice,
3 that any other person, besides the defendant, claiming an
4 interest in the premises, should be made a party with the
5 original defendant, on motion, the court may order him to be
6 served with an attested copy of the bill, in such manner as
7 they may direct, and, on his appearance, the cause shall
8 proceed, as though he had been originally joined.

R. S., c. 125, § 21.

SECT. 19. The court, when a decree is made for the re-
2 demption of mortgaged lands, may award execution, jointly
3 or severally, as the case requires; and for sums found due
4 for rents and profits, over and above the sums reasonably
5 expended in repairing and increasing the value of the estate
6 redeemed.

R. S., c. 125, § 22.

SECT. 20. When any sum of money is brought into court,
2 in a suit for redemption of mortgaged premises, the court
3 may deduct therefrom such sum, as the defendant is charge-
4 able with on account of rents and profits by him received, or
5 costs awarded against him; and the person, to whom a sum
6 of money is tendered to redeem such lands, if he receives a
7 larger sum than he is entitled to retain, shall refund the
8 excess.

R. S., c. 125, § 23.

SECT. 21. When a mortgage is made, or assigned to the
2 state, the treasurer may demand and receive the money due
3 thereon, and discharge it by his deed of release. After breach
4 of the condition, he may, in person, or by his agent, make
5 use of the like means, for the purpose of foreclosure, which
6 an individual mortgagee might, as specially prescribed in the
7 third and fifth sections of this chapter. R. S., c. 125, § 12.

SECT. 22. If the treasurer of state, and the person applying
2 to redeem any lands mortgaged to the state, disagree, as to
3 the sum due thereon, such person may bring a bill in equity
4 against the state for the redemption thereof, in the supreme
5 judicial court.

R. S., c. 125, § 24.

SECT. 23. The court shall order notice to be served on the
2 treasurer of state in the usual form, and shall hear the cause

3 and decide, what sum is due on said mortgage to the state,
4 and award costs, as they may deem equitable; and it shall
5 be the duty of the treasurer to accept the sum adjudged by
6 the court to be due, and discharge and release the mortgage.
R. S., c. 125, § 25.

SECT. 24. If any person, entitled to redeem any mortgaged
2 estate, or to redeem an equity of redemption, which has been
3 sold on execution, or the right to redeem such right, or the
4 right to redeem lands, set off on execution, dies without
5 having made any tender for that purpose, a tender may be
6 made, and a bill for redemption commenced and prosecuted
7 by the executors or administrators, or the heirs or devisees of
8 the deceased person; and if the plaintiff, in any such bill in
9 equity, dies pending the suit, it may be prosecuted to final
10 judgment, by his heirs or devisees, or his executors or ad-
11 ministrators.
R. S., c. 125, § 26.

SECT. 25. When the mortgagee, or person holding under
2 him, is under guardianship, a tender may be made to the
3 guardian, and he shall receive the sum due on the mortgage;
4 and, upon receiving it, or on performance of such other con-
5 dition as the case requires, shall execute a release or discharge
6 of the mortgage.
R. S., c. 125, § 27.

SECT. 26. In all cases, the mortgage may be discharged by
2 the deed of release of the person authorized to discharge it,
3 or by his causing satisfaction and payment to be entered in
4 the margin of the record of such mortgage, in the register's
5 office, under his hand.
R. S., c. 128, § 28.

SECT. 27. If the purchaser of an equity of redemption sold,
2 on execution, has satisfied and paid to the mortgagee, or
3 those claiming under him, the sum due on the mortgage, the
4 mortgager, or those claiming under him, having redeemed
5 the equity of redemption within one year after such sale,
6 shall have a right to redeem such mortgaged estate of such
7 purchaser, or any person claiming under him, within the
8 time and in the manner he might have redeemed the same of
9 the mortgagee, had there been no such sale made, and within
10 such time only.
R. S., c. 125, § 29.

Chapter 91.**MORTGAGES OF PERSONAL PROPERTY AND LIENS ON REAL AND PERSONAL ESTATE.***Mortgages of personal property.*

- Sect. 1.* Recording of mortgages of personal property, provided for. What mortgages to be recorded; effect of recording; where to be recorded.
2. Clerk to record. His fees.
 3. Foreclosure and redemption of such mortgages.
 4. Tender or payment, effect of. Remedy to recover the property.
 5. Certain marine contracts not affected by these provisions.

Liens upon vessels.

6. Liens upon vessels for labor or materials. How secured.
7. Discharged, by tender of amount due.
8. How the attachment is to be made.
9. By what officer to be made.
10. How proceeds of sale to be applied.

Lien upon buildings.

11. Lien upon buildings, &c., for labor and materials. Not dissolved by death or insolvency.
12. Time for attaching extended, on death of owner.
13. How secured by attachment. Dissolved by tender.
14. Lien of landlord on buildings erected by lessee.

Lien for labor upon lumber.

15. Lien for labor in cutting, hauling or driving logs or lumber. Extent of. Not defeated by death or insolvency; nor by taking note for amount due.
16. How to be enforced. Officer may pay boomage.
17. Notice to be given to the owner of the lumber.

Mortgages of Personal Property.

SECT. 1. No mortgage of personal property made to secure a sum amounting to more than thirty dollars, shall be valid against any other party than the mortgagee or his assigns, unless possession of the mortgaged property is delivered to and retained by the mortgagee; or unless the mortgage is recorded by the clerk of the town in which the mortgagee resides. If the mortgager is a corporation, the mortgage shall be recorded in the town in which it is established or has its principal place of business. If the mortgager resides in an unincorporated place or plantation in which there is no plantation clerk, the mortgage shall be recorded in the oldest adjoining town

12 in the county. If the mortgage is made by a firm or copart-
 13 nership, it shall be recorded in the town in which is their
 14 principal place of business.

R. S., c. 125, § 32. 1849, c. 103.

1850, c. 180. 1852, c. 262. 1854, c. 103.

SECT. 2. The clerk, on payment of his fees, shall record
 2 all such mortgages, delivered to him, in a book kept for that
 3 purpose, noting therein, and on the mortgage, the time when
 4 it was received; and it shall be considered as recorded when
 5 thus left with the clerk. His fees shall be the same as are
 6 allowed for like services, to the register of deeds.

R. S., c. 125, § 33.

SECT. 3. No mortgage so recorded, shall be foreclosed until
 2 sixty days after the mortgagee, the condition being broken,
 3 shall cause notice thereof, and that he claims a foreclosure,
 4 to be entered on the margin of the record. When the condi-
 5 tion of any such mortgage is broken, the mortgager or any
 6 person lawfully holding or claiming under him, may redeem
 7 it at any time within sixty days after the breach, or if the
 8 mortgage is recorded, within sixty days after the entry so
 9 made upon the record, unless the property has been sold in
 10 the mean time, in pursuance of the contract between the
 11 parties, or on execution for the debt of the mortgager.

R. S., c. 125, § 30.

SECT. 4. The person entitled to redeem such property, shall
 2 pay or tender to the mortgagee, or person holding under him,
 3 the sum due on the mortgage, with all reasonable and lawful
 4 charges incurred in the care and custody of the property, or
 5 otherwise arising from the mortgage itself; and if the prop-
 6 erty is not immediately restored, the person entitled to redeem
 7 it, may recover it in an action of replevin; or he may recover
 8 such damages as he has sustained by the withholding thereof,
 9 in an action of the case.

R. S., c. 125, § 31.

SECT. 5. Nothing in the preceding sections shall avoid or
 2 defeat any contract of bottomry, or respondentia, or transfer,
 3 assignment or hypothecation of any ship or goods at sea, or
 4 abroad, if the mortgagee takes possession thereof, as soon as
 5 may be, after their arrival within the state.

R. S., c. 125, § 34.

Lien upon Vessels.

SECT. 6. Any ship carpenter, caulker, blacksmith, joiner, 2
3 or other person who performs labor or furnishes materials for
4 or on account of any vessel, building or standing on the
5 stocks, or for furnishing or rigging any vessel, or for any
6 repairs of a vessel after having been launched, shall have a
7 lien on such vessel for his wages, or materials, until four
8 days after such vessel is launched, or such other work or
9 repairs done afterwards, are completed; and may secure the
10 same by an attachment on the vessel within that period.

R. S., c. 125, § 35.

SECT. 7. In case any such creditor demands or claims more 2
3 for his services so performed or materials furnished, than is
4 just and reasonable, the owner, agent, or contractor may
5 tender the full, fair and just balance to such claimant, and
6 such tender shall, if refused, absolutely discharge the lien on
7 such vessel.

R. S., c. 125, § 36.

SECT. 8. The officer making such attachment, within 2
3 twenty-four hours thereafter, shall file with the clerk of the
4 town in which the vessel lies, and also deliver to some owner
5 or to the master workman of the vessel, a certificate signed
6 by him, setting forth the attachment, its date, the names of
7 parties to the suit, the sum or amount sued for, the date of
8 the writ, and the court to which it is returnable; and there-
9 upon it shall not be necessary, until after the vessel is
10 launched, in order to preserve the attachment, to put the
1848, c 78, § 1.

SECT. 9. The service of the writ in all cases, shall be made 2
3 by the sheriff or his deputy, or by a coroner. Every subse-
4 quent attachment during the pendency of the first, shall be
5 made by the same officer, except that in his necessary ab-
6 sence, inability or disqualification, it may be made by any
7 other proper officer, who shall as soon thereafter as conve-
8 niently may be, gives notice thereof to the first attaching
9 officer; and such subsequent attachment shall give to the
10 creditor the same rights he would have if it had been made
1848, c. 78, § 2, 3.

SECT. 10. When final judgment is entered in all the suits, 2 the executions shall be issued, and the vessel sold. The 3 proceeds of the sale shall be applied to the payment of the 4 executions, in full, or, if not sufficient for the payment in full 5 of all, a pro rata distribution shall be made thereof upon all 6 the executions. 1848, c. 78, § 4.

Liens upon Buildings.

SECT. 11. Any person, who performs or furnishes labor or 2 materials for erecting, altering, or repairing any house or 3 other building or appurtenances, by virtue of any contract 4 with the owner thereof, shall have a lien to secure the pay- 5 ment of the same upon such house or other building, and the 6 lot of land on which it stands, if owned by him, and upon 7 the right of redeeming it, if under mortgage. Such lien 8 shall continue in force ninety days from the time when the 9 payment becomes due, notwithstanding the decease of any 10 such debtor, and the representation of his estate as insolvent; 11 and the administrator or executor of any insolvent estate, 12 shall, upon citation, be holden to answer to any action 13 brought upon a claim secured by such lien.

R. S., c. 125, § 37. 1850, c. 159, § 1.

SECT. 12. If such owner dies within the said ninety 2 days, the suit not having been commenced, sixty days after 3 notice given of the appointment of an administrator or exec- 4 utor on his estate, shall be given within which to commence 5 the suit, and the lien shall be extended accordingly.

1850, c. 159, § 2.

SECT. 13. The benefit of such lien, may be secured by an 2 attachment of the house, or building, and land or right of 3 redemption within the ninety days; and such attachment 4 shall have precedence of all other attachments, not made 5 under any such lien, and of all other incumbrances made 6 after such contract. A tender, by the debtor to the creditor, 7 of the sum justly due him, shall discharge the lien.

R. S., c. 125, § 38, 39.

SECT. 14. When any lot or parcel of land, or any mill 2 privilege, is leased for the purpose of having a house, shop, 3 mill, or other building erected or placed thereon, and rent is

4 reserved in the lease, all the buildings erected as aforesaid,
 5 together with all the interest which the lessee has in the
 6 premises, by force of such lease, shall remain liable to be
 7 attached by the lessor or his assignee, to secure the rent due
 8 on the lease, notwithstanding any previous transfer of prop-
 9 erty by the lessee; provided, such attachment be made
 10 within six months from the time the rent becomes due.

R. S., c. 125, § 40.

Lien for labor upon Lumber.

SECT. 15. Any person, who labors at cutting, hauling, or
 2 driving logs, masts, spars or other lumber, shall have a lien
 3 thereon, to continue sixty days after they arrive at their
 4 place of destination, previous to being rafted for sale or man-
 5 ufacture, for the amount stipulated to be paid for his personal
 6 services, to take precedence over all other claims, except liens
 7 reserved by the states of Maine and Massachusetts. The
 8 action therefor shall be maintained, notwithstanding the
 9 decease of the defendant, before or after its commencement,
 10 and the representation of his estate as insolvent; and the
 11 administrator or executor of the deceased defendant, shall be
 12 holden to come in and answer to the action; and if the plain-
 13 tiff prevails, he shall have judgment and execution for his
 14 damages and costs, and may levy the same upon the said
 15 property, notwithstanding the insolvency of the estate. The
 16 lien or action shall not be defeated by taking a promissory
 17 note for the amounts, before or after the suit is commenced,
 18 unless it is taken expressly in discharge thereof.

1848, c. 72, § 1. 1851, c. 216, § 1.

SECT. 16. Such lien may be secured by attachment of the
 2 logs, masts, spars or lumber; and the officer making it, may
 3 pay the boomage due demanded thereon by any boom cor-
 4 poration, not exceeding the rate due per thousand on the logs
 5 attached, and return the amount so paid on the writ, and it
 6 shall be added by the court to, and included in the damages
 7 recovered by the plaintiff. 1848, c. 172, § 2.

SECT. 17. In all such suits, such notice as the court shall
 2 order, shall be given to the owner of the lumber, and he may
 3 come in and defend the suit. 1855, c. 144.

Chapter 92.

THE RIGHT OF ERECTING MILLS AND MILL-DAMS, AND OF FLOWING LANDS AND DIVERTING WATER TO SUPPLY MILLS, AND THE MODE OF OBTAINING DAMAGES THEREFOR.

- Sect.* 1. Right to erect and maintain mill-dams, and to divert water by a canal for mills.
2. Not to injure a mill or canal previously built.
3. Restriction as to height of dam and quantity of water.
4. Damages for flowing, &c., recoverable on complaint.
5. Form of complaint.
6. How presented and served.
7. What may be pleaded in bar.
8. Mode of trial. Appeal. Costs for respondent if complainant fails.
9. Proceedings, if complainant recovers.
10. Trial by jury. Commissioners' report to be evidence.
11. Acceptance of commissioners' report.
12. Verdict or report to bar any future action.
13. Yearly damages, how fixed.
14. Security to be given for yearly damages, if required.
15. Complainant may sue for damages, if unpaid.
16. Lien upon mill and land for damages.
17. Mill and land may be seized and sold on the execution after thirty days. Effect of such sale.
18. Right of redemption.
19. Either party may file a new complaint.
20. Restriction of this right.
21. Owner may offer an increased compensation. Consequence.
22. Injured party may offer to accept a less compensation. Consequence.
23. Restriction of suits for damages.
24. Tenants may make such offers as well as owners.
25. Double damages if dam is raised higher, kept up longer, or more water diverted than allowed by the judgment.
26. Agreement of parties binding, if recorded.
27. Judgment no bar to a new complaint.
28. Tender of damages, and effect thereof.
29. Complaint not to abate by death of either party.
30. If complaint abates, rights may be preserved by new complaint within a year.
31. Provisions of this chapter apply to streams forming the boundary of the state.
32. Compensation of commissioners. Costs.

SECT. 1. Any man may erect and maintain a water mill
2 and dams to raise water for working it, on his own land,
3 upon and across any stream that is not navigable; or for the
4 purpose of propelling mills or machinery, may cut a canal,
5 and erect walls and embankments, upon his own land, not
6 exceeding, in all, one mile in length, and thereby divert from
7 its natural channel, the water of any stream not navigable, or
8 used for the purpose of driving or floating lumber upon the

9 terms and conditions, and subject to the regulations herein-
10 after expressed. R. S., c. 126, § 1. 1855, c. 133, § 1.

SECT. 2. No such dam shall be erected, or canal construct-
2 ed, to the injury of any mill or canal, lawfully existing, on
3 the same stream; nor to the injury of any mill site, on which
4 a mill or mill dam has been lawfully erected and used, unless
5 the right to maintain a mill, on such last mentioned site, has
6 been lost or defeated by an abandonment, or otherwise.

R. S., c. 126, § 2. 1855, c. 133, § 2.

SECT. 3. The height to which the water may be raised,
2 and the length of time, during which it may be kept up in
3 each year, and quantity of water that may be so diverted by
4 such canal, shall be liable to be restricted and regulated by
5 the verdict of a jury, or report of commissioners, as herein-
6 after is provided.

R. S., c. 126, § 4.

SECT. 4. Any person sustaining damages in his lands, by
2 their being overflowed by a mill, or by the diversion of the
3 water by such canal, may obtain compensation for the injury
4 by complaint to the supreme judicial court, in the county
5 where the lands, or any part thereof, so injured, are situated;
6 but no compensation shall be awarded for damages sustained
7 more than three years before the institution of the complaint.

R. S., c. 126, § 5.

SECT. 5. The complaint shall contain such a description of
2 the land flowed or injured, and such a statement of the
3 damage, that the record of the case shall show, with suffi-
4 cient certainty, the matter heard and determined in the
5 suit.

R. S., c. 126, § 6.

SECT. 6. The complaint may be presented to the court in
2 term time, or be filed in the clerk's office, in vacation; and,
3 in either case, a copy shall be served, by the proper officer,
4 fourteen days, at least, before the term day, on the respond-
5 ent, by being left at his dwelling-house, if he has any in the
6 state; otherwise, it shall be left at the mill in question, or
7 with the occupant of the mill.

R. S., c. 126, § 7, 8.

SECT. 7. The owner or occupant of such mill, or canal,
2 may plead in bar that the complainant has no right, title or
3 estate in the lands alleged to be injured; or, that he has a
4 right to maintain such dam and flow the lands, or divert the

5 water, for an agreed price, or without any compensation ; or
6 any other matter, which may show that the complainant
7 cannot maintain the suit ; but he shall not plead in bar of the
8 complaint, that the land described therein is not injured by
9 such dam or canal. R. S., c. 126, § 9.

SECT. 8. When any such plea is filed, and an issue in fact,
2 or in law, is joined, it shall be decided as similar issues are
3 decided in cases at common law ; and if judgment is for the
4 respondent by nonsuit, discontinuance or otherwise, he shall
5 recover his costs. R. S., c. 126, § 10, 11.

SECT. 9. If the issue is decided in favor of the complainant,
2 or if the respondent is defaulted or does not plead or show
3 any legal objection to proceeding, the court shall appoint three
4 or more disinterested commissioners of the same county, who
5 shall go upon and examine the premises, and make a true and
6 faithful appraisalment under oath of the yearly damages, if
7 any done to the complainant by the flowing of his lands, or
8 the diversion of the water, described in the complaint, and
9 determine how far the same is necessary, and ascertain and
10 make report what portion of the year such lands ought not to
11 be flowed, or what quantity of water shall be left to flow
12 undiverted. R. S., c. 126, § 12.

SECT. 10. If either party requests that a jury may be em-
2 panned to try the cause at the bar of the court, the report
3 of the commissioners shall under the direction of the court,
4 be given in evidence to the jury ; subject to be impeached by
5 evidence from either party. R. S., c. 126, § 13.

SECT. 11. If neither party requests a trial by jury, the
2 report o the commissioners may be accepted by the court,
3 and judgment rendered thereon. R. S., c. 126, § 14.

SECT. 12. The verdict of the jury, or the report of the com-
2 missioners, so accepted, shall be a bar to any action brought
3 for such damages, and the owner or occupant shall not flow
4 the lands during any portion of the period, when such flow-
5 ing is prohibited, or divert the water beyond the quantity
6 allowed by the commissioners or the jury.

R. S., c. 125, § 15.

SECT. 13. Such verdict or accepted report of the commis-
2 sioners, and judgment thereon, shall be the measure of the

3 yearly damages until the owner or occupant of the lands, or
 4 the owner or occupant of the mill or canal, shall on a new
 5 complaint to the court and by similar proceedings as in the
 6 former case, obtain an increase or decrease of such damages.

R. S., c. 126, § 17.

SECT. 14. When any person whose lands are so flowed, or
 2 from whose lands the water is thus diverted files his com-
 3 plaint for ascertaining or increasing his damages, or brings
 4 his action of debt as provided in the fifteenth section of this
 5 chapter, moves the court to direct the owner or occupant of
 6 such mill or canal to give security for the payment of the
 7 annual damages, and the court so orders, the owner or occu-
 8 pant refusing or neglecting to give such security, shall have
 9 no benefit of this chapter; but shall be liable to be sued for
 10 the damages occasioned by such flowing, in an action at
 11 common law.

R. S., c. 126, § 18.

SECT. 15. The party entitled to such annual compensation,
 2 may maintain an action of debt or assumpsit therefor, before
 3 the proper tribunal, against any person who owns or occupies
 4 the said mill, or canal and mills supplied thereby, when the
 5 action is brought; and shall therein recover the whole sum
 6 due and unpaid, with costs.

R. S., c. 126, § 20.

SECT. 16. The person entitled to receive the annual com-
 2 pensation, shall have a lien therefor, from the time of the
 3 institution of the original complaint, on the mill and mill
 4 dam, or on the canal and the mill supplied thereby, with the
 5 appurtenances, and the land under and adjoining the same,
 6 and used therewith; provided, that it shall not extend to any
 7 sum, due more than three years before the commencement
 8 of the action.

R. S., c. 126, § 19. 1855, c. 133.

SECT. 17. The execution on such judgment, if not paid,
 2 may, at any time within thirty days, be levied on the prem-
 3 ises subject to the lien; and the officer may sell the same at
 4 public auction, or so much thereof in common with the
 5 residue, as shall be necessary to satisfy the execution; pro-
 6 ceeding in giving notice of such sale, in the same manner, as
 7 in making sale of an equity of redemption upon execution.

8 Such sale shall be effectual against all persons claiming the
9 premises by any title, which accrued within the time covered
10 by the lien. R. S., c. 126, § 21, 22.

SECT. 18. Any person entitled to the premises, may redeem
2 the same within one year after the sale, on paying to the
3 purchaser or the person holding under him, the sum paid
4 therefor, with interest at the rate of twelve per cent., deduct-
5 ing therefrom any rents and profits received by such purchaser
6 or person holding under him; and may have the same pro-
7 cess to compel the purchaser to account, as might be had
8 against a purchaser of an equity of redemption.

R. S., c. 126, § 23.

SECT. 19. When either party is dissatisfied with the annual
2 compensation, established as before provided, a new com-
3 plaint may be filed, and similar proceedings had, and
4 conducted substantially in the manner before provided, in
5 case of an original complaint. R. S., c. 126, § 24.

SECT. 20. No new complaint shall be brought, until the
2 expiration of one month after the payment of the then last
3 year, is due, and one month after notice to the other party;
4 and the other party may, within that time, make an offer or
5 tender, as hereinafter is provided. R. S., c. 126, § 25.

SECT. 21. The owner of the mill or dam, or canal, within
2 said month, may offer, in writing, to the owner of the land
3 injured, any increase of compensation to be paid thereafter
4 for maintaining said dam or canal; and if the owner of the
5 land does not agree to accept it, but brings a new complaint
6 for the purpose of increasing the compensation, he shall not
7 recover any costs, unless he obtains an increase of damages.

R. S., c. 126, § 26.

SECT. 22. The owner of the land injured, may also, within
2 said month, offer, in writing, to the owner of the mill or dam,
3 or canal, to accept any sum smaller than the annual com-
4 pensation established, to be paid thereafter for maintaining
5 said dam or canal; and, if the owner of the mill or dam, or
6 or canal, declines to pay such reduced compensation, but
7 brings a new complaint to obtain a reduction of the same, he
8 shall not recover costs, unless such compensation is reduced
9 to a less sum than was offered. R. S., c. 126, § 27.

SECT. 23. No action shall be sustained at common law for
2 the recovery of damages, occasioned by the overflowing of
3 lands, or for the diversion of the water, as before mentioned,
4 except in the special cases provided in this chapter, to enforce
5 the payment of damages after they have been ascertained by
6 process of complaint, as aforesaid. R. S., c. 126, § 28

SECT. 24. Such offers may be made by or to the tenants or
2 occupants of the land, and of the mill and dam, or canal, in
3 question, in like manner, and with like effect, as if made by
4 or to the owners; but no agreements founded thereon shall
5 bind the owners, unless made by their consent.

R. S., c. 126, § 30.

SECT. 25. If any such dam, after such judgment shall be
2 raised higher, or kept up longer, or if more water is diverted
3 by such canal, than is allowed by such judgment, the party
4 injured thereby may recover of the wrong-doers double dam-
5 ages for the injury sustained, in an action at common law.

1848, c. 86.

SECT. 26. When an annual compensation upon the ac-
2 ceptance by one party, of an offer made by the other, is
3 established, and signed by the owners of the mill or dam, or
4 canal, and of the land, and recorded in the office of the clerk
5 of the court in which the former judgment was rendered,
6 with a reference on the record of the former judgment, to the
7 book where the agreement is recorded, such agreement shall
8 be as binding as a verdict and judgment on a new complaint.

R. S., c. 126, § 31.

SECT. 27. A judgment against a complainant, as not being
2 entitled to any compensation, shall be no bar to a new com-
3 plaint for damages, which have arisen after the former
4 verdict, and for compensation for damages, subsequently
5 sustained.

R. S., c. 126, § 32.

SECT. 28. In case of an original complaint, the respondent
2 may, with the same advantages to himself, tender and bring
3 money into court, as in an action at common law; and, if
4 the money is accepted, the judgment shall have the same
5 effect as if rendered on a verdict.

R. S., c. 126, § 33.

SECT. 29. No complaint for so flowing lands, or diverting
2 water, shall abate by the death of any party thereto; but it

3 may be prosecuted or defended by the surviving complainants
4 or respondents, or the executors or administrators of the
5 deceased. R. S., c. 126, § 34.

SECT. 30. If such complaint is abated or defeated for want
2 of form, or if after a verdict for the complainant, judgment is
3 reversed, he may bring a new complaint at any time within
4 one year after such abatement or reversal, and thereon recover
5 such damages as were sustained during the three years next
6 before the institution of the first complaint, or at any time
7 afterwards. R. S., c. 126, § 35.

SECT. 31. The provisions of this chapter shall apply to mills
2 and dams erected upon streams forming the boundary line of
3 the state, although a part of the dam is not in the state; and
4 the rights and remedies of all parties concerned, shall be
5 ascertained and determined in the same manner as if the
6 whole of such streams were in the state. 1855, c. 133, § 4.

SECT. 32. The court shall award a suitable compensation,
2 to be paid to the commissioners, and taxed and recovered by
3 the prevailing party. The prevailing party shall recover his
4 costs except where it is otherwise expressly provided.

R. S., c. 126, § 16, 29.

Chapter 93.

INQUESTS OF OFFICE, AND INFORMATIONS FOR INTRUSION.

- Sect. 1. Proceedings to rovest in the stato lands granted on condition.
2. Attorney general to file information.
3. Scire facias to issue. Service.
4. Judgment on default.
5. Consequence of disclaimer by defendant.
6. Proceedings, if defendant claims title.
7, 8. Proceedings, if it is adjudged that defendant holds too much land.
9. Cases in which information may be filed, without order of the legislature. Notice.
10. Proceedings, judgment and costs.
11. Information to recover escheats. Notice.
12. Tenant to set up no title, unless he claims under it.
13. Costs, if defendant recovers.
14. Defendant may hold by title subsequently acquired. What judgment, if the
state recovers,
15. Effect of judgment, that the state be reseized.

16. Tenant under the state to have betterments, though occupying less than six years.
17. Proceedings by attorney general to obtain betterments.
18. Execution therefor, how levied.

SECT. 1. Where lands have been granted by the colony or province of Massachusetts Bay, the commonwealth of Massachusetts, or by this state, or shall be hereafter granted on certain conditions alleged to have been violated, and the state claims to be revested therein, the following proceedings shall be had.

R. S., c. 127, § 1.

SECT. 2. When the legislature directs, the attorney general shall file an information in the supreme judicial court in the county where the lands lie, stating the grant and conditions, breaches and claims of the state.

R. S., c. 127, § 2.

SECT. 3. The court shall issue a scire facias against the person stated as holding the lands under such grant, returnable to said court; which shall be served, according to law, thirty days before the return day.

R. S., c. 127, § 3.

SECT. 4. Should the defendant not appear and answer to such information, judgment shall be rendered that the state be reseized of their lands.

R. S., c. 127, § 4.

SECT. 5. If he appears and disclaims holding said lands or any part thereof, the attorney general shall take nothing by his information, so far as the same respects the lands disclaimed; and the defendant and all claiming under him, shall be estopped from claiming or holding such disclaimed lands.

R. S., c. 127, § 5.

SECT. 6. If the defendant claims all or any part of the lands under such grant, and traverses the breaches, the cause shall be tried by jury, and if the issue is found in favor of the state, judgment shall be rendered, that the state be reseized of said estate, and for costs; but if the issue is found for the defendant, he shall have judgment for his costs of suit, to be taxed and paid from the public treasury.

R. S., c. 127, § 6.

SECT. 7. If the only alleged breach of condition is, that the defendant holds more land than he has a right to hold under the grant, and the same is found by the jury, or the defendant's confession, the court shall assign to him by metes and

5 bounds, so much of the land held by him as shall be equal in
6 quantity to what he has a right to hold under the grant, and
7 in such part thereof as shall be judged reasonable by the
8 court. R. S., c. 127, § 7.

SECT. 8. Such part shall be located by persons appointed
2 by the court, at the expense of the defendant, and a plan
3 thereof returned to the court; and if confirmed by the court,
4 they shall order an attested copy of the location and plan to
5 be filed in the land office, and judgment shall be rendered
6 that the state be reseized of the residue, and for costs.

R. S., c. 127, § 8.

SECT. 9. In all other cases, where an inquest is necessary,
2 the attorney general, without order of the legislature, may
3 file an information in said court, describing the estate
4 claimed, and stating the title asserted thereto by the state;
5 and notice shall be given, as before mentioned, if there is any
6 tenant in possession; if not, the notice shall be given, as the
7 court orders, at least ninety days before the sitting of the
8 court, to which it is returnable. R. S., c. 127, § 9, 10.

SECT. 10. If no person appears and answers to the infor-
2 mation, or, if after appearing and answering, and on trial
3 by jury, a verdict is found, that the state has good title to
4 such estate, judgment shall be rendered, that the state be
5 seized thereof and recover costs; but if the verdict is in favor
6 of the defendant, and that he has good title to the land, he
7 shall recover his costs of suit, to be taxed and paid as before
8 provided. R. S., c. 127, § 11.

SECT. 11. The attorney general may file an information, in
2 manner before mentioned, for recovering seizin by the state
3 for any real estate, supposed to have escheated to the state
4 for want of legal heirs; and on such information being filed,
5 the court shall order such notice as they judge proper.

R. S., c. 127, § 12.

SECT. 12. In such case, the defendant shall not avail him-
2 self of the title of an alien or subject of another nation, or
3 sovereign, or of any other person, unless he shows that he is
4 the tenant or agent of such alien, or other person.

R. S., c. 127, § 13.

SECT. 13. If, on trial, he proves that he is such tenant or
2 agent, or the legal owner of such estate, he shall recover his
3 costs, to be paid as aforesaid. R. S., c. 127, § 14.

SECT. 14. If it is found that he was not legal owner of such
2 estate, nor had any right, as tenant or agent, when the pro-
3 cess was commenced against him, but afterwards acquired a
4 good title, or became tenant or agent, the attorney general
5 shall cease further to prosecute the suit; but, when the
6 defendant proves no such title to the estate as owner, or
7 interest therein as tenant or agent, judgment shall be rendered
8 that the state be seized thereof, and recover rents and profits,
9 as in case of a writ of entry between private persons.

R. S., c. 127, § 15.

SECT. 15. When judgment, on information, is rendered,
2 that the state be reseized, or seized, of any lands, the state
3 shall be deemed in law to be so seized, in fact, to all intents
4 and purposes; and any judgment, so rendered, shall conclude
5 all privies and parties, and those claiming under them, so
6 long as it remains in force, subject to the provisions of the
7 following section.

R. S., c. 127, § 16.

SECT. 16. Should any person appear, and, by due process
2 of law, prove himself to have a legal title to such estate, and
3 recover the same against the state, or its grantee or tenant,
4 the same estate shall be liable for all expenses of improve-
5 ments thereon made, over and above the rents and profits
6 thereof; though the tenant and those claiming under the
7 state, had not been in possession six years.

R. S., c. 127, § 17.

SECT. 17. For the purpose of ascertaining the amount of
2 such improvements, the attorney general, or the tenant or
3 grantee of the estate, may file a bill in equity, in the supreme
4 judicial court, for recovering the same; and, after due notice
5 and a copy of the bill, served on the defendant fourteen days
6 before court, such court may try the cause, with or without
7 a jury, according to the principles of law, and render judg-
8 ment and issue execution for the sum found due.

R. S., c. 127, § 18.

SECT. 18. The sheriff, by virtue of such execution, shall
 2 sell, at public auction, so much of said land as will be
 3 sufficient to satisfy the execution and charges, unless other-
 4 wise paid. R. S., c. 127, § 19.

Chapter 94.

FORCIBLE ENTRY AND DETAINER, AND TENANCIES.

- Sect. 1. Justices of the peace and quorum and municipal and police judges have jurisdiction of such cases.
2. Warrant and service.
 3. Judgment on default, and writ of possession.
 4. Proceedings, if defendant pleads title.
 5. Estates at will terminated by thirty days' notice. Tenants not entitled to further notice, but liable to process, &c.
 6. Disseizor of lands, tenant whose estate is determined, and lessee whose term has expired, all liable to provisions of this chapter.
 7. Writ of possession to issue, notwithstanding appeal in case, &c. On appeal, jury may estimate damages for defendant, &c. Complainant may set off against the damages his claim for rent.
 8. Proceedings when a brief statement filed is found to be frivolous.
 9. Rent and damages may be recovered by assumpsit.
 10. Writs of possession served by constable.

Forcible Entry and Detainer, and Tenancies.

SECT. 1. Every justice of the peace and quorum, and every
 2 judge of a municipal or police court, shall have jurisdiction
 3 of all cases of forcible entry, and detainer, arising in their
 4 counties. Such judges shall have exclusive jurisdiction of
 5 all such cases arising in their cities or towns, except those in
 6 which they are interested. R. S., c. 128, § 1, 6.

SECT. 2. On complaint made to such magistrate, in writing
 2 and on oath, of any unlawful and forcible entry into any
 3 lands or tenements, or any unlawful and forcible detainer, he
 4 shall issue his warrant under hand and seal, directed to any
 5 proper officer, to summon him to show cause why judgment
 6 should not be rendered against him; which shall be served
 7 upon him, by reading the same in his presence and hearing,
 8 or by delivering him a copy, or leaving it at his last and
 9 usual place of abode, seven days, at least, before the day set
 10 for trial. R. S., c. 128, § 2.

SECT. 3. On return of such service, in case of the non-
2 appearance and default of the party charged, or his failing to
3 show sufficient cause, judgment shall be rendered against
4 him for possession of the premises, and for costs, and the
5 justice or judge shall issue a writ of possession to remove
6 him. R. S., c. 128, § 3.

SECT. 4. If the defendant pleads not guilty to the com-
2 plaint, and files a brief statement of title in himself, or some
3 other person under whom he claims the premises in question,
4 the justice or judge shall thereupon order him to recognize to
5 the complainant, with sufficient sureties, in such sum as he
6 orders, to pay all intervening damages and costs, and reason-
7 able intervening rent for the premises; and shall require the
8 complainant to recognize to the defendant, with sufficient
9 sureties, in a reasonable sum, conditioned to enter the action
10 at the next supreme judicial court, and prosecute the same to
11 final judgment, and pay all costs adjudged against him; and
12 if either party refuses so to recognize, he shall enter judgment
13 as in case of nonsuit or default, against the party so neglect-
14 ing or refusing. Either party may appeal from the judgment
15 of the justice or judge, upon issue joined, to the next supreme
16 judicial court, recognizing, as aforesaid, to pay such costs as
17 may be adjudged against him; and, if the defendant appeals,
18 he shall recognize to pay such reasonable intervening rent
19 for the premises, as such justice or judge shall adjudge, in
20 case his judgment shall not be reversed on such appeal.

R. S., c. 128, § 4.

SECT. 5. Any estate at will may be terminated by a notice,
2 in writing, served upon the tenant, or occupant, thirty days
3 before the time fixed in the notice for the termination thereof.
4 When a tenancy, at will or otherwise, is terminated, the
5 tenant shall have no further right to retain possession, by
6 virtue of the tenancy, and is entitled to no further notice;
7 but shall be liable to the proceedings specified in this chapter,
8 unless he has, after service of the notice, paid rent for the
9 premises, which accrued after the termination of his tenancy.

R. S., c. 95, § 19, 20. 1853, c. 39, § 1.

SECT. 6. A disseizor of land, whose entry therein was
2 without apparent title, and who has not been in possession

3 thereof more than three years; a tenant, whose estate in the
 4 premises is determined, and who unlawfully refuses to quit
 5 the same; a lessee, who holds under a written lease or
 6 agreement; and any person, holding under such lessee, at
 7 the expiration or forfeiture of his term; shall each be subject
 8 to the process of forcible entry and detainer, under the pro-
 9 visions of this chapter, without any other or further notice;
 10 provided, that in case of such tenancies, the process be sued
 11 out within seven days after the termination thereof; and, on
 12 the trial, if it appears that the complainant is the owner, and
 13 the respondent the occupant of the premises, it shall not be
 14 necessary to show that the relation of landlord and tenant
 15 existed between them. R. S., c. 128, § 5.

1850, c. 160. 1853, c. 39, § 1. 1849, c. 98.

SECT. 7. When judgment is rendered for the complainant,
 2 the writ of possession shall issue, notwithstanding an appeal
 3 from the judgment by the defendant, if the complainant
 4 recognizes to the defendant in such sum as the court orders,
 5 with sufficient sureties to pay all such damages and costs as
 6 may finally be awarded against him, if the judgment is
 7 reversed and final judgment is rendered for the defendant.
 8 On the trial of the appeal the court shall direct the jury, if
 9 they find for the defendant, to estimate the damages sus-
 10 tained by him, and return their verdict therefor. In case of
 11 nonsuit, the damages may be determined by the court; and
 12 the complainant on trial may give evidence of any claim he
 13 has for rent of the premises against the defendant, to be set
 14 off against such damages, and have judgment and execution
 15 for the balance due him. If the defendant prevails, he shall
 16 have judgment for the damages, or balance so due him, and
 17 his costs and execution therefor; and a writ of possession
 18 may be awarded to him at the discretion of the court.

1853, c. 39, § 2.

SECT. 8. If the defendant pleads not guilty, and files a
 2 brief statement under the fourth section, and the complainant
 3 in writing suggests that it is frivolous and intended for delay
 4 only, and requests the judge or justice so to do, he may
 5 examine the case so far as to ascertain whether or not such
 6 is the purpose for which it is filed; and if satisfied on

7 such examination that such is the purpose, he may, notwith-
 8 standing such statement filed, proceed to try the cause upon
 9 the plea of not guilty; and if it is determined in favor of the
 10 complainant he may issue his writ of possession in the same
 11 manner, and on appeal the same proceedings shall be had as
 12 is provided in the seventh section. 1853, c. 39, § 3.

SECT. 9. All sums due for rent, whether upon lease, under
 2 seal or otherwise, and all claims for damages done by a
 3 tenant to premises under rent, may be recovered in an action
 4 of assumpsit, on an account annexed to the writ, specifying
 5 the items and amounts of charge claimed to be recovered.
 1853, c. 39, § 4.

SECT. 10. Writs of possession, issued by any judge of a
 2 municipal or police court, or justice of the peace, may be
 3 directed to, and served by, constables. 1853, c. 39, § 5.

Chapter 95.

WASTE AND TRESPASSES ON REAL ESTATE.

- Sect.* 1. Remedy if tenant for life or years commits waste; the heir may sue for waste committed in his ancestors' time, as well as in his own time.
2. Proceedings in court; jury in all cases to assess damages, with or without a view of the premises; action of the case may be brought.
3. Reversioner and remainder man may sue.
4. The action will lie against the executor or administrator.
5. Part owners not to commit waste without giving thirty days' notice; treble damages to be awarded in such case; how recovered and appropriated.
6. Defendant not to pay treble damages in certain cases.
7. Injunction to prevent waste pending a process for the recovery of lands, and on lands attached.
8. Treble damages may be recovered for waste on lands pending a suit therefor.
9. Trespass on lands of another without his consent.
10. Trespases on public buildings or property.
11. Trespases by taking grass, fruit, or other vegetables from improved lands.
12. Penalty for waste on lands of a person deceased insolvent.
13. Liability of executor or administrator for committing waste.
14. One or more tenants in common may join or sever in actions for damages.
15. Notice to the other cotenants to be given, who may become plaintiffs.
16. Judgment to be rendered for the whole damage, and execution to issue for the proportion which the plaintiffs have sustained.
17. Scire facias on such judgment by the other cotenants for their shares.
18. If one or more joint tenant takes the whole rent, the cotenants may recover their share, after demand.

SECT. 1. If any tenant in dower, by curtesy, for life, or for 2 years, commits or suffers any waste on the premises, the person having the next immediate estate of inheritance, in an 3 action of waste against such tenant, may recover the premises 4 and the damages done to them; and an heir, in the same 5 action, may recover for waste done in his own time, and the 6 time of his ancestor. R. S., c. 129, § 1, 2.

SECT. 2. Any issue of fact, in the case, shall be tried by a 2 jury, in the usual manner, with or without a view of the 3 premises, as the court orders; and the jury that enquires of 4 the waste, in all cases, shall assess the damages. An action 5 of the case, in nature of waste, may be substituted for the 6 action of waste. R. S., c. 129, § 3, 4.

SECT. 3. The remainder man or reversioner, for life, or 2 years only, or fee simple or fee tail, after an intervening 3 estate for life, may maintain such action, and recover the 4 damages he has suffered by the waste. R. S., c. 129, § 5.

SECT. 4. Such action may be originally commenced against 2 the executors or administrators of the tenant, or prosecuted 3 against them, after his death, when the action was brought 4 against him. R. S., c. 129, § 6.

SECT. 5. If any joint tenant, coparcener, or tenant in com- 2 mon, of undivided lands, cuts down, destroys or carries away 3 any trees, timber, wood or underwood, standing or lying on 4 such lands or digs up, or carries away any ore, stone, or other 5 valuable thing found thereon, or commits any strip or waste, 6 without first giving thirty days' notice, in writing, under his 7 hand, to all other persons, or to their agents or attorneys, 8 and to mortgagers and mortgagees, if any there are, inter- 9 ested therein, of his intention to enter upon and improve the 10 land; and if any persons interested are unknown, or their 11 residence is unknown, or out of the state, the notice to them 12 may be published in the state paper, three times, the first 13 publication to be forty days before such entry; or if he does 14 any such acts, pending a process for partition of the premises, 15 he shall forfeit three times the amount of damages; and any 16 one or more of the cotenants, without naming the others, 17 may sue for and recover their proportion of such damages

R. S., c. 129, § 7, 8. 1842, c. 31, § 15. 1854, c. 78 § 1.

SECT. 6. If the jury finds that the defendant in such suit
 2 has good reason to believe himself the owner of the land, in
 3 severalty, or that he and those under whom he claims had
 4 been in the exclusive possession thereof, claiming it as their
 5 own, for three years next before the acts complained of, were
 6 committed, only single damages shall be recovered.

R. S., c. 129, § 9. 1854, c. 78, § 1.

SECT. 7. If any defendant in an action to recover possession
 2 of real estate, or any person whose real estate is attached in
 3 a civil action, does any act of waste thereon, or threatens or
 4 makes preparation so to do, any justice of the supreme judi-
 5 cial court, in vacation or term time, may issue an injunction
 6 to stay such waste; but notice shall first be given to the
 7 adverse party, to appear and answer, unless the applicant
 8 files a bond, with sufficient sureties, to respond all damages
 9 and costs; and the court may enforce obedience to such
 10 injunctions, by such process as may be employed in an
 11 equity case, and dissolve it when deemed proper.

R. S., c. 129, § 14. 1846, c. 188, § 12.

SECT. 8. If during the pendency of any action for the recov-
 2 ery of land, the tenant makes any strip or waste, by cutting,
 3 felling, or destroying any wood, timber, trees or poles, stand-
 4 ing on said land, he shall pay to the aggrieved party, treble
 5 damages, to be recovered in an action of trespass.

R. S., c. 129, § 11.

SECT. 9. If any person cuts down, destroys, injures or
 2 carries away any ornamental or fruit trees, timber, wood,
 3 underwood, stones, gravel, ore, goods or property of any
 4 kind, from land not his own, without license of the owner,
 5 or injures, or throws down any fences, bars or gates, or leaves
 6 such gates open, or breaks any glass in any building, he shall
 7 be liable in damages to the owner, in an action of trespass.

R. S., c. 129, § 10.

SECT. 10. Where any trespasses are committed on any
 2 buildings, inclosures, monuments or mile stones, belonging to
 3 any county, town or parish, the treasurer of such corpora-
 4 tion, may sue for the damages in the name of the cor-

5 poration; and if the property injured belongs to a school
6 district, the treasurer of the town may sue, in the name of
7 such district. R. S., c 129, § 12.

SECT. 11. If any person enters on any grass land, orchard
2 or garden, and takes therefrom, without permission of the
3 owner, any grass, hay, fruit, vegetable or shrub, he shall be
4 liable to the party injured, in a sum, equal to three times the
5 value of the articles so taken away, in an action of trespass.
R. S., c. 129, § 13.

SECT. 12. If any of the heirs or devisees of a person
2 deceased, whose estate is represented insolvent, after such
3 representation is made, and before the conveyance of the real
4 estate of the deceased, for the payment of debts, in case the
5 estate is absolutely insolvent, removes or destroys any build-
6 ing, or cuts down, destroys or carries away trees, for timber
7 or fire-wood, except what is needed for fuel or repairs, or
8 commits any strip or waste on the land so sold and conveyed,
9 he shall forfeit treble the amount of damages, to be recovered
10 by the executor or administrator, in an action of trespass.
R. S., c. 129, § 15.

SECT. 13. If such executor or administrator is heir or
2 devisee, and commits any such trespass or waste, on proof
3 thereof before the judge of probate, he shall be liable to the
4 same extent as the heirs or devisees; and, in both cases, the
5 damages, when recovered by the executor or administrator,
6 or adjudged against him by the judge of probate, shall be
7 accounted for in the administration account.
R. S., c. 129, § 16.

SECT. 14. All or any of the tenants in common, coparce-
2 ners or joint tenants of any lands, may join or sever in
3 personal actions for injuries done to the same.
R. S., c. 129, § 17.

SECT. 15. When any such action is brought, the court may
2 order notice to be given to all other cotenants known, and all
3 or any of them, at any time before final judgment, may be-
4 come plaintiffs in the action, and prosecute the suit for the
5 benefit of all concerned. R. S., c. 129, § 18.

SECT. 16. The court shall enter judgment for the whole
2 amount of the injury proved; but shall award execution only
3 for the proportion thereof sustained by the plaintiffs.

R. S., c. 129, § 19.

SECT. 17. The remaining cotenants may, afterwards, either
2 jointly or severally, sue out a scire facias on such judgment,
3 and execution shall be threupon awarded for their proportion
4 of the damages, adjudged in the original suit.

R. S., c. 129, § 20.

SECT. 18. If any one or more of the joint tenants, or ten-
2 ants in common, take the whole rents or income of the joint
3 estate, or more than their share, without the consent of their
4 cotenants; and refuse, after demand, in a reasonable time, to
5 pay such tenants their share thereof, any one or more of said
6 cotenants, may have an action of special assumpsit against
7 their cotenants, so withholding the rents and income, to
8 recover their proportion thereof. 1848, c. 61, § 1, 2.

Chapter 96.

REPLEVIN OF BEASTS AND CHATTELS.

REPLEVIN OF BEASTS.

- Sect.* 1. Owner of beasts distrained, may replevy them.
2. The mode of proceeding, process, &c.
 3. Bond to be given before service of writ.
 4. If the beasts are lawfully distrained, defendant to have judgment for forfeiture or damages, fees, costs and expenses, or for a return.
 5. If unlawfully distrained, plaintiff to have judgment for damages and costs.
 6. Either party may appeal.
 7. In what cases a cause may be transferred from a justice to the supreme judicial court.

REPLEVIN OF GOODS.

8. Any goods, unlawfully detained, may be replevied.
9. In what courts replevin may be brought.
10. Bond to be given before service.
11. If plaintiff fails in his suit, defendant to have judgment for return, and for damages and costs.
12. Assessment of damages on judgment for return of property to an attaching officer.
13. Disposal of the money recovered by the officer.

14. Appropriation of the money received by the creditor in such cases.
15. Judgment for damages and costs if plaintiff recovers.
16. Continuance of attachment, if goods are replevied.
17. When writ of reprisal may issue.
18. Defendant's remedy on the replevin bond.
19. Limitation of surety's liability on replevin bond.

Replevin of Beasts.

SECT. 1. Any person whose beasts are distrained or impounded, in order to recover any penalty or forfeiture supposed to be incurred by their going at large, or to obtain satisfaction for any damages alleged to be done by them, may maintain a writ of replevin against the impounder or finder therefor, to be sued out and prosecuted before any justice of the peace for the county, in the form prescribed by law.

R. S., c. 130, § 1.

SECT. 2. The writ shall be sued out, served and returned, and the cause shall be heard and determined in like manner as is provided in the case of other civil actions, before a justice of the peace, except as otherwise prescribed.

R. S., c. 130, § 2.

SECT. 3. The writ shall not be served, unless the plaintiff, or some one in his behalf, executes and delivers to the officer a bond to the defendant, with sufficient sureties, to be approved by the officer, in a penalty double the actual value of the property to be replevied, conditioned as in the prescribed form of the writ, and to be returned with the writ, for the use of the defendant.

R. S., c. 130, § 3.

SECT. 4. If it appears, by nonsuit of the plaintiff, or upon trial, or otherwise, that the beasts were lawfully taken, or distrained, the defendant shall have judgment for such sum as is found due from the plaintiff for the penalty or forfeiture, or for damages for which the beasts were impounded, with the legal fees, costs and expenses occasioned by the distress, and the costs of the replevin suit; or, instead thereof, the justice or court, in their discretion, may enter judgment for a return of the beasts to the defendant, to be held by him for the original purpose, irrevocable by plaintiff, and for the defendant's damages and costs in the replevin suit.

R. S., c. 130, § 4.

SECT. 5. If it appears, by default of defendant, or upon
 2 trial or otherwise, that the beasts were taken, or distrained,
 3 without justifiable cause, the plaintiff shall have judgment
 4 for his damages and costs. R. S., c. 130, § 5.

SECT. 6. Either party may appeal from the final judgment
 2 of the justice, as in other civil actions. R. S., c. 130, § 6.

SECT. 7. When it appears that the sum demanded for the
 2 penalty, forfeitures or damages, exceeds twenty dollars, or
 3 that the property of the beasts is in question, and their value
 4 exceeds twenty dollars, or that the title to real estate is in
 5 question, at the request of either party the case shall be trans-
 6 ferred to the supreme judicial court, to be there disposed of,
 7 as is provided by law respecting other civil actions brought
 8 before a justice of the peace, in which the title to real estate
 9 is brought in question; but the party, requesting such trans-
 10 fer, shall recognize, as in actions of trespass brought before a
 11 justice of the peace, in such reasonable sum as the justice
 12 orders, to enter the action at the next term of said court, and
 13 prosecute it with effect, and pay all intervening damages and
 14 costs. R. S., c. 130, § 7.

Replevin of Goods.

SECT. 8. When any goods are unlawfully taken or detained
 2 from the owner or person entitled to the possession thereof,
 3 or are attached on mesne process, or taken in execution, are
 4 claimed by any person other than the defendant in the suit,
 5 in which they are so attached or taken, such owner or person
 6 may cause them to be replevied. R. S., c. 130, § 8.

SECT. 9. If the value of the goods exceeds the sum of
 2 twenty dollars, the action shall be brought in the supreme
 3 judicial court for the county where the goods are detained;
 4 and if the value of the goods does not exceed twenty dollars,
 5 the action shall be brought before a justice of the peace of the
 6 county where the goods are detained. R. S., c. 130, § 9.

SECT. 10. The officer before serving the writ, shall take
 2 from the plaintiff, or some one in his behalf, a bond to the
 3 defendant, with sufficient sureties in double the value of the
 4 goods to be replevied, conditioned as in the prescribed form

5 of the writ which bond shall be returned to the court from
6 which the writ issued, with the writ, for the use of the
7 defendant. R. S., c. 130, § 10.

SECT. 11. If it appears by nonsuit of the plaintiff, by trial
2 or otherwise, that the defendant is entitled to a return of the
3 goods, he shall have judgment and a writ of return accord-
4 ingly, with damages for the taking, and costs.

R. S., c. 130, § 11.

SECT. 12 If the goods when replevied were taken in exe-
2 cution, or attached, and judgment is afterwards rendered for
3 the attaching creditor, in either case, if the service of the
4 execution is delayed by the replevin, the damages, in case
5 of a judgment for a return, shall not be less than at the rate
6 of twelve per cent. by the year, on the value of the goods for
7 so long a time as the service of the execution is so delayed.

R. S., c. 130, § 12.

SECT. 13. All sums recovered by an officer in an action of
2 replevin on account of goods attached or taken in execution
3 by him, or recovered in a suit upon the replevin bond, shall
4 be applied :

First—To pay the lawful fees and charges of the officer,
6 and the reasonable expenses of the replevin suit, and the
7 action on the bond, so far as they are not reimbursed by the
8 costs recovered.

Second—to pay the creditor, at whose suit the goods were
10 attached, or taken in execution, the sum, if any, recovered by
11 him in that suit, or what remains unpaid, with interest there-
12 for, at the rate of twelve per cent. by the year, for the time
13 the money was withheld from the creditor, or the service of
14 his execution delayed by reason of the replevin.

Third—If the attaching creditor, in such case, does not
2 recover judgment in his suit, or if any balance remains of the
3 money so recovered by the officer, after paying the creditor
4 his due, such balance, or the whole amount, as the case may
5 be shall be applied in like manner as the surplus of the pro-
6 ceeds of sale should be applied, if the same goods had been
7 sold on execution. R. S., c. 130, § 13.

SECT. 14. All sums received by such creditor as proceeds
2 of sales of goods attached or taken in execution, which are

3 afterwards returned, for any of such goods not returned, and
4 of the officer for the insufficiency of the bond, shall be
5 applied in discharge of the creditor's judgment; but all sums
6 received as interest or damages for delay of his execution,
7 shall be retained to his own use, and not go in discharge of the
8 judgment. R. S., c. 129, § 14.

SECT. 15. If it appears by default of defendant or by trial,
2 or otherwise, that the goods were taken, attached, or detained
3 unlawfully by him, the plaintiff shall have judgment for his
4 damages caused thereby, and for his costs.

R. S., c. 130, § 15.

SECT. 16. If the goods replevied, had been attached in
2 case of judgment for a return, they shall be held by the
3 attachment, until thirty days after judgment in the suit, in
4 which they were attached; and if such final judgment is
5 rendered before the return of the goods, or if the goods, when
6 replevied, were seized on execution, they shall be held by
7 the same attachment, or seizure, for thirty days after the
8 return, liable to be taken and disposed of, as if they had not
9 been replevied.

R. S., c. 130, § 16.

SECT. 17. When the officer, in the service of the writ of
2 return and restitution, is not able to find in his precinct the
3 beast or other property, directed to be returned in his precept,
4 he shall certify that fact in his return; and the court whence
5 it issued, upon notice, may grant a writ of reprisal of the form
6 prescribed by law, against the plaintiff in replevin, to take
7 his goods or beasts, not exempted from attachment of the full
8 value, to be delivered to the defendant, to be held and dis-
9 posed of by him, according to law, until the plaintiff restores
10 the beast, or other property, replevied by him.

R. S., c. 130, § 17.

SECT. 18. The foregoing provisions shall not preclude the
2 defendant from resorting to his remedy, on the replevin bond,
3 or to his remedy against the officer for the insufficiency of the
4 sureties on the bond, to recover the value of the goods,
5 together with the damage or loss occasioned by the replevin
6 thereof, notwithstanding he has endeavored to recover the
7 same by the writs of return and of reprisal, as aforesaid.

R. S., c. 130, § 18.

SECT. 19. No action shall be maintained against any person, as surety in a replevin bond, unless the writ is served on him within one year after the final judgment in the action of replevin; or if the action is not entered by the plaintiff, and the defendant does not obtain judgment upon a complaint, such writ against the surety may be served on him within one year after the end of the term, at which the action of replevin ought to have been entered, and not afterwards.

R. S., c. 130, § 19.

Chapter 97.

BASTARD CHILDREN, AND THEIR MAINTENANCE.

- Sect.* 1. Accusations by a woman pregnant with a bastard child, and her examination.
2. Justice may issue a warrant.
 3. Person arrested to give bond.
 4. On refusal, to be committed.
 5. Cause to be continued, if complainant is not delivered, or unable to attend court.
 6. Surrender of principal by his sureties, and proceedings.
 7. Declaration must be filed before trial; form thereof.
 8. Complainant may be a witness, if she has continued constant in her accusations.
 9. Proceedings if respondent is adjudged guilty.
 10. If not guilty, respondent to be discharged.
 11. Complainant not to settle with the father, unless by the written consent of the overseers of the poor.
 12. The father may be discharged from imprisonment, on taking the poor debtor's oath; his liability to the mother and town, after such discharge.

SECT. 1. When any woman, pregnant with a child, which, if born alive, may be a bastard, or who has been delivered of a bastard child, accuses any man of being the father thereof, before any justice of the peace, and requests a prosecution against him, such justice shall take her accusation and examination, on oath, respecting the accused, and the time and place when and where the child was begotten, as correctly as they can be described, and all such other circumstances as he deems useful in the discovery of the truth.

R. S., c. 131, § 1.

SECT. 2. He may issue his warrant for the apprehension of such person, directed to the sheriff of any county, in which

3 the accused is supposed to reside, accompanied by such
4 accusation and examination. R. S., c. 131, § 2.

SECT. 3. When the person is brought before such or any
2 other justice, he may require him to give bond to the com-
3 plainant, with sufficient sureties, in such reasonable sum as
4 he orders, conditioned for his appearance at the next supreme
5 judicial court, for the county in which she resides, and for his
6 abiding the order of court thereon. R. S., c. 131, § 3.

SECT. 4. If the accused refuses or neglects to give such
2 bond, the justice shall commit him to the jail of the county
3 of such justice, until such bond is given. R. S., c. 131, § 4.

SECT. 5. If, at such next, or any subsequent court, the
2 complainant has not been delivered of her child, or is unable
3 to attend court, or for other good reason, the cause may be
4 continued, and the bond shall remain in force until final
5 judgment, unless it becomes void, as mentioned in the follow-
6 ing section. R. S., c. 131, § 5.

SECT. 6. The sureties of the accused, may surrender him
2 in court at any time before final judgment, and thereupon
3 they shall be discharged; and he shall be committed, until a
4 new bond is given. R. S., c. 131, § 6. R. S., c. 114, § 100.

SECT. 7. Before proceeding to trial, the complainant must
2 file a declaration, stating that she has been delivered of a
3 bastard child, begotten by the accused; the time and place
4 when and where it was begotten, with as much precision as
5 the case will admit; that, being put on the discovery of the
6 truth, during the time of her travail, she accused the
7 respondent of being the father of the child, and that she had
8 been constant in such accusation. R. S., c. 131, § 7.

SECT. 8. When the complainant has made said accusation,
2 been examined on oath as before mentioned, and been put
3 upon the discovery of the truth of the same accusation at the
4 time of her travail, and thereupon has accused the same man
5 with being the father of the child of which she is about to be
6 delivered, and has continued constant in such accusation,
7 and prosecutes him as the father of such child before such
8 court, the man shall be held to answer to such complaint,
9 and she may be a witness in the trial, unless incompetent
10 by reason of a conviction of some crime. R. S., c. 131, § 8.

SECT. 9. If on such issue, the jury finds the respondent
2 guilty, or the facts in the declaration filed are admitted by
3 default or on demurrer, he shall be adjudged the father of
4 such child, and stand charged with its maintenance, with
5 the assistance of the mother, as the court may order; and
6 shall give a bond with sufficient sureties, approved by the
7 court, to the complainant, to perform said order, and a bond
8 with sufficient sureties approved as aforesaid, to the town
9 that may be liable for the maintenance of such child; the
10 latter bond to be deposited with the clerk of the court for the
11 use of such town; and he shall be committed till he gives
12 such bonds. R. S., c. 131, § 9.

SECT. 10. If on trial, the jury finds the respondent not
2 guilty, the court shall order him to be discharged; and the
3 verdict in either case shall be final. R. S., c. 131, § 10.

SECT. 11. No woman, whose accusation and examination
2 on oath, have been taken by a justice of the peace at her
3 request, shall make any settlement with the father, or give
4 him any discharge which may be given in evidence on the
5 trial, to bar or affect any such complaint, without the con-
6 sent in writing of the overseers of the poor of the town,
7 interested in the support of such mother or child.

R. S., c. 131, § 11.

SECT. 12. When the father of such bastard child, has
2 remained ninety days in jail, without being able to comply
3 with the order of court, he may be liberated by taking the
4 poor debtor's oath, in the same manner as persons committed
5 on execution; but he shall give fifteen days' notice of his
6 intention to take the benefit of such oath, to the complainant,
7 if then living, and the clerk of the town where the child has
8 its legal settlement, if in this state. The mother of such
9 child, and said town, may, after such liberation of such pris-
10 oner, recover of him by action of debt, any sum of money,
11 which ought to have been paid pursuant to the order of
12 court. R. S., c. 131, § 12, 13.

Chapter 98.**PERSONAL PROPERTY SEIZED, AND LOST GOODS; AND PROCEEDINGS THEREON.**

- Sect.* 1. Seizure of forfeited personal property, by the person entitled thereto.
2. To be restored to claimant, on his giving bond.
3. The same to be appraised.
4. Inventory and appraisal, if there is no claimant.
5. If the value exceeds twenty dollars, libel to be in the supreme judicial court.
6. How notice of libel to be given.
- 7: 8. Proceedings and decree thereon.
9. If the value is less than twenty dollars, libel to be before a justice.
10. Appeal; decree to be affirmed, if appeal is not prosecuted; depositions may be used in the trial.
- 11, 12. Duty of finder of goods worth three dollars, or more; also, worth ten dollars, or more.
13. Proceedings, if owner appears in one year.
14. If no owner appears, within one year, the finder to have the money, or goods, on paying one half the value to town treasurer.
15. Penalty, if finder neglects to give notice.

SECT. 1. When any personal property is forfeited for any
2 offense, and no special mode is prescribed for recovering it,
3 any person entitled to the whole or part of the same, may
4 seize and keep it till final judgment, unless restored on the
5 bond as herein provided. R. S., c. 132, § 1.

SECT. 2. If the person claiming it for himself, or another,
2 gives bond to the party seizing, with sufficient surety, to pay
3 the appraised value thereof, when it is decreed forfeited, it
4 shall be restored to such claimant. R. S., c. 132, § 2.

SECT. 3. The value shall be ascertained by the appraise-
2 ment of three disinterested men, mutually chosen by the
3 parties; or if they cannot agree, by a justice of the peace of
4 the same county. R. S., c. 132, § 3.

SECT. 4. If no person claims the property, after it has been
2 so seized, the party seizing, shall cause an inventory and
4 appraisement thereof to be made by three disinterested persons,
5 under oath, appointed by a justice of the same county; which
6 shall be the rule for deciding where the libel shall be filed.

R. S., c. 132, § 4.

SECT. 5. If the property seized exceeds twenty dollars, the
2 party seizing, within twenty days thereafter, shall file a libel
3 in the clerk's office of the supreme judicial court, in the

4 county where the offense was committed, stating the cause
5 of seizure, and praying for a decree of forfeiture. The
6 clerk thereupon, shall make out a notice to all persons to
7 appear at such court, at the time appointed, to show cause
8 why such decree should not be passed. R. S., c. 132, § 5.

SECT. 6. Such notice shall be published in some newspaper
2 printed in the same county, if any, if not, in the state paper,
3 at least fourteen days before the time of trial.

R. S., c. 132, § 6.

SECT. 7. When there is a claimant, the court may hear
2 and determine the cause by a jury, or without, if the parties
3 agree, and may allow costs against the claimant; if there is
4 no claimant, the court shall decree the forfeiture and dispo-
5 sition of the property, according to law, and a sale and
6 distribution of the proceeds, after deducting all proper charges.

R. S., c. 132, § 7.

SECT. 8. If the libel is not supported, or is discontinued,
2 the court shall decree a restoration of the property, with
3 costs. If the jury or court finds the seizure without probable
4 cause, reasonable damages shall be decreed for the claimant.

R. S., c. 132, § 8.

SECT. 9. When the property seized does not exceed twenty
2 dollars, the libel shall be filed before a justice of the peace of
3 the county, where the offense was committed, and after
4 notice of the kind as before mentioned, has been posted at
5 two or more public places in the same county, seven days at
6 least, before the day of trial, such justice shall try and decide
7 the cause, and make such decree therein as the law requires.

R. S., c. 132, § 9.

SECT. 10. Either party may appeal to the next supreme
2 judicial court in the same county, recognizing as in other
3 cases of appeal; if the appeal is not prosecuted, the court on
4 complaint may affirm the decree of the justice with costs;
5 and depositions duly taken, may be used in the trial of the
6 action. R. S., c. 132, § 10, 11, 12.

SECT. 11. The finder of any money or goods of the value
2 of three dollars or more, if the owner is unknown, within ten
3 days next following, shall give notice thereof in writing to
4 the clerk of the town where they are found, and post up a

5 notification thereof in some public place in said town, and
6 cause the same to be publicly cried therein, on three several
7 days, if there is any public crier in said town. And if the
8 value of said money or goods is ten dollars or more, the same
9 shall be cried and notice given by posting as aforesaid, in two
10 towns adjoining, in addition. R. S., c. 132, § 13, 14.

SECT. 12. Every finder of lost goods, of the value of ten
2 dollars, or more, within two months after finding, and before
3 using them to their disadvantage, shall procure a warrant
4 from the town clerk or a justice of the peace, directed to two
5 persons appointed by said clerk or justice, not interested,
6 except as inhabitants of the town, returnable within seven
7 days from the date, in the said clerk's office, to appraise said
8 goods under oath. R. S., c. 132, § 15.

SECT. 13. If the owner of such lost money, or goods,
2 appears within one year after said notice to the clerk, and
3 gives reasonable evidence of his ownership, to the finder, he
4 shall have restitution of the same, or the value thereof,
5 allowing and paying all necessary charges and reasonable
6 compensation to the finder, to be adjudged by some justice of
7 the peace of the county, if the owner and finder cannot agree.
R. S., c. 132, § 16.

SECT. 14. If no owner appears within one year, such money
2 or lost goods, shall belong to the finder, by paying one half
3 their value to the treasurer of said town, after deducting all
4 necessary charges; but if he neglects to pay the same, on
5 demand, it may be recovered in an action, brought by said
6 treasurer, in the name of the town. R. S., c. 132, § 17.

SECT. 15. If the finder of any lost money, or goods, of the
2 value of three dollars, or more, neglects to give notice to the
3 town clerk, and cause the same to be cried and advertised, as
4 herein provided, he shall forfeit the full value thereof, one
5 half to the use of the town, and the other half to him who
6 sues therefor, and be liable to the owner for the lost money,
7 or goods. R. S., c. 132, § 18.

Chapter 99.**HABEAS CORPUS.**

- Sect.* 1. Who may prosecute the writ, as matter of right.
2. Minors enlisting into the army or navy, entitled to benefits of this chapter.
3. Parent, master or guardian of minor restrained, entitled to such writ.
4. Supreme judicial court may grant such writ, on application of any person, in behalf of one incapable of making his own application.
5. Who are not so entitled as of right.
6. Application; how made by persons not of right entitled.
7. To be returnable before the court, or any justice thereof.
8. Application to be in writing, signed and sworn to, and shall state the case clearly.
9. When the writ shall not issue.
10. Proceedings, if excessive bail is demanded.
11. If the officer refuses a copy of the precept, the writ shall issue forthwith.
12. Form of writ, in cases mentioned in the fifth section.
13. Time of service and return. Tender of fees.
14. Officer, when he makes return, to bring the body of the person restrained.
15. Proceedings, if the person is sick, and cannot be brought.
16. Examination of the causes of restraint.
17. Persons interested to be notified before discharge.
- 18, 19, 20. Proceedings and decision upon the application.
21. Form of writ, if the restraint is not by an officer.
22. By whom issued and where served.
23. If the person restraining is unknown, how designated.
24. If the person restrained is unknown, how designated.
25. Form of return in the cases mentioned in the thirteenth and twenty-first sections.
26. How such return shall be authenticated.
27. Manner of keeping the party before judgment.
28. Penalty for neglect of an officer to give a copy of his precept for detaining a prisoner.
29. Punishment, if an officer neglects to serve a writ of habeas corpus.
30. If attachment is issued against a sheriff.
31. Proceedings in such case for release of the person for whose benefit the writ issued.
32. Persons discharged on habeas corpus, not to be arrested again, except in certain cases.
33. Conveyance to prison of persons ordered to be committed. Penalty for eluding the service of a writ of habeas corpus.
34. Penalties no bar to actions for damages.
35. A third person may appear for the party detained in certain cases.
36. Supreme court may allow bail, at discretion, or any justice thereof. Exception.
37. Admission of a person to bail, when committed for not finding sureties.
38. Habeas corpus may issue to bring in a prisoner as a witness.
39. Habeas corpus may issue, on application, in behalf of an insane person, committed on meane process, or execution.

SECT. 1. Every person unlawfully deprived of his personal
2 liberty, by the act of another, except in the cases hereinafter
3 mentioned, shall of right have a writ of habeas corpus,
4 according to the provisions herein contained.

R. S., c. 140, § 1.

SECT. 2. Any minor enlisted within this state, into the army
2 or navy of the United States, without the written consent of
3 his parent, guardian or master, shall have all the benefits of
4 this chapter on the application of himself, parent, guardian
5 or master.

R. S., c. 140, § 37.

SECT. 3. The parent, master, or guardian of any minor
2 imprisoned or restrained of his liberty, shall be entitled to the
3 writ of habeas corpus for such minor, in case the minor would
4 be entitled to said writ on his own application.

1845, c. 138, § 1.

SECT. 4. The supreme judicial court or any justice thereof,
2 on application of any person, may issue the writ of habeas
3 corpus to bring before them any party alleged to be impris-
4 oned or restrained of his liberty, who would be entitled to
5 said writ on his own application, when from any cause he is
6 incapable of making such application.

1845, c. 138, § 2.

SECT. 5. The following persons shall not of right, have
2 such writ :

First—Persons committed to and confined in prison for trea-
4 son, felony, or suspicion thereof, or as accessories, before the
5 fact, to a felony, when the same is plainly and specially
6 expressed in the warrant of commitment.

Second—Persons convicted, or in execution upon legal pro-
8 cess, criminal or civil.

Third—Persons committed on mesne process in any civil
10 action, on which they are liable to be arrested and impris-
11 oned.

R. S., c. 140, § 2.

SECT. 6. Every application for such writ by any such per-
2 son, shall be made to the supreme judicial court in the county
3 where the restraint exists, if it is in session ; if not, to any
4 justice thereof ; and when issued by the court, it shall be
5 returnable thereto ; but if the court is adjourned without day,

6 or for more than seven days, it may be returned before any
7 justice thereof, and heard and determined by him.

R. S., c. 140, § 3.

SECT. 7. When issued by a justice of the court, it may be
2 made returnable before the court or himself, or any other
3 justice thereof.

R. S., c. 140, § 4.

SECT. 8. The application shall be in writing and signed
2 and sworn to by the person making it. The applicant shall
3 state the place where and the person by whom, he or the
4 person in whose behalf the application is made, is restrained ;
5 and produce to the court or justice, a copy of the precept by
6 virtue of which he or such other person is so restrained, attested
7 by the officer holding it. R. S., c. 140, § 5. 1845, c. 138, § 2, 3.

SECT. 9. If on inspection of the copy of such precept, it
2 appears to the court or justice that such person is lawfully
3 imprisoned or restrained of his liberty by virtue thereof, a
4 writ of habeas corpus shall not be granted.

R. S., c. 140, § 6.

SECT. 10. If it appears by such copy that such person is
2 committed and imprisoned on mesne process for want of bail,
3 and the court or justice is of the opinion that excessive bail
4 is demanded, the court or justice shall decide what bail is
5 reasonable, and on giving such bail to the plaintiff, he shall
6 be discharged.

R. S., c. 140, § 7.

SECT. 11. If the prison keeper or other officer having the
2 custody of such person, refuses or unreasonably delays to
3 deliver to the applicant an attested copy of the precept by
4 which he restrains him, on demand therefor, the court or
5 justice on proof of such demand and refusal, shall forthwith
6 issue the writ of habeas corpus, as prayed for.

R. S., c. 140, § 8.

SECT. 12. When such writ is issued, on application in be-
2 half of any person described in the fifth section, it shall be
3 substantially as follows :

STATE OF MAINE.

C——, ss. To A. B. of —— ;

6 [L. s.]

Greeting.

7 We command you, that the body of C. D., in our prison,
8 at ——, under your custody, (or by you imprisoned and re-

9 strained of his liberty, as the case may be) as it is said,
 10 together with the day and cause of his taking and detaining,
 11 by whatsoever name the said C. D. is called or charged, you
 12 have before our supreme judicial court, holden at ———, in
 13 and for our county of ———, immediately after the receipt
 14 of this writ, to do and receive what our said court shall then
 15 and there consider concerning him in this behalf, and have
 16 you there this writ.

17 Witness ———, at ———, this ——— day of ———, in
 18 the year ———.

—————, clerk.

20 The like form shall be used by any justice of said court,
 21 changing what should be changed, when such writ is awarded
 22 by him. R. S., c. 140, § 9.

SECT. 13. When such writ is offered to the officer to whom
 2 it is directed, he shall receive it; and on payment or tender
 3 of such sum as the court or justice thereof directs, shall make
 4 due return thereof within three days, if the place of return is
 5 within twenty miles of the place of imprisonment; if over
 6 twenty, and less than one hundred miles, within seven days;
 7 and if more than one hundred miles, within fourteen days;
 8 but if such writ was issued against such officer, on his refu-
 9 sal or neglect to deliver on demand to the applicant, a copy
 10 of the precept by which he restrained the person of his lib-
 11 erty, in whose behalf application was made, then the officer
 12 shall be bound to obey the writ without payment or tender
 13 of expenses R. S., c. 140, § 10.

SECT. 14. The person making the return shall at the same
 2 time bring the body of the party, if in his custody or power,
 3 or under his restraint, according to the command of the writ,
 4 unless prevented by his sickness or infirmity.

R. S., c. 140, § 11.

SECT. 15. When by reason of such sickness or infirmity he
 2 cannot, without danger, be brought to the place appointed in
 3 the writ, that fact shall be stated in the return, and, if
 4 proved to the satisfaction of the court or justice thereof, any
 5 justice of the court may proceed to the place where the party
 6 is confined, and there make his examination, or may adjourn

7 the same to another time, or make such other order in the
8 case, as law and justice requires. R. S., c. 140, § 12.

SECT. 16. On the return of the writ, the court, or justice
2 thereof, without delay, shall proceed to examine the causes of
3 imprisonment or restraint; and may adjourn such examina-
4 tion from time to time. R. S., c. 140, § 13.

SECT. 17. When it appears that the party is detained on
2 any process, under which any other person has an interest
3 in continuing such imprisonment or restraint, the party shall
4 not be discharged until notice has been given to such other
5 person, or his attorney, if within the state, or within thirty
6 miles of the place of examination, to appear and object, if he
7 see cause; and, if imprisoned on any criminal accusation, he
8 shall not be discharged, until sufficient notice has been given
9 to the attorney general or other attorney for the state, that he
10 may appear and object, if he thinks fit. R. S., c. 140, § 14.

SECT. 18. The party, imprisoned or restrained, may deny
2 any facts, stated in the return or statement, and may allege
3 any other facts, that are material; and the court, or justice
4 thereof, may, in a summary way, examine the cause of im-
5 prisonment or restraint, and hear evidence, produced by any
6 person interested, both in support of such imprisonment or
7 restraint and against it; and thereupon may dispose of the
8 party, as law and justice requires. R. S., c. 140, § 15.

SECT. 19. If no legal cause is shown for the imprisonment
2 or restraint of the party, the court, or justice thereof, shall
3 discharge him; but this provision shall not apply to the case
4 of a person committed on mesne process, where excessive
5 bail is demanded. R. S., c. 140, § 16.

SECT. 20. If the party is imprisoned and detained for any
2 offence, which is bailable, he shall be admitted to bail, if
3 sufficient bail is offered; and, if not, he shall be remanded
4 with an order of the court or justice thereof, expressing the
5 sum in which he shall be held to bail, and the court at which
6 he shall be bound to appear; and any justice of the peace
7 may, at any time before the sitting of the court, bail the party
8 pursuant to such order. R. S., c. 140, § 17.

SECT. 21. In cases of imprisonment or restraint of personal
2 liberty, by any person not a sheriff, deputy sheriff, coroner,

3 constable, jailer, or marshal, deputy marshal or other officer
4 of the courts of the United States, the writ shall be in the
5 following form, viz:

STATE OF MAINE.

7 (Seal.) To the sheriffs of our several counties, and their
8 respective deputies, Greeting.

9 We command you, that the body of C. D. of ———, im-
10 prisoned and restrained of his liberty, as it is said, by A. B.
11 of ———, you take and have before our supreme judicial
12 court, holden at ———, immediately after receipt of this
13 writ, to do and receive what our court shall then and there
14 consider concerning him in this behalf; and summon the said
15 A. B. then and there to appear before our said court, to show
16 cause of the taking and detaining of the said C. D., and have
17 you there this writ with your doings thereon. Witness,
18 our ——— at ———, this ——— day of ———, in the
19 year ———. ——— ———, Clerk.

R. S., c. 140, § 18.

SECT. 22. Such writ may be issued by the supreme judicial
2 court, when sitting in any county in which the person in
3 whose behalf application is made, is restrained, or by any
4 justice thereof, the form to be varied, so far as necessary,
5 when issued by a justice of the court, and served in any
6 county in the state. R. S., c. 140, § 19, 20.

SECT. 23. The person, having custody of the prisoner, may
2 be designated by the name of his office, if he has any, or by
3 his own name; or, if both are unknown or uncertain, he may
5 be described by an assumed name; and any one who is
6 served with the writ, shall be deemed the person thereby
7 intended. R. S., c. 140, § 21.

SECT. 24. The person detained, and to be produced, shall
2 be designated by his name, if known; and, if unknown or
3 uncertain, he may be described in any other way, so as to
4 make known who is intended. R. S., c., 140, § 22.

SECT. 25. In cases provided for in the thirteenth section,
2 the person who makes the return, and in cases provided for
3 in the twenty-first section, the person in whose custody the

4 prisoner is found, shall state, in writing, to the court, or
 5 justice thereof, before whom the process is returned, plainly
 6 and unequivocally,—

7 *First*—Whether he has, or has not, the party in his custody
 8 or power, or under restraint;

9 *Second*—If he has, he shall state, at large, the authority
 10 and the true and whole cause of such imprisonment or re-
 11 straint, upon which the party is detained; and,

12 *Third*—If he has had the party in his custody or power,
 13 or under his restraint, and has transferred such custody or
 14 restraint to another, he shall state particularly to whom, at
 15 what time, for what cause, and by what authority, such
 16 transfer was made

R. S., c. 140, § 23.

SECT. 26. Such return or statement shall be signed and
 2 sworn to, by the person making it, unless he is a sworn pub-
 3 lic officer, and makes and signs his return in his official
 4 capacity.

R. S., c. 140, § 24.

SECT. 27. The party may be bailed to appear from day to
 2 day, until judgment is rendered, or remanded, or committed
 3 to the sheriff, or placed in custody, as the case may require.

R. S., c. 140, § 25.

SECT. 28. If any officer refuses or neglects for four hours,
 2 to deliver a true and attested copy of the warrant or process
 3 by which he detains any prisoner, to any person who de-
 4 mands it, and tenders the fees therefor, he shall forfeit to
 5 such prisoner, two hundred dollars.

R. S., c. 140, § 26.

SECT. 29. If any person or officer, to whom such writ is
 2 directed, refuses to receive it, or neglects to obey and execute
 3 it, as hereby required, and no sufficient cause is shown for
 4 such refusal or neglect, he shall forfeit to the aggrieved party
 5 four hundred dollars; and the court or judge before whom
 6 the writ was returnable, shall proceed forthwith by attach-
 7 ment, as for a contempt, to compel obedience to the writ, and
 8 to punish for the contempt.

R. S., c. 140, § 27.

SECT. 30. If such attachment is issued against a sheriff or
 2 his deputy, it may be directed to a coroner or any other per-

3 son therein designated, who shall thereby have power to
4 execute it; and the sheriff or his deputy may be committed
5 to jail on such process, in any county but his own.

R. S., c. 140, § 28.

SECT. 31. If the person to whom the writ is directed, refuses
2 to obey and execute it, the court or judge may issue a pre-
3 cept to any officer or other person therein named, command-
4 ing him to bring the person for whose benefit the writ was
5 issued, before the court or judge; and the prisoner shall
6 thereupon be discharged, bailed or remanded, in like manner
7 as if brought in on habeas corpus. R. S., c. 140, § 29.

SECT. 32. No person, who has been enlarged by habeas
2 corpus, shall be again imprisoned or restrained for the same
3 cause, unless indicted therefor, convicted thereof, or commit-
4 ted for want of bail; or, after a discharge for defect of proof,
5 or some material defect in the commitment, in a criminal
6 case, he is arrested on sufficient proof, and committed by
7 legal process, for the same offense. R. S., c. 140, § 30.

SECT. 33. Any person, ordered to be committed to prison,
2 on any criminal charge, shall be carried to such prison, as
3 soon as may be, and shall not be delivered from one officer to
4 another, except for easy and speedy conveyance; nor re-
5 moved, without his consent, from one county to another,
6 unless by habeas corpus; and if any one, who has in his
7 custody, or under his power, any person entitled to a writ of
8 habeas corpus, whether issued or not, transfers such person
9 to the custody of another, or changes his place of confine-
10 ment, with intent to elude the service of such writ, he shall
11 forfeit to the party aggrieved, the sum of four hundred
12 dollars. R. S., 140, § 31.

SECT. 34. No penalty, established by this chapter, shall bar
2 any action at common law for damages, for false imprison-
3 ment. R. S., c. 140, § 32.

SECT. 35. When any person is unlawfully carried out of
2 the state, or imprisoned in a secret place, any other person
3 may appear for him, in any action therefor, in his name,
4 who shall stipulate for the payment of costs, as the court
5 orders. R. S., c. 140, § 33.

SECT. 36. Nothing in this chapter shall be construed to
2 restrain the supreme judicial court in term time, or any
3 justice thereof in vacation, from bailing any person for any
4 offence whatever, at their discretion, when the circumstances
5 of the case require it; except persons committed by the gov-
6 ernor and council, senate or house of representatives, for the
7 causes mentioned in the constitution. R. S., c. 140, § 34.

SECT. 37. When any person is confined in jail for a bail-
2 able offence, or for not finding sureties on a recognizance, any
3 two justices of the peace and of the quorum, on application,
4 may inquire into the case, and admit any such person to bail,
5 and exercise the same power which any one of the justices of
6 the supreme judicial court may do; and may issue a writ of
7 habeas corpus, and cause such person to be brought before
8 them, for the purpose expressed in this section, and may take
9 such recognizance. R. S., c. 140, § 35.

SECT. 38. Any court may issue a writ of habeas corpus,
2 when necessary, to bring before them any prisoner for trial,
3 in any cause pending in such court, or to testify as a witness,
4 when his personal attendance may be deemed necessary for
5 the attainment of justice. R. S., c. 140, § 36.

SECT. 39. When any insane person is arrested or impris-
2 oned on mesne process or execution in a civil suit, any judge
3 of the supreme judicial court, or judge of probate within his
4 county, on application, may inquire into the case, and issue
5 a writ of habeas corpus, and cause such person to be brought
6 before him for examination, and after notice to the creditor
7 or his attorney, if either is living in the state, and a hearing,
8 if proved to the satisfaction of said judge, that the person is
9 insane, he may discharge him from arrest or imprisonment;
10 and the creditor shall have the right to make a new arrest,
11 on the same demand, when the debtor becomes of sound
12 mind. But if he is arrested on the same demand a second
13 time, before he becomes of sound mind, and again discharged
14 for that reason, his body forever after, shall be exempted
15 from arrest therefor. Act of amendment, 1841, § 24.

Chapter 100.**WRIT OF AUDITA QUERELA.**

- Sect.* 1. Form of the writ.
2. In what court and county to be sued out.
 3. Proceedings in court.
 4. Complaint may recover special damages.
 5. Pleadings, and filing exceptions.
 6. Proceedings, if complainant is in prison.
 7. Effect of a surrender to jail.

SECT. 1. The writ of audita querela may be sued out in the form of a writ of attachment or summons; and shall be sealed, signed, tested and indorsed, as other writs.

R. S., c. 141, § 1.

SECT. 2. When brought to prevent, set aside, or annul proceedings on a judgment or execution, it shall be sued out of the court in which judgment was rendered, or in which the record of the judgment remains; but in all other cases in the county, and court having jurisdiction of the case, according to the provisions of law, as to personal actions.

R. S., c. 141, § 2.

SECT. 3. If the defendant does not appear, after being duly served with process, he shall be defaulted; and if he appears, a trial shall be had, as in common civil actions.

R. S., c. 141, § 3.

SECT. 4. The complainant may declare in his writ, for any special damages he has suffered by the service of such execution; and, on proof, he shall have judgment and execution for such damages, instead of recovering therefor in a subsequent suit.

R. S., c. 141, § 4.

SECT. 5. The defendant may plead the general issue, if not guilty, with or without a brief statement, as the case requires, or any special matter in bar; and exceptions may be alleged to the rulings, instructions and opinion of the court, as in civil actions, unless an appeal is allowable by law.

R. S., c. 141, § 5.

SECT. 6. When the complainant is in prison, on execution, the court before which such action is brought, may admit him to bail, to be approved by the court; the bond shall be conditioned, that if final judgment is rendered for the re-

5 spondent, the complainant, within thirty days thereafter,
6 shall surrender himself to the jail keeper, to be detained on
7 the execution, or, within that time, satisfy the execution,
8 and such final judgment as the respondent recovers.

R. S., c. 141, § 6.

SECT. 7. If the complainant surrenders himself to jail, he
2 shall be in lawful custody, on such execution; and there
3 detained, until discharged, according to law.

R. S., c. 141, § 7.

Chapter 101.

WRIT FOR REPLEVING A PERSON.

Sect. 1. Who is entitled to the writ.

2. Writ to issue from the supreme judicial court. Service.
3. Form of the writ.
4. Bond to be given.
5. Officer responsible for the sureties.
6. What judgment, if the action is or is not maintained.
7. What judgment, if defendant is entitled to the custody of the plaintiff.
8. If defendant has eligned the plaintiff, he may be arrested.
9. Defendant may be enlarged by giving bail.
10. Discharge and costs, if not guilty of eligning.
11. If guilty, to be imprisoned; and discharged on proof of plaintiff's death.
12. Form of writs of reprisal.
13. Proceedings, if the plaintiff is produced.

SECT. 1. If any person is imprisoned, restrained of his lib-
2 erty, or held in duress, unless by a lawful writ, warrant or
3 other process, civil or criminal, he shall be entitled of right,
4 by his own application, or by any one in his behalf without
5 any express power, to the writ for replevying for that pur-
6 pose, a person, and thereby to be delivered as herein
7 provided. R. S., c. 142, § 1, 18.

SECT. 2. The writ shall issue from and be returnable to
2 the supreme judicial court in the county where the plaintiff
3 is confined, and directed to the sheriff or coroner, as the case
4 requires, and served as soon as may be, fourteen days at
5 least, before the return day. R. S., c. 142, § 2.

SECT. 3. The form of the writ shall be as follows :

STATE OF MAINE.

3 [L. s.] S—— ss. To the sheriff of our county of S—— ;
4 Greeting.

5 We command you, that justly and without delay, you
6 cause C. D., who, as it is said, is taken and detained in a
7 place called N, in our said county of S——, by the duress of
8 G. H. that said C. D. may appear at our supreme judicial
9 court, next to be held at ——, within and for the county
10 of S——, on the —— day of —— next, then and there in
11 our said court, to demand right and justice against said G.
12 H., for the duress and imprisonment aforesaid, and to prose-
13 cute his replevin, as the law directs ; provided that the said
14 .C D. (the plaintiff,) before his deliverance gives bond to the
15 defendant in such sum as you judge reasonable, with two
16 sufficient sureties, with condition to appear at said court
17 to prosecute his replevin against the defendant, and to have
18 his body there to be redelivered, if thereto ordered by the
19 court, and to pay all such damages and costs, as are
20 awarded against him ; and if the plaintiff is delivered by you
21 at a day before the sitting of said court, you are to sum-
22 mon the defendant to appear at said court.

23 Witness J. S., Esquire, at ——, the —— day of ——, in
24 the year of our Lord ——.

L. M., Clerk.

R. S., c. 142, § 3. 1821, c. 63, § 10.

SECT. 4. No person shall be delivered by such writ until a
2 bond is given by the plaintiff or person suing on his behalf ;
3 and the bond shall be returned to the court with the writ.

R. S., c. 142, § 4.

SECT. 5. The officer serving the writ shall be answerable
2 for the sufficiency of the bond, as in case of bail in civil
3 actions.

R. S., c 142, § 5.

SECT. 6. If the plaintiff maintains his action, he shall be
2 discharged and recover his costs ; but if not, the defendant
3 shall recover his costs and such damages as the jury assess ;
4 or if the defendant is defaulted, or the parties consent, the
5 court may assess the damages.

R. S., c. 142, § 6, 7.

SECT. 7. If it appears that the defendant is bail for the
2 plaintiff, or that as his child, ward, apprentice or otherwise,

3 he is entitled to his custody, he shall have judgment for a
4 redelivery of his body, to be held or disposed of, according to
5 law. R. S., c. 142, § 8.

SECT. 8. If it appears that the defendant has eloiigned the
2 plaintiff's body, so that the officer cannot deliver him, the
3 court, on motion in the plaintiff's behalf, shall issue a writ
4 of reprisal, to take the defendant's body, and him safely
5 keep, so that he may be at the then next term of the court,
6 to traverse the return of said writ, for replevying the plaintiff.

R. S., c. 142, § 9.

SECT. 9. The defendant may be enlarged, by giving bail
2 for his appearance at court, with two sufficient sureties, in
3 such sum as the officer requires. R. S., c. 142, § 10.

SECT. 10. The defendant may traverse the return on the
2 writ for replevying the plaintiff; and, if it appears that he is
3 not guilty of eloiigning the plaintiff, he shall be discharged
4 and recover costs. R. S., c. 142, § 11.

SECT. 11. If such return is not traversed, or if on such
2 traverse it appears that the defendant did not eloiign the
3 plaintiff, an alias writ of refusal shall issue, on which, he
4 shall be committed to the common jail, to remain irreplevi-
5 able, till he produces the body of the plaintiff, or proves his
6 death. He may suggest the plaintiff's death, and the court
7 shall empanel a jury to try the fact, at the defendant's ex-
8 pense; and, if the death is proved, he shall be discharged.

R. S., c. 142, § 12, 14.

SECT. 12. Said writs shall be substantially in the form
2 heretofore established and used in this state.

R. S., c. 142, § 13.

SECT. 13. If the defendant, after the return of eloiignment,
2 produces the body of the plaintiff in court, the court shall
3 deliver him from imprisonment, on his giving the defendant
4 such bond as before directed, to be taken by the officer, when
5 the plaintiff is delivered by him; and for want of the bond,
6 he shall stand committed, to abide the judgment on the writ
7 for replevying the plaintiff; and, in either case, the suit shall
8 be tried as aforesaid. R. S., c. 142, § 15, 16.

Chapter 102.

WRITS OF ERROR AND CERTIORARI.

WRITS OF ERROR.

- Sect.* 1. Writs of error may issue from the supreme judicial court in vacation or term time.
2. Execution not to stay, unless bond is given.
 3. Bond to be approved by a justice of the court, or the clerk.
 4. Filing of the bond deemed a delivery thereof; clerk to issue certificate to stay proceedings.
 5. Costs to prevailing party; damages and costs if defendant prevails.
 6. Form of writ of error.
 7. Scire facias to specify the errors of fact and law.
 8. Proceedings on writs of error, according to the common law.
 9. Writs of error in capital cases; notice to attorney general.
 10. Effect of writs of error in other criminal cases.
 11. Provision for keeping plaintiff in error on stay of proceedings.
 12. Limitation of writs of error.

WRITS OF CERTIORARI.

13. How writs of certiorari to be issued.
14. Costs on applications, or on final decisions.
15. Limitation of applications for certiorari.

Writs of Error.

SECT. 1. Writs of error may issue out of the supreme
2 judicial court, in vacation or term time, and shall be return-
3 able to the same court. R. S., c. 143, § 1.

SECT. 2. No writ of error shall stay or supersede execution
2 in any civil action, unless the plaintiff in error, or some per-
3 son in his behalf, gives bond to the defendant, with one or
4 more sureties, conditioned that the plaintiff shall prosecute
5 his suit with effect, and satisfy such judgment as is rendered
6 therein. R. S., c. 143, § 2.

SECT. 3. The penal sum and sufficiency of the bond, shall
2 be determined by any justice of the supreme judicial court,
3 or by the clerk from whose office the writ is issued, in
4 accordance with the rules of court. R. S., c. 143, § 3.

SECT. 4. When the bond is given, the filing of it in the
2 clerk's office, for the use of the defendant, shall be deemed a
3 delivery thereof; and no execution shall be issued on the
4 judgment complained of, while such suit is pending; and, if
5 execution has already issued, the clerk shall make a certifi-
6 cate of the issuing of such writ, and filing of the bond; and,

7 after notice thereof, to the officer holding the execution, all
8 further proceedings thereon shall be stayed.

R. S., c. 143, § 4.

SECT. 5. The prevailing party in such writ, in a civil
2 action, in all cases, shall be entitled to his costs; and, if the
3 judgment is affirmed, the defendant in error shall be entitled
4 to not less than six, nor more than twelve per cent. a year on
5 the amount of his former judgment, as damages for his delay,
6 and in such case, the court, in their discretion, may allow
7 him double costs.

R. S., c. 143, § 5.

SECT. 6 The writ of error may be a scire facias, issued
2 substantially as follows, without any assignment of errors or
3 other preliminary proceedings:

STATE OF MAINE.

5 [L. s.] ——— ss. To the sheriff, &c.

6

Greeting.

7 We command you, that you make known unto — of
8 —, to appear if he sees cause, before our supreme judicial
9 court to be holden at — within and for our said county of
10 —, on the — to answer to — of —, in a plea of
11 error, whereas the said — alleges that in the process, pro-
12 ceedings and judgment had before — at —, on —,
13 wherein the said — was plaintiff, and the said — was
14 defendant, there occurred the errors hereinafter specified, by
15 which the present plaintiff was injured, and for which he
16 therefore seeks that said judgment may be reversed, recalled
17 or corrected, as law and justice require; that is to say, the
18 following errors:—

19 Hereof fail not, and have you there this writ with your
20 doings thereon.

21 Witness, —, Esq., at —, the — day of —.

22

— —, Clerk.

1852, c. 269, § 1, 2.

SECT. 7. The scire facias shall specify the errors of fact
2 and law, upon which the plaintiff relies; and a transcript of
3 the record, process and proceedings, attested by the clerk of
4 the court, or justice of the peace, rendering the judgment
5 without further authentication, or the introduction of the

6 record, shall be competent evidence in such trial ; and in case
7 of mistake in the transcript, the court may grant leave to
8 amend. 1852, c. 269, § 3.

SECT. 8. The proceedings upon writs of error, not herein
2 provided for, shall be according to the common law, as
3 modified by the practice and usage in this state, and the
4 general rules of court.

R. S., c. § 143, 6. 1852, c. 269, § 4.

SECT. 9. No writ of error, upon a judgment for a capital
2 offense, shall issue, unless allowed by one of the justices of
3 the law court, after notice to the attorney general, or other
4 attorney for the state. R. S., c. 143, § 7,

SECT. 10. Writs of error shall issue, of course, upon all
2 other judgments in criminal cases, but not to stay or delay ex-
3 ecution of sentence or judgment, unless allowed by a justice
4 of the supreme judicial court, with an express order thereon
5 to stay all proceedings on such judgment or sentence.

R. S., c. 143, § 8.

SECT. 11. When a stay of proceedings is thus ordered, the
2 judge may make such order as the case requires, for the cus-
3 tody of the plaintiff in error, or letting him to bail ; or upon a
4 writ of habeas corpus, if entitled, he may procure his enlarge-
5 ment by giving bail. R. S., c. 143, § 9.

SECT. 12. No writ of error shall be sustained, unless
2 brought within six years next after the entering up of the
3 judgment sought to be reversed or avoided ; but if the person
4 entitled to such writ, is a minor, a married woman, insane,
5 imprisoned, or not in the United States, when becoming so
6 entitled, then he, his heirs, executors or administrators, may
7 sue out the writ, within five years after the removal of such
8 disability. R. S., c. 143, § 10.

Writs of Certiorari.

SECT. 13. All writs of certiorari, to correct errors in pro-
2 ceedings, that are not according to the course of the common
3 law, shall be issued from the supreme judicial court, accord-
4 ing to the practice heretofore established, and subject to such
5 further regulations, as are made from time to time by such
6 court. R. S., c. 143, § 11.

SECT. 14. Upon every application for a certiorari, and on
 2 the final adjudication thereof, the court, in their discretion,
 3 may award costs against any party, who appears and under-
 4 takes to maintain or object to the proceedings.

R. S., c. 143, § 12.

SECT. 15. No application for a writ of certiorari, shall be
 2 sustained, unless made within six years next after the pro-
 3 ceedings complained of, or in case of such disability of the
 4 one entitled to the same, as is provided for in the thirteenth
 5 section, within five years from the removal of such disability.

R. S., c. 143, § 13.

Chapter 103.

ESTATES IN DOWER AND BY CURTESY, AND ACTIONS OF DOWER.

ESTATES IN DOWER AND BY CURTESY.

- Sect. 1. Of what lands a woman is dowable.
 2. Of what she is not dowable.
 3. When judge of probate may assign dower.
 4. Mode of proceeding in assignment of dower.
 5. Special assignment in certain cases.
 6. Rights of widow, before dower is assigned.
 7. Widow of naturalized alien entitled to dower.
 8. A married woman may bar her right to dower by deed solely or jointly with her husband.
 9. A woman may bar her right to dower by accepting a jointure before marriage.
 10. Also by a pecuniary provision made for the benefit of an intended wife in lieu of dower.
 11. Widow may waive jointure in certain cases.
 12. She may waive provision in her husband's will.
 13. Remedy if she is evicted of her dower.
 14. When dowable of an equity of redemption.
 15. Penalty if she commits waste.
 16. Rights of widow to remain in her husband's house.
 17. Tenancy by curtesy.

ACTION OF DOWER.

18. Rights of widow to sue for dower.
 19. Previous demand, and time of bringing the action.
 20. Demand upon a corporation, and time for bringing the action.
 21. Defendant may plead in abatement, but not in bar, that he is not tenant of the freehold.
 22. Damages for detaining dower.

23. Suit to be against the tenant of the freehold; liable for damages only while he held possession. Separate action against prior tenant, of whom demand was made.
24. If demandant dies pending an action for dower, executor or administrator may prosecute for the damages.
25. Writ of seizin and proceedings in setting off dower.
26. Assignments of rents and profits in certain cases.
27. Recovery of dower by a woman divorced.

ARTICLE I.—*Estates in dower and by curtesy.*

SECT. 1. Every woman shall be entitled to her dower at 2 common law, in the lands of her husband, with the excep- 3 tions hereafter mentioned, to be assigned to her after his 4 decease, unless lawfully barred. R. S., c. 95, § 1.

SECT. 2. A widow shall not be endowed of wild lands of 2 which her husband dies seized, nor of wild lands conveyed 3 by him, though afterwards cleared; but she shall have right 4 to dower in any wood lot or other land used with the farm 5 or dwelling house, though the same has never been cleared. R. S., c. 95, § 2.

SECT. 3. The judge of probate for the county in which the 2 husband's estate is settled, may assign dower to the widow, 3 in the lands of which the husband died seized, in whatever 4 counties situated, where her right of dower is not disputed 6 by the heirs or devisees. R. S., c. 95, § 3.

SECT. 4. The judge of probate may issue his warrant to 2 three discreet and disinterested persons, to assign the dower 3 by metes and bounds, when it can be done without prejudice 4 to the whole estate; who shall be first sworn according to 5 law, to assign the same equally and impartially, without 6 favor and affection, as conveniently as may be, in one or 7 more parcels, for the best interest of the parties. R. S., c. 96, § 4.

SECT. 5. When a division by metes and bounds cannot be 2 conveniently made, dower shall be assigned in a special man- 3 ner, as of a third part of the rents and profits. R. S., c. 95, § 5.

SECT. 6. The widow shall be entitled to receive one undi- 2 vided net third part of the rents and profits of the estate

3 of which her husband died seized, until her dower is assigned
4 either by the heirs, the judge of probate, or judgment of
5 court. R. S., c. 95, § 6.

SECT. 7. The widow of a citizen of the United States, who
2 was an alien when she married him, shall be entitled to
3 dower, as other widows, in her husband's estate, which was
4 not conveyed by him, or taken from him, by execution, prior
5 to the twenty-third day of February, 1813.

R. S., c. 95, § 7.

SECT. 8. A married woman may bar her right of dower in
2 any estate conveyed by her husband, by a deed, executed
3 solely or jointly with her husband. R. S., c. 95, § 9.

SECT. 9. A woman may be barred of her dower in her
2 husband's lands, by a jointure settled on her, with her con-
3 sent, before marriage; such jointure shall consist of a free
4 hold estate in lands, for the life of the wife, at least, to take
5 effect immediately on the husband's death; if of full age, she
6 shall express her consent by becoming a party to the convey-
7 ance; if under age, by joining with her father or guardian.

R. S., c. 95, § 10.

SECT. 10. Any pecuniary provision, made for the benefit of
2 an intended wife, in lieu of dower, consented to by her, as
3 provided in the preceding section, shall bar her right of dower
4 in her husband's lands. R. S., c. 95, § 11.

SECT. 11. If such jointure, or pecuniary provision, is made
2 before marriage, without the consent of the intended wife, or
3 if made after marriage, it shall bar her dower, unless, within
4 six months after the husband's death, she makes her election
5 to waive such provision, and files the same, in writing, in the
6 probate court. R. S., c. 95, § 12.

SECT. 12. When a specific provision is made in her hus-
2 band's will, for the widow, within six months after probate
3 of the will, she shall make her election, whether to accept it
4 or claim her dower; but shall not be entitled to both, unless
5 it appears by the will, that the testator plainly so intended.

R. S., c. 95, § 13.

SECT. 13. If a woman is lawfully evicted of lands assigned
2 to her as dower, or settled upon her as a jointure, or is de-
3 prived of the provision made for her by will or otherwise, in
4 lieu of dower, she may be endowed anew in like manner as
5 though no such assignment or provision had been made.

R. S., c. 95, § 14.

SECT. 14. If the wife has released her right of dower in
2 any mortgage made by her husband, or if her husband is
3 seized of land, mortgaged by another person, or by himself
4 before their marriage, she shall be entitled to dower in the
5 mortgaged premises as against every person except the mort-
6 gagee, and those claiming under him; and if the mortgagee,
7 or other person claiming under the husband, redeems the
8 mortgage, the widow shall repay such proportion of the
9 money so paid by him, as her interest in the mortgaged prem-
10 ises bears to the whole value; else she shall be entitled to
11 dower only, according to the value of the estate, after deduct-
12 ing the money so paid for its redemption. R. S., c. 95, § 15.

SECT. 15. If any woman, endowed of lands, commits or
2 suffers any waste thereon, she shall forfeit the place wasted,
3 and the amount of the damages done to the premises, to be
4 recovered in an action of waste, by the person having the
5 next immediate estate of inheritance therein: but, taking
6 fuel necessary for her own use, and materials for the repair
7 of buildings and for fences thereon, from any woodlands, of
8 which she is endowed, shall not be considered waste.

R. S., c. 95, § 16.

SECT. 16. A widow may remain in the house of her hus-
2 band, ninety days next after his death, without being charge-
3 able with rent therefor; and, in the mean time, she shall
4 have her reasonable sustenance out of the estate.

R. S., c. 95, § 17.

SECT. 17. When a man and his wife are seized of lands in
2 fee, in her right, which are under improvement, and issue is
3 born alive of her body, that may inherit the same, the hus-
4 band shall hold such estate after his wife's decease, during
5 his life, as tenant by the curtesy. R. S., c. 95, § 18.

ARTICLE II.—*Action of Dower.*

SECT. 18. When a woman is entitled to dower, and it is
 2 not set out to her, by the heir, or tenant of the freehold,
 3 according to intendment of law, nor assigned to her by the
 4 judge of probate, she may recover it by a writ of dower, as
 5 herein provided. R. S., c. 144, § 1. R. S., c. 95, § 8.

Act of amendment, 1841, § 25.

SECT. 19. She must demand her dower of the person who
 2 is at the time seized of the freehold, if he is in the state,
 3 otherwise of the tenant in possession, and shall not com-
 4 mence her action of dower before the expiration of one month,
 5 nor after the expiration of one year from the time of demand;
 6 but she may make a new demand and commence an action
 7 thereon, if an action is not brought within one year after the
 8 first demand. R. S., c. 144, § 2.

SECT. 20. When a corporation is the tenant of the freehold,
 2 she must demand her dower in writing of any officer thereof,
 3 on whom by law a writ in a civil action against the same
 4 may be served; but in that case, the time shall be sixty
 5 instead of thirty days between the demand and the suit; but
 6 a second demand may be made, if necessary, as provided in
 7 the preceding section. R. S., c. 144, § 3.

SECT. 21. In such actions, the defendant may plead in
 2 abatement, but not in bar, that he is not tenant of the free-
 3 hold. R. S., c. 144, § 4.

SECT. 22. If the demandant recovers judgment for her
 2 dower, she shall in the same action recover her damages for
 3 its detention. R. S., c. 144, § 5.

SECT. 23. The action shall be brought against the person
 2 who is at the time tenant of the freehold; but if he is not
 3 the person of whom demand was made, he shall be liable for
 4 damages only for the time he held the possession; and if the
 5 demandant recovers her dower and damages, she may after-
 6 wards maintain an action on the case, against the prior
 7 tenant, of whom her demand was made, for the rents and
 8 profits, while he held the premises after the demand.

R. S., c. 144, § 6, 7.

SECT. 24. If the demandant dies during the pendency of an
 2 action of dower, her executor or administrator may prosecute
 3 the action to final judgment, and recover therein, the dama-
 4 ges to which she would be entitled to the time of her decease.
 5 He may in like manner, prosecute any action commenced by
 6 her under the provisions of the twenty-third section; or com-
 7 mence an action for the damages as provided in said section,
 8 if not done by her, and recover therein the damages to which
 9 she would be entitled, if any. 1852, c. 259, § 1.

SECT. 25. When judgment for her dower is rendered in
 2 favor of the demandant, a writ of seizin shall be issued, re-
 3 quiring the proper officer to cause her dower to be assigned
 4 and set out to her by three disinterested persons, to be
 5 appointed by the plaintiff, defendant and officer, as in case
 6 of the levy of an execution on land; they shall be duly
 7 sworn to set out the same equally and impartially, and as
 8 conveniently as may be, and according to their best skill and
 9 judgment; and the officer shall make return of the writ and
 10 doings thereon to the court, with the assignment of dower
 11 indorsed thereon, or annexed thereto; which being accepted,
 12 shall be conclusive. R. S., c. 144, § 8.

SECT. 26. When the estate out of which the dower is to be
 2 assigned, consists of a mill or other tenement, which cannot
 3 be divided without damage to the whole, the dower may be
 4 assigned of the rents and profits thereof, to be received by
 5 the demandant, as tenant in common with the other owners
 6 of the estate. R. S., c. 144, § 9.

SECT. 27. Any woman who is divorced from her husband,
 2 for his fault, may recover her dower in the manner before
 3 provided, against her former husband, or whoever is tenant of
 4 the freehold. R. S., c. 144, § 10.

Chapter 104.

REAL ACTIONS.

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32. Restriction of the right to betterments.
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34. Parties may agree as to value of improvements.
35. Tenant may propose a sum at which the value may be estimated. Effect thereof.
36. Set off of costs, against the appraised value of improvements in certain cases.
37. Jurors disqualified, if interested in similar questions.
38. Execution may issue after a year.
39. What constitutes a possession and improvement.
40. Proceedings, if either party dies before the cause is disposed of.
41. How writ of possession shall issue in such case.
42. Either party may have a view by the jury.
43. Proceedings if a life estate is demanded.

44. If tenant is ousted after six years' possession, he may recover for his buildings and improvements.
45. The value of improvements in such case to be estimated, under the provisions of this chapter.
46. Cases, in which defendant may impeach the plaintiff's title deeds.
47. If tenant and those under whom he claims have been in possession forty years, demandant to recover no costs.

SECT. 1. Any estate of freehold, in fee simple, fee tail, for 2 life, or any term of years, may be recovered by a writ of 3 entry; and such writs, and the writ in an action of dower, 4 shall be served, not only in the usual manner, by attachment 5 and summons, or copy of the writ on the defendant, but if 6 the defendant is not in possession, the officer shall give the 7 tenant in hand, or leave at his last and usual place of abode, 8 an attested copy of the writ; and, if the defendant is not an 9 inhabitant of this state, the service on the tenant shall be suf- 10 ficient notice to the defendant, or the court may order further 11 notice.

R. S., c. 145, § 3. 1842, c. 31, § 18.

SECT. 2. The demandant shall declare on his own seizin, 2 within twenty years then last past, without naming any 3 particular day, and shall allege a disseizin by the tenant; 4 but need not aver a taking of the profits. R. S., c. 145, § 4.

SECT. 3. He shall set forth the estate he claims in the 2 premises, whether in fee simple, fee tail or for life; and, if 3 the latter, then whether for his own life or the life of another; 4 but shall not be required in any case to state in the writ, the 5 origin of his title, or the deduction of it to himself; but, on 6 the application of the tenant, the court may direct the de- 7 mandant to file in the case an informal statement of the title 8 on which he relies and its origin. R. S., c. 145, § 5.

SECT. 4. The demandant shall not be required to prove an 2 actual entry under his title, but proof that he is entitled to 3 such an estate in the premises, as he claims, as heir, devisee, 4 purchaser, or otherwise, and that he has a right of entry 5 therein, shall be deemed sufficient proof of his seizin.

R. S., c. 145, § 6.

SECT. 5. No such action shall be maintained, unless, at the 2 time of commencing it, the demandant had such right of

3 entry; and no descent or discontinuance shall defeat any
4 right of entry for the recovery of real estate.

R. S., c. 145, § 7, 8.

SECT. 6. Every person alleged to be in possession of the
2 premises demanded in such writ, claiming any freehold
3 therein, may be considered a disseizor, for the purpose of
4 trying the right; but the defendant may plead in abatement,
5 but not in bar, that he is not tenant of the freehold; or by a
6 brief statement, under the general issue, filed within the time
7 allowed for pleas in abatement, unless, by leave of court, the
8 time therefor is enlarged, he may show that he was not in
9 possession of the premises when the action was commenced,
10 and disclaim any right, title or interest therein; and proof
11 of such fact shall defeat the action; and if he claimed, or
12 was in possession of only a part of the premises, when the
13 action was commenced, he shall describe such part in a
14 statement, signed by him or his attorney, and filed in the
15 case, and may disclaim the residue; and, if the facts con-
16 tained in such statement, are proved, on trial, the demandant
17 shall recover judgment for no more than such part.

R. S., c. 145, § 9. 1846, c. 221, § 1.

SECT. 7. If the person in possession has actually ousted the
2 demandant, or withheld the possession, at the demandant's
3 election, he may be considered a disseizor for the purpose of
4 trying the right, though he claims an estate therein less than
5 a freehold.

R. S., c. 145 § 10.

SECT. 8. In the trial upon such writ, on the general issue,
2 if the demandant proves that he is entitled to such estate in
3 the premises as he has alleged, and had a right of entry
4 therein, when he commenced his action, he shall recover the
5 premises, unless the tenant proves a better title in himself.

R. S., c. 145. § 11.

SECT. 9. Persons claiming as tenants in common, joint ten-
2 ants, or coparceners, may all join, or any two or more may
3 join, in a suit for recovery of lands; or any one may sue
4 alone for his share.

R. S., c. 145, § 12.

SECT. 10. The demandant in all cases, may recover any
2 specific part of the premises, or any undivided portion thereof,
3 to which he proves a title, though it is less than is demanded.

R. S., c. 145, § 13.

SECT. 11. When a demandant recovers judgment in a writ
2 of entry, he shall be entitled to recover in the same action,
3 damages for the rents and profits of the premises, from the
4 time his title accrued, subject to the limitation herein con-
5 tained; and for any destruction or waste of the buildings or
6 other property, for which the tenant is by law answerable.

R. S., c. 145, § 14.

SECT. 12. The rents and profits for which the tenant shall
2 be liable, shall be the clear annual value of the premises, for
3 the time he was in possession, after deducting all lawful taxes
4 which the tenant has paid, and all the necessary and ordinary
5 expenses of repairs, and cultivating the land, or collecting
6 the rents and profits.

R. S., c. 145, § 15.

SECT. 13. In estimating the rents and profits, the value of
2 the use by the tenant of any improvements made by himself,
3 or those under whom he claims, shall not be allowed to the
4 demandant.

R. S., c. 145, § 16.

SECT. 14. The tenant shall not be liable for the rents and
2 profits, for any longer time than six years, nor for any waste
3 or other damage committed before that time, unless the rents
4 and profits are allowed by way of set-off to his claim for im-
5 provements.

R. S., c. 145, § 17.

SECT. 15. Nothing herein contained shall prevent the de-
2 mandant from maintaining an action for mesne profits, or for
3 damage to the premises against any person except the tenant
4 in a writ of entry, who has had possession of the premises,
5 or is otherwise liable to such action.

R. S., c. 145, § 18.

SECT. 16. No action, wherein the possession of land is
2 demanded, at any stage of its progress, after its entry in
3 court, shall be abated by the death or intermarriage of either
4 party; but the court shall proceed to try and determine such
5 action, after such notice as the court may order, has been
6 duly served upon the legal representatives of the party de-
7 ceased, and all others interested in his estate, as heirs, or

8 upon the husband of the party intermarried, either personally
9 or by publication in some newspaper. R. S., c. 145, § 19.

SECT. 17. In such case, if any such heir is a minor, the
2 court shall order notice to the guardian, and may appoint a
3 guardian ad litem, if necessary, and direct all necessary
4 amendments in the forms of proceeding. R. S., c. 145, § 20.

SECT. 18. If the demandant recovers judgment in any such
2 case, the court may order one or more writs of possession to
3 issue, as may be necessary; and when the judgment is against
4 the representative or heirs of a deceased party, a writ of pos-
5 session may issue against all such as have been so notified,
6 whether they appeared and defended, or not; and the judg-
7 ment shall be conclusive against all who were so notified,
8 whether they appeared, or not. R. S., c. 145, § 21.

SECT. 19. The prevailing party shall recover full costs, in
2 all such cases, and the court may order one or more execu-
3 tions to be issued therefor, against the goods and estate of a
4 deceased party in the hands of his executor or administrator,
5 or otherwise, according to the legal rights and liabilities of
6 the parties, and may stay any such execution, if the situa-
7 tion of the estate requires it. R. S., c. 145, § 22.

SECT. 20. When the demanded premises have been in the
2 actual possession of the tenant, or those under whom he
3 claims for six successive years or more, before commence-
4 ment of the action, such tenant shall be allowed a compensa-
5 tion for the value of any buildings and improvements on the
6 premises, made by him or those under whom he claims, to
7 be ascertained and adjusted in the manner hereinafter
8 provided. R. S., c. 145, § 23.

SECT. 21. In such action, the demanded premises shall be
2 clearly defined and described in the declaration, otherwise,
3 the court may direct a nonsuit. And if the tenant, or person
4 under whom he claims, has been in possession of a tract of
5 land, lying in one body, for six years or more before the
6 commencement of the action, and only a part thereof is de-
7 manded, and the tenant alleges that the demandant has as
8 good a title to the whole, as to the part demanded, he may
9 request the jury to enquire and decide that fact; and, if they
10 so find, they shall proceed no farther, but the court shall

11 enter judgment that the writ abate, unless the declaration is
 12 amended so as to include the whole tract, which amendment
 13 the court may allow, without costs. R. S., c. 145, § 24.

SECT. 22. If the tenant enters notice on record in open
 2 court, that the demandant may recover a specified part of
 3 the demanded premises, by consent of the demandant, judg-
 4 ment may be rendered in his favor for such part, and for the
 5 tenant for the residue ; but if the demandant does not consent
 6 and recovers only such part, he shall recover no costs, and
 7 the tenant shall recover his costs from the time of such notice.

R. S., c. 145, § 25.

SECT. 23. The tenant shall have the benefit of the pro-
 2 visions in the following sections, as to the increased value of
 3 premises, when the cause is determined in favor of the
 4 defendant upon demurrer, default, or by verdict, includ-
 5 ing all real actions brought by a reversioner or remainder
 6 man, or his assigns, after the termination of a tenancy in
 7 dower, or any other life estate, against the assignee or grantee
 8 of the tenant of the life estate, or against the heirs, or legal
 9 representatives of such tenant.

R. S., c. 145, § 26. 1843, c. 6, § 1.

SECT. 24. The tenant may file a claim in writing to com-
 2 pensation for buildings and improvements on the premises,
 3 and a request for an estimation, by the jury, of the increased
 4 value of the premises by reason thereof ; and the demandant
 5 may file a request in writing, that the jury would also esti-
 6 mate what would have been the value of the premises, at the
 7 time of trial, if no buildings had been erected or improvements
 8 made, or waste committed ; both these estimates they shall
 9 make and state in their verdict ; and the jury shall allow for
 10 no buildings or improvements, except those that they find
 11 were made by the tenant, his grantor or assignor, and were
 12 judicious and proper, under the circumstances of the case.

R. S., c. 145, § 27. 1843, c. 6, § 1.

SECT. 25. If the tenant, so claiming, alleges and proves
 2 that he and those under whom he claims, have had the
 3 premises in actual possession for more than twenty years
 4 prior to the commencement of the action, the jury may find
 5 that fact ; and, in estimating the value of the premises, if no

6 buildings had been erected or improvements made thereon,
 7 they shall find and state in their verdict what was the value
 8 of the premises when the tenant, or those under whom he
 9 claims, first entered thereon. The sum so found, shall be
 10 deemed the estimated value of the premises; and, in esti-
 11 mating the increased value, by reason of the buildings and
 12 improvements, the jury shall find and state in their verdict,
 13 the value of the premises, at the time of the trial, above their
 14 value when the tenant, or those under whom he claims, first
 15 entered thereon; and the sum so found and stated, shall be
 16 taken for the buildings and improvements.

1848, c. 76, § 1. 1853, c. 34, § 1.

SECT. 26. If the demandant, after such verdict, at the same
 2 or a subsequent term of the court, if the cause is continued,
 3 makes his election, on record, to abandon the premises to the
 4 tenant at the value estimated by the jury, and file with the
 5 clerk, for the use of the tenant, a bond in the penal sum of
 6 three times the estimated value of the premises, with sureties
 7 approved by the court, conditioned to refund the estimated
 8 value aforesaid, with interest, to the tenant, his heirs or as-
 9 signs, if they shall be evicted from the land within twenty
 10 years, by a title better than that of the demandant, then
 11 judgment shall be rendered against the tenant, for the sum so
 12 estimated by the jury, and costs.

R. S., c. 145, § 28. 1853, c. 34, § 2.

SECT. 27. At the end of one year, execution may issue for
 2 such sum, with one year's interest thereon, and costs, unless
 3 the tenant has then deposited with the clerk of the court, or
 4 in his office, for the demandant's use, one year's interest of
 5 said sum, and one third part of said principal sum, and all
 6 the costs, if taxed and filed, in which case no execution shall
 7 issue at the time.

R. S., c. 145, § 29.

SECT. 28. If, within two years after the rendition of judg-
 2 ment, the tenant pays one year's interest on the balance of
 3 the judgment due, and one third part of the original judg-
 4 ment, then execution shall be further stayed; otherwise, it
 5 may issue for two third parts of the original amount of the
 6 judgment, and interest thereon.

R. S., c. 145, § 30.

SECT. 29. If the tenant, within three years after the rendition of judgment, pays into the clerk's office the remaining third part, and interest thereon, having made the payments aforesaid, execution shall never issue; otherwise, it may for the third part aforesaid, and one year's interest thereon; and the premises shall be held as security for the amount of the judgment, liable to be taken in execution for the amount and interest, until sixty days after an execution might have issued as aforesaid, notwithstanding any intermediate conveyance, attachment, or seizure upon execution; and such execution may be extended, on said land, or any part of it; or it may be sold on the execution, like an equity of redemption, and in either case, subject to the right of redemption, as in those cases.

R. S., c. 145, § 31, 32

SECT. 30. If the tenant, or his heirs are evicted from the land so abandoned to him, by a better title, and he notified the demandant, or his heirs, to aid him in his defense against such title, the tenant, his executors or administrators may recover back the money so paid, with lawful interest, of said demandant or his representatives; but, if no notice was given, the tenant, in an action against the original demandant, to recover the price paid for the premises, may show that he was evicted by a title better than that of the demandant.

R. S., c. 145, § 33.

SECT. 31. When the demandant does not elect so to abandon the premises, no writ of possession shall issue on his judgment, nor a new action be sustained for the land, unless the demandant, within one year from the rendition thereof, pays into the clerk's office of the same court, or to such person as the court may appoint, for the use of the tenant, the sum assessed for the buildings and improvements, with interest thereon.

R. S., c. 145, § 34.

SECT. 32. Nothing contained in this chapter concerning rents and profits, or the estimate and allowance of the value of the buildings and improvements, shall extend to any action between a mortgager and mortgagee, their heirs and assigns; or to any case where the tenant, or the person under whom he claims, entered into possession of the premises and occu-

7 pied under a contract with the owner, which was known to
8 the tenant when he entered R. S., c., 145, § 35.

SECT. 33. No tenant, after judgment is entered against him
2 for the appraised value of the premises, shall unnecessarily
3 cut wood or take away any timber, or make any strip or
4 waste on the land, till the amount of such judgment is satis-
5 fied. R. S., c. 145, § 36.

SECT. 34. When the parties agree that the value of the
2 buildings and improvements on the land demanded, and the
3 value of the land shall be ascertained by persons named on
4 the record for that purpose, their estimates as reported by
5 them and recorded, shall be deemed equal in its effect to the
6 verdict of a jury. R. S., c. 145, § 37.

SECT. 35. When the tenant in any stage of such action,
2 files a statement in open court, consenting to a sum at which
3 the buildings and improvements, and the value of the de-
4 demanded premises may be estimated, if the demandant con-
5 sents thereto, judgment shall be rendered accordingly, as if
6 such sums had been found by verdict; but if the demandant
7 does not consent, and the jury does not reduce the value of
8 the buildings and improvements below the sum offered, nor
9 increase the value of the premises above the sum offered, he
10 shall recover no costs after such offer, but the tenant shall
11 recover his costs after such offer, and have judgment and
12 execution therefor, subject to the provisions of the following
13 section. R. S., c. 145, § 38.

SECT. 36. In all cases, where the demandant does not
2 abandon the premises to the tenant, the court may, on the
3 written application of either party, during the term when
4 judgment is entered, order the costs recovered by the demand-
5 ant, to be set off against the appraised value of the buildings
6 and improvements on the land; a record of this order
7 shall be made, and the court shall thereupon enter judg-
8 ment according as the balance and its amount may be in
9 favor of one party or the other. R. S., c. 145, § 39.

SECT. 37. No person shall sit as a juror in the trial of a
2 cause, when the value of buildings and improvements made
3 on the demanded premises, and the value of the premises, are

4 to be estimated as aforesaid, who, as proprietor or occupant,
5 is interested in a similar question. R. S., c. 145, § 40.

SECT. 38. The expiration of a year after the rendition of
2 judgment, shall not prevent the issuing of execution or writ
3 of possession, in the cases mentioned in the twenty-eighth,
4 twenty-ninth and thirtieth sections; but it may issue at any
5 time within three months after any default of payment by
6 the tenant. R. S., c. 145, § 41.

SECT. 39. A possession and improvement of land, by a
2 tenant, shall be within the provisions of this chapter, though
3 not wholly surrounded by a fence, or rendered inaccessible
4 by other obstructions, if such possession and improvement
5 has been open, notorious and exclusive, and comporting with
6 the usual management and improvement of a farm by its
7 owner, and though a portion of it may be woodland and
8 uncultivated. R. S., c. 145, § 42.

SECT. 40. If, after judgment has been rendered for the de-
2 mandant, in a writ of entry, either party dies before a writ
3 of possession is executed, or the cause otherwise disposed of
4 according to the foregoing provisions, any money, payable
5 by the tenant, may be paid by him, his executors, or admin-
6 istrators, or by any person, who is entitled to the estate under
7 him, to the demandant, or his executors or administrators,
8 with the like effect as if both parties were living.

R. S., c. 145, § 43.

SECT. 41. The writ of possession shall be issued in the
2 name of the original demandant against the original tenant,
3 though either or both are dead; and, when executed, it
4 shall enure to the use and benefit of the demandant, or
5 whoever is then entitled to the premises under him, in like
6 manner as if it had been executed in the lifetime of the par-
7 ties. R. S., c. 145, § 44.

SECT. 42. Either party may have a view, by the jury, of
2 the place in question, if, in the opinion of the court, such view
3 is necessary to a just decision; the party moving for the
4 same, shall advance to the jury such sum as the court orders,
5 to be taxed against the adverse party, if the cause is decided
6 against him, on the merits, or through his default.

R. S., c. 145, § 45.

SECT. 43. If the demandant claims an estate for life only, 2 in the premises, and pays any sum allowed to the tenant for 3 improvements, he, or his executors or administrators, at the 4 termination of his estate, shall be entitled to receive of the 5 remainder man, or reversioner, the value of such improve- 6 ments, as they then exist; and shall have a lien therefor on the 7 premises, as if they had been mortgaged for its payment, and 8 he may keep possession till it is paid; and if the parties can- 9 not agree on the existing value, it may be settled in the same 10 manner as in case of the redemption of mortgaged real estate.

R. S., c. 145, § 46.

SECT. 44. When any person makes entry into lands or 2 tenements, of which the tenant in possession, or those under 3 whom he claims, have been in actual possession, for six 4 years, or more, before such entry, and withholds from such 5 tenant the possession thereof, he shall have a right to recover 6 of him so entering, or of his executors or administrators, in 7 an action of assumpsit for money laid out and expended, the 8 increased value of the premises, by reason of the buildings 9 and improvements, made by the tenant or those under whom 10 he claims; and these provisions shall extend to the grantee 11 or assignee of the tenant in dower, and of any other life 12 estate; and a lien is hereby created on the premises, in favor 13 of such claim, to be enforced by an action commenced 14 within one year after such entry; and it shall be no bar to 15 such action, if the tenant, to avoid cost, yields to the superior 16 title.

R. S., c. 145, § 47. 1843, c. 6, § 2.

SECT. 45. Such right and value shall be ascertained by the 2 same principles, as regulate such right and value under the 3 provisions of this chapter.

R. S., c. 145, § 48.

SECT. 46. In all actions respecting lands, or any interest 2 therein, any title deed, offered in evidence, may be impeached 3 by the defendant, as obtained by fraud, where the grantor, 4 if a party, could impeach it, if the defendant has been in the 5 open, peaceable and adverse possession of the premises for 6 twenty years.

R. S., c. 145, § 50.

SECT. 47. In all real and mixed actions, in which the ten- 2 ant proves that he and those under whom he claims, have 3 been in the open, notorious, adverse and exclusive possession

4 of the demanded premises, claiming in fee simple, for forty
 5 years next before the commencement of the action, the jury
 6 shall inquire into the fact of possession, and in case they find
 7 that the tenant and those under whom he claims, have so
 8 occupied, the demandant shall recover no costs.

1854, c. 90, § 1. 1852, c. 240, § 2.

Chapter 105.

LIMITATION OF REAL ACTIONS, AND RIGHTS OF ENTRY.

- Sect.* 1. Rights of entry and of action barred in twenty years.
2. From what time.
 - 3, 4, 5. When such right shall be deemed to accrue.
 6. When an action may be brought by a minister, or other sole corporation.
 7. Saving in favor of infants, and certain other disabled persons.
 8. Further saving, if the person first entitled dies during such disability.
 9. Consequence, if tenant in tail or remainder man dies before the expiration of the limitation.
 10. What shall constitute such a disseizin as to bar the right of recovery.
 11. Limitation of actions by the state.
 12. Limitation not to take effect in certain cases, where the first suit fails.
 13. Right of way, or other easement, acquired by adverse user; the owner, by notice, may prevent such acquisition.
 14. How such notice is to be given.
 15. No real or mixed action, for the recovery of land, to be maintained, when the tenant and those under whom he claims, have been in possession over forty years.

SECT. 1. No person shall commence any real or mixed
 2 action for the recovery of lands, or make an entry thereon,
 3 unless within twenty years after the right to make such
 4 entry, or bring such action, first accrued; or within twenty
 5 years after he or those under whom he claims, were seized
 6 or possessed of the premises; except as hereinafter provided.

R. S., c. 147, § 1.

SECT. 2. If such right or title first accrued to an ancestor,
 2 predecessor or other person, under whom the demandant
 3 claims, the said twenty years shall be computed from the
 4 time when the right or title so first accrued to such ancestor,
 5 predecessor or other person.

R. S., c. 147 § 2.

SECT. 3. In the construction of this chapter, the right of entry or of action to recover land, shall first accrue at the times hereinafter mentioned.

First—When a person is disseized, at the time of such disseizin.

Second—When he claims as heir or devisee of one who died seized, at the time of such death, unless there is a tenancy by the curtesy, or other estate intervening after the death of such ancestor or devisor; in that case, his right shall accrue when such intermediate estate expires, or would expire by its own limitation.

Third—When there is such an intermediate estate, and in all cases, when the party claims by force of any remainder or reversion, his right, so far as it is affected by the limitation herein prescribed, shall accrue, when the intermediate estate would expire by its own limitation, notwithstanding any forfeiture thereof, for which he might enter at an earlier time.

R. S., c. 147, § 3.

SECT. 4. The preceding clause shall not prevent any person from entering, when so entitled, by reason of any forfeiture or breach of condition; but if he claims under such a title, his right shall accrue when the forfeiture was incurred, or the condition broken.

R. S., c. 147, § 4.

SECT. 5. In all cases not specially provided for, the right of entry shall accrue when the claimant or the person under whom he claims, first became entitled to the possession of the premises under the title, upon which the entry or action is founded.

R. S., c. 147, § 5.

SECT. 6. If any minister or other sole corporation is disseized, any of his successors may enter upon the premises, or may bring an action for the recovery of them, at any time within five years after the death, resignation or removal of the person disseized, notwithstanding the twenty years after the disseizin have expired.

R. S., c. 147, § 6.

SECT. 7. When such right of entry, or action, first accrues, if the person thereto entitled is a minor, married woman, insane, imprisoned, or absent from the United States, he or any one claiming under him, may make the entry, or bring the

5 action at any time within ten years after such disability is
6 removed, notwithstanding the twenty years have expired.

R. S., c. 147, § 7.

SECT. 8. If the person, first entitled to make the entry, or
2 bring the action, dies during the continuance of the disa-
3 bility, and no determination or judgment has been had on
4 his title or right of action, the entry may be made or action
5 brought by him or any other person claiming under him, at
6 any time within ten years after his death, notwithstanding
7 the twenty years have elapsed; but no such further time for
8 bringing the action, or making the entry, beyond what is
9 herein before prescribed, shall be allowed, by reason of the
10 disability of any other person. R. S., c. 147, § 8.

SECT. 9. When a tenant in tail, or a remainder man in
2 tail, dies before the expiration of the period herein before lim-
3 ited for making any entry, or bringing an action for lands,
4 no person, claiming any estate, which such tenant in tail or
5 remainder man might have barred, shall make an entry, or
6 bring an action, to recover such land, but within the period,
7 during which the tenant in tail, or remainder man, if he had
8 so long lived, might have made such entry, or brought such
9 action. R. S., c. 147, § 9.

SECT. 10 To constitute a disseizin, or such exclusive and
2 adverse possession of lands, as to bar or limit the right of the
3 true owner thereof to recover the same, it shall not be ne-
4 cessary for such lands to be surrounded with fences, or
5 rendered inaccessible by water; but it shall be sufficient, if
6 the possession, occupation and improvement, are open and
7 notorious, and comporting with the ordinary management of
8 a farm; although that part of the same, which composes the
9 woodland belonging to such farm, and used therewith as a
10 wood lot, is not enclosed as before mentioned.

R. S., c. 147, § 11.

SECT. 11. No real or mixed action, for the recovery of any
2 lands, shall be commenced in behalf of the state, unless within
3 twenty years from and after the time the title accrues to
4 the state. R. S., c. 147, § 12.

SECT. 12. When any writ, in a real or mixed action, fails
2 of sufficient service or return, by unavoidable cause, or by

3 the default or negligence of any officer to whom it was de-
 4 livered for service, or the writ is abated, or the action defeated
 5 for any matter of form, or by the death, or other disability,
 6 of either party, or if the demandant's judgment is reversed on
 7 writ of error, the demandant may commence a new action at
 8 any time within six months after the abatement or determin-
 9 ation of the first suit, or the reversal of the judgment.

R. S., c. 147, § 13.

SECT. 13. No person shall acquire any right or privilege of
 2 way, air or light, or any other easement, from, in, upon or
 3 over the land of another, by the adverse use and enjoyment
 4 thereof; unless such use is continued, uninterrupted, for
 5 twenty years; and the owner of such land, to prevent such
 6 right, may give notice, in writing, to the person claiming
 7 the same, of his intention to contest such right, privilege
 8 or easement; and such notice, being served and recorded, as
 9 hereinafter stated, shall be deemed an interruption of such
 10 use, and prevent the acquisition of a right thereto.

R. S., c. 147, § 14, 15.

SECT. 14. Such notice may be given by an officer, as in civil
 2 actions, by giving to the claimant his agent or guardian, if
 3 in the state, an attested copy thereof, or by leaving it at his
 4 dwelling house, or if not resident in the state, a copy may be
 5 left with the tenant or occupant, if any, of the estate; if not,
 6 such copy shall be affixed to the house or a conspicuous part
 7 of the premises; and the officer shall make his return on the
 8 original notice, and the whole shall be recorded in the regis-
 9 try of deeds in the registry district where the land lies, within
 10 three months from the time of such service; the notice may
 11 be given by the agent or guardian of the owner of the land.

R. S., c. 147, § 16.

SECT. 15. No real or mixed action for the recovery of any
 2 lands, shall be commenced or maintained against any person
 3 in possession thereof, when such person or those under whom
 4 he claims, have been in actual possession for more than forty
 5 years, claiming to hold the same by adverse, open, peaceable
 6 notorious and exclusive possession in their own right.

1848, c. 87, § 1. . 1852, c. 240, § 1.

Chapter 106.**THE SELECTION AND SERVICE OF JURORS.**

- Sect.* 1. Board for preparing lists of jurors; towns may make alterations.
 2. How the lists are to be prepared.
 3. Persons exempted from serving,
 4. Tickets of names to be kept in jury box; liable to be drawn once in three years.
 5. Number required to be kept in jury box; names may be withdrawn in certain cases.
 6. Commissioners to divide the county into jury districts, and furnish copy of division to clerk; how divided and numbered.
 7. Rule by which the clerk shall issue venire.
 8. Grand jurors to serve one year; venire for such, to issue forty days before second Monday of September, annually.
 9. Grand and traverse jurors to attend on the first day of the term, unless, at a previous term, the court designated a different day.
 10. Distribution of venire, and notice of meetings to draw jurors.
 11, 12, 13. Mode of drawing jurors; date of draft to be endorsed on the ticket.
 14. Constables to notify jurors, and return venire.
 15. Indorsement to be transferred, if ticket is renewed.
 16. Penalty for neglect of selectmen or clerk.
 17. Penalty for neglect of constable or town.
 18. Penalty for neglect of clerk of court or sheriff.
 19. Penalty for neglect of juror to attend.
 20, 21. Penalty for fraud by town clerk or selectmen; recovery and appropriation of fines.

SECT. 1. The selectmen, treasurer and clerk of each town, 2 shall constitute a board for preparing lists of jurors to be laid 3 before the town for their approval; and the town in legal 4 town meeting, by a majority of the legal voters assembled, 5 may strike out such names as they think proper from such 6 lists, but shall not insert any other names.

R. S., c. 135, § 1.

SECT. 2. Such board, at least once in every three years, 2 shall prepare a list of such persons of good moral character, 3 and qualified as the constitution directs, to vote for repre- 4 sentatives, under the age of seventy years, in such town, as 5 they shall judge best qualified to serve as jurors.

R. S., c. 135, § 2.

SECT. 3. The following persons shall be exempted from 2 serving as jurors, and their names shall not be placed on the 3 lists: the governor, counselors, judges and clerks of the 4 common law courts, secretary and treasurer of the state, all

5 officers of the United States, judges and registers of probate,
 6 registers of deeds, settled ministers of the gospel, officers of
 7 any colleges, preceptors of incorporated academies, physi-
 8 cians and surgeons, cashiers of incorporated banks, sheriffs
 9 and their deputies, coroners, counselors and attorneys at
 10 law, county commissioners, constables, and constant ferry-
 11 men. R. S., c. 135, § 3.

SECT. 4. After the list of jurors is approved by the
 2 town, the said board shall write their names upon tickets,
 3 and place them in the jury box, which shall be kept by the
 4 town clerk ; and the persons whose names are in the box
 5 shall be liable to be drawn and to serve on any jury, at any
 6 court for which they are drawn, once in every three years,
 7 and not oftener, except as herein provided.

R. S., c. 135, § 4.

SECT. 5. Each town shall provide and constantly keep in
 2 the box, a number of names ready to be drawn when
 3 required, not less than one nor more than two for every hun-
 4 dred persons in the town, according to the census taken next
 5 before preparing the box ; and the board shall withdraw from
 6 the box, the name of any person convicted of any scandalous
 7 crime, or guilty of any gross immorality.

R. S., c. 135, § 5, 6.

SECT. 6. Within one year after every new census, and
 2 oftener, if a considerable change of population renders it
 3 proper, the county commissioners shall divide their county
 4 into not less than four, nor more than twelve districts,
 5 numerically designated ; and they shall place as many ad-
 6 joining towns, in each district, as shall make the number of
 7 inhabitants in each, according to the last census, as nearly
 8 equal as may be, without dividing a town ; and shall deliver
 9 a copy of such division immediately to the clerk of the courts
 10 in their county. R. S., c. 135, § 7, 8, 9.

SECT. 7. The grand and traverse jurors shall be drawn
 2 from each jury district, in such manner as to cause jurors, at
 3 each term of the court, to come from every part of the county,
 4 as equally as may be, and, as far as is practicable, from
 5 every town in rotation, having regard to the number of its
 6 inhabitants, taking not more than two grand jurors and two

7 traverse jurors from the same town, at the same time, unless
8 from necessity, or some extraordinary cause, or to equalize
9 the service; and the clerk of the courts shall issue venire to
10 the constables accordingly. R. S., c. 135, § 10, 11.

SECT. 8. Venires for grand jurors, to serve at the supreme
2 judicial court, shall be issued at least forty days before the
3 second Monday of September, annually; and such jurors
4 shall serve at every term of said court, for the transaction of
5 criminal business, throughout the year.

R. S., c. 135, § 12, 13. 1852, c. 246, § 17.

SECT. 9. The grand and traverse jurors shall attend on the
2 first day of the term, for which they are drawn and sum-
3 moned; unless the court, at a previous term, has designated
4 a different day; and, in that case, the venire shall specify
5 the day on which the jurors shall attend. 1844, c. 95, § 1.

SECT. 10. The sheriff, on receiving venires for jurors, shall
2 immediately send them to the constables of the towns, where
3 directed; and each constable on receipt thereof, shall notify
4 the freeholders and other inhabitants of the town, qualified
5 to vote for representatives, in the manner annual town meet-
6 ings are notified, and especially the selectmen and town
7 clerk, unless a different mode has been adopted at a legal
8 town meeting, which any town may do in respect to drawing
9 jurors only, to assemble and be present at the draft of the
10 jurors called for; which meeting shall be six days before the
11 sitting of the court, to which the venire is returnable.

R. S., c. 135, § 14.

SECT. 11. The town clerk, or in his absence, one of the
2 selectmen, shall carry the jury box into the meeting, which
3 shall be there unlocked, and the tickets mixed by a majority
4 of the selectmen present; and one of the selectmen shall draw
5 out as many tickets as there are jurors required, and the per-
6 sons whose names are drawn, shall be returned as jurors,
7 unless they have served on the jury within three years, or
8 from sickness, absence beyond sea, without the limits, or in
9 distant parts of the state, they are considered by the town
10 unable to attend. R. S., c. 135, § 15.

SECT. 12. In either of said cases, or if a person is drawn,
2 who has been appointed to an office exempting him from

3 serving, others shall be drawn in their stead; but any person
 4 thus excused, or returned and attending court, and there
 5 excused, shall not be excused on another draft, though within
 6 three years; and when all the persons whose names are in the
 7 box, have served within three years, or are not liable to serve,
 8 the selectmen shall draw out the required number of those
 9 who have not served for eighteen months; and the clerk shall
 10 certify, on the venire, that all persons whose names are in
 11 the box, have served within three years, or are not liable to
 12 serve. R. S., c. 135, § 16.

SECT. 13. When a juror is drawn, and not excused
 2 by the town, the selectmen who drew his ticket, shall en-
 3 dorse thereon the date of the draft, and return it into the box.
 R. S., c. 135, § 17.

SECT. 14. The constables shall notify the persons, thus
 2 drawn, four days, at least, before the sitting of the court, by
 3 reading the venire and indorsement thereon, to them, or
 4 leaving at their usual place of abode a written notice that
 5 they have been drawn, and of the time and place of the sit-
 6 ting of the court, where they are to attend; and make a
 7 reasonable return of the venire with his doings thereon.

R. S., c. 135, § 18, 19.

SECT. 15. When a new list of jurors is made, the selectmen
 2 shall transfer from the back of the old tickets, to the new
 3 ones of the same persons, the minutes of such drafts as had
 4 been made within the three preceding years. R. S., c. 135, § 20.

SECT. 16. If the selectmen or town clerk, neglect to per-
 2 form their duties, as herein required, so that the jurors
 3 called for from their town, are not returned, they shall be
 4 fined not less than ten, nor more than twenty dollars each.

R. S., c. 135, § 21.

SECT. 17. Any constable, neglecting to perform his duties,
 2 herein required, shall be fined not exceeding twenty dollars;
 3 and any town, for a like neglect of its duties, shall be fined
 4 not exceeding one hundred dollars. R. S., c. 135, § 22, 23.

SECT. 18. If the clerk of the court, or sheriff, neglects to
 2 perform his duties, so as to prevent a compliance with any
 3 of the provisions of this chapter, he shall be fined not exceed-
 4 ing fifty dollars. R. S., c. 135, § 24.

SECT. 19. Any juror, who after being notified and returned, 2 unnecessarily fails in his attendance, shall be fined, as for 3 contempt, not exceeding forty dollars. R. S., c. 135, § 25, 26.

SECT. 20. Any town clerk or selectman, who commits a 2 fraud, in any manner, on the box previous to the draft, in 3 drawing a juror, or in returning a name into the box, which 4 had been fairly drawn, and drawing another in its stead, or 5 in any other mode, shall be fined not exceeding two hundred 6 dollars, to be recovered by indictment, one half to the use of 7 the state, and the other half to the prosecutor.

R. S., c. 135, § 27, 29.

SECT. 21. All fines imposed by the sixteenth, seventeenth, 2 eighteenth and nineteenth sections, shall be recovered by in- 3 dictment, information or action, by the county treasurer, to 4 the use of the county where the offense was committed.

R. S., c. 135, § 28.

Chapter 107.

DEPOSITIONS.

DEPOSITIONS IN GENERAL.

- Sect.* 1. In what cases depositions may be used.
2. Before whom they may be taken.
3. When a cause is deemed pending, for the purpose of taking depositions.
4. Reasons for which they may be taken and used.
5. On application of the party, a justice or notary may issue summons to deponent, and notice to adverse party.
6. Service of such notice, how made.
7. Who is to be considered attorney of the adverse party.
8. Notice to one of the adverse party sufficient; time of notice; verbal notice by the justice or notary; due notice to be given when deposition is taken out of the state.
9. Form of notice to adverse party.
10. Form of summons to deponent.
11. Witness may be compelled to give his deposition.
12. Deponent to be sworn before examination.
13. Who may write the deposition.
14. The magistrate in all cases to return the notice to the adverse party, with the deposition, if in writing, if not, to return how notice was given.
15. If the adverse party is not present, the magistrate to keep deposition open one hour after close of direct examination.
16. If deception is used in giving notice, deposition may be rejected.
17. Form of caption.

18. Depositions to be delivered in court, or sealed up.
19. Not to be used if the reason for taking no longer exists.
20. Objections to competency of witness or questions must be seasonably made.
21. When depositions may be used in a second suit.
22. The court may admit or reject depositions taken out of the state.
23. The court may issue commissions to take depositions out of the state.

DEPOSITIONS IN PERPETUAM.

24. Application for taking a deposition in perpetuum, and notice to persons interested.
25. How such depositions are to be taken and certified.
26. To be recorded.
27. When it may be used in evidence. Never against the deponent or his interest.
28. Such depositions may be taken out of the state, upon a commission issued from the supreme judicial court.
29. The court to order notice, and on hearing may issue a commission to take such depositions.
30. Such deposition to be taken upon interrogations; application may be filed in vacation, and notice given.
31. Proceedings to compel a deponent to appear to give his deposition.
32. Punishment if he refuses to depose.

Depositions in general.

SECT. 1. Depositions, taken for any of the causes and in
 2 the manner hereinafter mentioned, may be used in all civil
 3 suits or causes, petitions for partition of land, libels for
 4 divorce, prosecutions for the maintenance of bastard children,
 5 petitions for review, and in trials before arbitrators, referees
 6 and county commissioners; and in cases of the contested
 7 election of a person returned as a member of the house of
 8 representatives. R. S., c. 133, § 1, 24.

SECT. 2 Any justice of the peace or notary public may
 2 take depositions to be used in any pending cause in which he
 3 is not interested, nor then, nor previously, counsel or attor-
 4 ney. R. S., c. 133, § 2.

SECT. 3. No suit, petition, libel or prosecution for the pur-
 2 poses of this chapter, shall be considered pending till the
 3 process therein has been duly served on the respondent, or
 4 such notice as is required by law, or ordered by the court,
 5 has been duly given; and no such deposition shall be used
 6 in the trial of any cause except by consent of parties unless
 7 the notice hereinafter mentioned is duly given to the adverse
 8 party. R. S., c. 133, § 3.

SECT. 4. Such depositions may be taken for either of the 2 following causes. R. S., c. 133, § 4.

First—When the deponent is so aged, infirm or sick, as not 4 to be able to attend at the place of trial.

Second—When the deponent resides out of, or is absent from 6 the state. 1842, c. 31, § 16.

Third—When the deponent, before the session of the court, 8 where the deposition is to be used, is bound to sea on a 9 voyage, is about to go out of the state, or more than sixty 10 miles from the place of trial, and not expected to return in 11 season to attend the trial. 1842, c. 1, § 1.

Fourth—When the deponent is judge of the supreme judi- 13 cial court, or court of probate, and is prevented, by his 14 official duty, from attending the trial. 1844, c. 103, § 1.

Fifth—When the deponent resides in a town, other than 16 that in which the trial is to be had. 1849, c. 123, § 1.

Sixth—When the deponent is confined in prison, and such 18 imprisonment is continued until after the trial.

R. S., c. 133, § 4.

SECT. 5. On application of either party to a justice of the 2 peace or notary public, he may issue a summons to the 3 deponent, to appear at a designated time and place, to give 4 his deposition, and a notice to the adverse party to be present 5 at such time and place; and the deposition may then and 6 there be taken by him, or any other justice or notary.

R. S., c. 133, § 5. 1849, c. 119, § 1.

SECT. 6. The notice to the adverse party shall be served 2 on him or his attorney, by reading it in his presence and 3 hearing, or by giving to him, or leaving at his last and usual 4 place of abode, an attested copy thereof; and the service may 5 be made by a sworn officer, or by any other person, and 6 proved by his affidavit. R. S., c 133, § 6.

SECT. 7. No person, for the purposes of this chapter, shall 2 be considered such attorney, unless his name is indorsed upon 3 the writ, or the summons left with the defendant, or he has 4 appeared for his principal in the cause, or given notice, in 5 writing, that he is attorney of such adverse party.

R. S., c. 133, § 7.

SECT. 8. Where there are several plaintiffs or defendants,
 2 the notice shall be sufficient, if given by the justice or notary
 3 to one or more of them ; the adverse party shall be allowed
 4 not less than at the rate of one day, Sundays excepted, for
 5 every twenty miles' travel, from his usual place of abode to
 6 the place of caption, between the service of notice and time
 7 appointed for taking the deposition : verbal notice to the ad-
 8 verse party, by any justice or notary, shall be sufficient ; and
 9 when a deposition is taken, not under a commission, out of
 10 the state, the adverse party, or his attorney, shall have due
 11 notice thereof. R. S., c. 133, § 8, 9, 10, 14.

1842, c. 31, § 17.

SECT. 9. The notice to the adverse party, if in the state,
 2 shall be, in substance, as follows :—

3 ———, ss. To ———, of ———, in the county of ———.

4 Greeting.

5 Whereas A. B. of ———, has requested that the deposition
 6 of C. D. of ———, may be taken to be used in an action
 7 of ———, pending between you and the said A. B., and the
 8 ——— of ———, in ———, and the ——— day of ———,
 9 at ——— of the clock in ——— ——— noon, are the place and
 10 time appointed therefor ; you are hereby notified to be present
 11 and put such questions as you think fit. Dated this ———
 12 day of ———, 18—.

13 ——— ———, Justice of the Peace.

R. S., c. 133, § 11.

SECT. 10. The justice or notary, when requested, shall
 2 issue a summons to the deponent, in substance as follows,
 3 viz :—

4 ———, ss. To C. D. of ———, in the county of ———.

5 Greeting.

6 Whereas A. B. of ———, in the county of ———, has re-
 7 quested that your deposition be taken to be used in an action
 8 now pending between him and E. F. of ———, in the county
 9 of ———, and the ——— of ———, in the town of ———,
 10 and the ——— day of ———, at ——— of the clock in the
 11 ——— noon, are the place and time appointed therefor ; you
 12 are therefore required, in the name of the state of Maine, there

13 and then to appear and testify what you know relating to
 14 said action. Dated this — — of —, in the year —.
 15 — —, Justice of the Peace.

16 The summons may be served, and the service thereof
 17 proved, as in section six. R. S., c. 133, § 12.

SECT. 11. A witness may be compelled to attend and give
 2 his deposition, in like manner and under the same penalties,
 3 as a witness is compelled to attend and testify in court; but
 4 not to travel more than thirty miles to give his deposition;
 5 and such deposition shall not be used in any trial, except for
 6 the causes mentioned in the fourth section, unless the adverse
 7 party uses the witness at such trial. R. S., c. 133, § 13.

SECT. 12. The deponent shall be first sworn to testify the
 2 truth, the whole truth, and nothing but the truth, relating to
 3 the cause or matter for which the deposition is to be taken;
 4 and he shall then be examined, first by the party producing
 5 him, on verbal or written interrogatories, and then by the
 6 adverse party, and by the justice, or the parties afterwards,
 7 if they see cause. R. S., c. 133, § 15.

SECT. 13. The deposition shall be written by the justice or
 2 notary, or by the deponent or some disinterested person, in
 3 the presence and under the direction of such justice or notary;
 4 and after it has been carefully read to, or by the deponent, it
 5 shall be subscribed by him. R. S., c. 133, § 16.

SECT. 14. The magistrate, in all cases, shall return with
 2 the deposition, the notice to the adverse party, when it is in
 3 writing, with the evidence of its service; and, when the
 4 notice is verbal, shall state, particularly, when, to whom,
 5 and how it was given. The sufficiency of the notice shall
 6 be determined by the court, to which the deposition is re-
 7 turned. [New.]

SECT. 15. If the adverse party is not present, before the
 3 close of the direct examination, the deponent shall not depart
 4 before the expiration of one full hour after such close; and
 5 the magistrate shall keep the deposition open for that time,
 6 unless the adverse party comes in and closes the cross-
 7 examination within that time. [New.]

SECT. 16. If the adverse party is notified to take depositions
 2 in the same case, at two places, at the same time, or any de-

3 ceptive means are used, to prevent his attendance at the
 4 taking of any depositions, the court, for such reason, may
 5 reject them. [New.]

SECT. 17. The justice or notary shall make out a certificate,
 2 and annex it to the deposition, therein stating the following
 3 facts: R. S., c. 133, § 17.

First—That the deponent was first sworn, according to
 5 law, to testify the truth, the whole truth, and nothing but
 6 the truth, relating to the cause or matter for which the dep-
 7 osition was taken. R. S., c. 133, § 15, 17.

Second—By whom the deposition was written; if by the
 9 deponent, or some disinterested person, he must name him,
 10 and that it was written in his presence and under his direc-
 11 tion.

Third—Whether the adverse party was notified to attend,
 13 and did, or did not, attend;

Fourth—The cause in which the deposition is to be used,
 15 and the names of the parties thereto;

Fifth—The court or tribunal, in which it is to be tried, and
 17 the time and place of trial;

Sixth—The cause of taking the deposition.

R. S., c. 133, § 17.

SECT. 18. The deposition shall be delivered by the justice
 2 to the court or referees, before whom the cause is to be tried,
 3 or inclosed and sealed up by him, and directed to such court
 4 or referees, and kept sealed, till opened by their order.

R. S., c. 133, § 18.

SECT. 19. When a deposition is so taken, it shall not be
 2 used on trial, if the adverse party shows that the cause for
 3 taking it no longer exists. R. S., c. 133, § 19.

SECT. 20. Objections to the competency of a deponent, or
 2 to the questions or answers, may be made when the depo-
 3 sition is produced, in the same manner as if the witness
 4 testified on the trial; but, if a deposition is taken on written
 5 interrogatories, all objections to an interrogatory shall be
 6 made before it is answered; and, if it is not withdrawn, the
 7 objection shall be noted thereon, otherwise the objection shall
 8 not afterwards be allowed. R. S., c. 133, § 20.

SECT. 21. When a plaintiff becomes nonsuit, or discontinues his suit, and commences another for the same cause, between the same parties or their representatives, all depositions, lawfully taken for the first, may be used in the second suit, if they were duly filed in the court where the first suit was pending, and remained on file till the commencement of the second. R. S., c. 133, § 21.

SECT. 22. The court may admit or reject depositions, taken out of the state, by a justice or notary, or other person lawfully empowered to take them. R. S., c. 133, § 22.

SECT. 23. The justices of the supreme judicial court may issue commissions to take depositions without the state, to be used in pending suits in the state, on such terms and conditions, as they think proper. R. S., c. 133, § 23.

Depositions in Perpetuum.

SECT. 24. When any person wishes to perpetuate the testimony of any witness, he shall make a statement in writing, under oath, briefly setting forth, in substance, his title, interest or claim in the subject, to which the desired testimony relates, and the names of all persons supposed to be interested therein, and the name of each witness proposed to be examined; and shall deliver the statement to any judge or register of probate, notary public, or clerk of the supreme judicial court or justice of the peace and quorum, requesting him to take the deposition of such witness; and he thereupon shall cause notice to be given of the time and place for taking such deposition, to all persons so named in the statement, which may be given and proved, in like manner as in case of other depositions. R. S., c. 133, § 25, 26.

SECT. 25. The deponent shall be sworn and examined, and the deposition written, read and subscribed in the same manner as other depositions; and the person taking it, shall annex to it a like certificate, as near as the case will admit, and also state therein that it was taken in perpetual remembrance of the thing, and the name of the person, at whose request it was taken, and of all who were notified, and all who attended. R. S., c. 134, § 27.

SECT. 26. The statement, deposition and certificate, within
 2 ninety days after the taking, shall be recorded in the registry
 3 of deeds in the county where the land, or any part of it, lies,
 4 if the deposition relates to real estate; if not, in the county
 5 where the parties, or some of them, resides.

R. S., c. 133, § 28.

SECT. 27. All such depositions, recorded as aforesaid, or a
 2 copy thereof attested by the register of deeds, may be used in
 3 the trial of any cause, pending when the deposition was
 4 taken, or commenced afterwards, between the person at
 5 whose request it was taken, and either of the persons named
 6 in the statement, and duly notified, or those claiming under
 7 either, concerning the title, claim, or interest, set forth in the
 8 statement, subject to the same objections as if originally taken
 9 for the suit; but no statement or testimony, in any such dep-
 10 osition, shall be received as evidence, in any case, against the
 11 deponent, or his interest, or any one claiming under him.

R. S., c. 133, § 29. 1852, c. 242, § 1.

SECT. 28. Depositions to perpetuate the testimony of wit-
 2 nesses, living out of the state, may be taken in any other
 3 state, or foreign country, upon a commission, issued by the
 4 supreme judicial court; and the person desirous to procure
 5 such depositions, may apply to said court, and file a state-
 6 ment as aforesaid; and if it relates to real estates in this
 7 state, the statement shall be filed in the county where it lies;
 8 if not, in the county where some of the parties reside.

R. S., c. 133, § 30, 31.

SECT. 29. The court shall order notice to be served on each
 2 of the persons named in the statement, living in the state
 3 fourteen days before the time appointed for hearing the par-
 4 ties; and, on hearing the parties, or the applicant, if no
 5 adverse party appears, may issue a commission for taking
 6 such deposition, in like manner as in a cause pending.

R. S., c. 133, § 32, 33.

SECT. 30. The deposition shall be taken upon interroga-
 2 tories, filed by the applicant, and cross interrogatories, by any
 3 party adversely interested, substantially in the same manner
 4 as when taken to be used in pending causes. Or the person
 5 wishing to take the deposition may file his statement in the

6 clerk's office in vacation, and cause notice to be given to the
 7 persons named therein as interested, fourteen days at least
 8 before the next term of the court, at which time the parties
 9 may be heard. R. S., c. 133, § 34, 35.

SECT. 31. When any judge or register of probate, notary
 2 public, clerk of the supreme judicial court, or justice of the
 3 peace and quorum, has summoned any person to appear
 4 before him, to give his deposition to be used in any cause
 5 pending in any court, in this or any other state, or to perpet-
 6 uate the testimony of any witness, and the summons has
 7 been served and returned by a proper officer, or other person,
 8 and proof of such service is entered on the summons, and
 9 legal fees have been tendered such witness, a reasonable
 10 time before the day appointed for taking the deposition, and
 11 such witness refuses to attend, he may adjourn the time of
 12 taking his deposition, and issue a *capias*, directed to a proper
 13 officer, to apprehend and bring such witness before him, at
 14 the time and place of the adjournment. R. S., c. 133, § 36.

SECT. 32. If such witness, on being brought before the per-
 2 son who is to take his deposition, refuses to depose and
 3 answer such questions as are propounded to him by either of
 4 the parties or persons interested, under his direction, he may
 5 commit him to the prison of the county for contempt, in like
 6 manner as the supreme judicial court may commit a witness
 7 for refusing to testify. R. S., c. 133, § 37.

Chapter 108.

REFERENCE OF DISPUTES BY CONSENT OF PARTIES.

- Sect. 1.* What controversies may be submitted; manner and form of submission; not to be revoked but by consent.
2. Submission of all demands, and of a specific demand.
 3. Parties may agree upon the time of reporting.
 4. Report, how returned into court.
 5. Power of referees same as if appointed under rule of court.
 6. Proceedings of court thereon; recommitment.
 7. All the referees must hear, but a majority may decide.
 8. Costs; compensation of referees.
 - 9 Report to be made to the supreme judicial court; either party may bring writ of error or file exceptions.
 10. A referee may take acknowledgment, or administer oaths.

SECT. 1. All controversies, which may be the subject of a
 2 personal action, may be submitted to one or more referees;
 3 and the parties, personally or by attorney, may sign and
 4 acknowledge an agreement, before any justice of the peace,
 5 in substance as follows:

Know all men by these presents, that — — of — —,
 7 in the county of — —, and — — of — — in the
 8 county of — —, have agreed to submit the demand, made by
 9 said — —, against said — —, which is hereunto an-
 10 nexed, (and all other demands between the parties, as the
 11 case may be,) to the determination of — —; the report of
 12 whom, (or the major part of whom) being made within one
 13 year from this day, to the supreme judicial court for the said
 14 county of — —, the judgment thereon shall be final. And, if
 15 either of the parties neglects to appear before the referees,
 16 after proper notice given to them of the time and place ap-
 17 pointed by the referees for hearing the parties, the referees
 18 may proceed in his absence.

19 Dated this — — day of — —, in the year — —.

20 Such agreement, subscribed by the parties, shall be ac-
 21 knowledged by them or their attorneys, as their voluntary
 22 act, before the same or any other justice, and shall not be
 23 revoked without the mutual consent of the parties.

R. S., c. 138, § 1, 2, 5.

SECT. 2. If all demands between the parties are so sub-
 2 mitted, no specific demand need be annexed to the agree-
 3 ment; but if a specific demand only is submitted, it shall be
 4 annexed to the agreement, and signed by the party making
 5 it; and so stated as to be readily understood, and as certain,
 6 in substance, as the case admits. R. S., c. 138, § 3, 4.

SECT. 3. The parties may agree when the report shall be
 2 made, and, in that respect, vary from the form aforesaid,
 3 without being confined to one year. R. S., c. 138, § 6.

SECT. 4. One of the referees shall deliver the report to the
 2 court, to which, by the agreement, it is to be returned, or it
 3 shall be sealed up, and transmitted, sealed, to the court, and
 4 opened by the clerk. R. S., c. 138, § 7.

SECT. 5. Such referees shall have the same authority as
 2 those appointed by a rule of court. R. S., c. 138, § 8.

SECT. 6. The court may accept, reject, or recommit it for
 2 further consideration; and the referees shall notify the parties
 3 of the time and place of a new hearing; and when the re-
 4 port is accepted, judgment shall be entered thereon, as in
 5 cases of submission by rule of court. R. S., c. 138, § 9.

SECT. 7. All the referees must meet and hear the parties,
 2 but a majority may make the report, which shall be valid as if
 3 signed by all of them; but it must appear by the report or
 4 certificate of the dissenting referee, that all attended and
 5 heard the parties. R. S., c. 138, § 10.

SECT. 8. The referees may allow costs, or not, to either
 2 party, as they judge reasonable, unless special provision is
 3 made in the submission on the subject; but the court may
 4 reduce the compensation of referees. R. S., c. 138, § 11.

SECT. 9. The report shall be made to the supreme judicial
 2 court, within the time limited in the submission, unless va-
 3 ried by the parties; and either party may bring a writ of
 4 error to reverse any judgment, or file exceptions to any
 5 decision of the court, accepting, rejecting, or recommitting a
 6 report, and carry the same to the law court.

R. S., c. 138, § 12, 13. 1845, c. 168.

SECT. 10. Any one of the referees, who is a justice of the
 2 peace, may take the acknowledgments of the parties to the
 3 submission, and any referee may swear witnesses.

R. S., c. 138, § 14.

Chapter 109.

TIMBER AND CORD WOOD; HOW IT MAY BE DISPOSED OF IN CERTAIN CASES.

- Sect.* 1. On application of the owners of certain interests in wood lands, the supreme
 judicial court, after notice and hearing, may grant leave to sell the wood.
 2. Commissioners to be appointed therefor, and to give bond.
 3. Proceeds; how invested. Appropriation of income.
 4. Court to appoint trustees of such proceeds, who shall give bond.

SECT. 1. Any person seized of a freehold estate, fee simple, fee
 2 tail, remainder or reversion in a lot or tract of wood land, or
 3 timber land, on which the trees are of a growth and age fit

4 to be cut, may apply to the supreme judicial court in any
 5 county, for leave to dispose of such trees, and invest the pro-
 6 ceeds for the use of the persons interested therein; and the
 7 court after due notice to all persons interested, and a hearing
 8 of the parties, if any appear, may appoint one or more per-
 9 sons to examine the land and report to the court, and the
 10 court may thereupon order the whole or a part of such trees
 11 to be felled and sold, and the proceeds brought into court
 12 subject to further orders. R. S., c. 139, § 1.

SECT. 2. The court shall appoint one or more commis-
 2 sioners, to superintend the felling and sale of such trees, and
 3 account for the proceeds to the court, who shall be under
 4 bond to the clerk, for the faithful performance of their trust.
 R. S., c. 139, § 2.

SECT. 3. The court may cause the net proceeds of sale to
 2 be invested in other real estate in this state, or in public
 3 stocks, to the same uses and under the same limitations, as
 4 the land; and the income thereof to be paid to the persons
 5 entitled to the income of the land, or apportioned among the
 6 persons interested in the estate, according to their interest.
 R. S., c. 139, § 3.

SECT. 4. The court may appoint one or more trustees,
 2 removable at their pleasure, to hold such estates or stocks for
 3 said uses, who shall give bond with sufficient sureties to said
 4 clerk, for the faithful discharge of their duty.
 R. S., c., 139, § 4.

Chapter 110.

COMMISSIONERS TO TAKE ACKNOWLEDGMENT OF DEEDS, OR OTHER CONTRACTS AND DEPOSITIONS IN OTHER STATES.

- Sect.* 1. Appointment; power to authenticate deeds.
 2. Legal effect of their official acts and certificates.
 3. May administer oaths, and take depositions.
 4. Qualification and seal.

SECT. 1. The governor may appoint one or more commis-
 2 sioners in any other of the United States, to continue in office
 3 during the pleasure of the governor; and have authority to

4 take the acknowledgment and proof of the execution of any
 5 deed or other conveyance or lease of any lands lying in this
 6 state; and of any contract, letter of attorney or any other
 7 writing, under seal or not, to be used or recorded in this
 8 state. R. S., c. 134, § 1.

SECT. 2. Such acknowledgment or proof, so taken accord-
 2 ing to the laws of this state, and certified by any such
 3 commissioner, under his seal of office, annexed to or indorsed
 4 on such instrument, shall have the same force and effect, as
 5 if done by an officer authorized to perform such acts in this
 6 state. R. S., c. 134, § 2.

SECT. 3. Every commissioner thus appointed, may admin-
 2 ister any oath, lawfully required in this state, to any person
 3 willing to take it; and take and duly certify all depositions
 4 to be used in any of the courts in this state, in conformity to
 5 the laws thereof, on interrogatories proposed under commis-
 6 sion from a court of this state, by consent of parties, or on
 7 legal notice given to the opposite party; and all such acts
 8 shall be as valid, as if done and certified, according to law,
 9 by a magistrate in this state. R. S., c. 134, § 3.

SECT. 4. Every such commissioner, before performing any
 2 duty, or exercising any power in virtue of his appointment,
 3 shall take and subscribe an oath or affirmation before a judge
 4 or clerk of one of the superior courts of the state in which he
 5 resides, well and faithfully to execute and perform all his
 6 official duties under the laws of Maine; which oath, and a
 7 description of his seal of office, shall be filed in the office of
 8 the secretary of this state. R. S., c. 134, § 4.

Chapter 111.

PREVENTION OF FRAUDS AND PURJURIES IN CONTRACTS, AND ACTIONS FOUNDED THEREON.

Sect. 1. Cases in which promises must be in writing.

2. The consideration need not be expressed therein.

3. No action shall be maintained on a demand, discharged for less than the amount
 due thereon.

4. No action to be maintained on a contract made by a minor, unless ratified, after becoming of age.
5. Representation of another's ability or character, to be in writing.
6. What contracts for sale of goods must be in writing.
7. When specific performance of a contract may be enforced by a bill in equity.
8. What decree to be made; the conveyance to be good.
- 9, 10. Enforcement of the decree; provision in case of the death of the obligor before conveyance.
11. Administrator of the contractor may petition for authority to make conveyance.

SECT. 1. No action shall be maintained in any of the following cases :

First—To charge an executor or administrator, upon any special promise to answer damages out of his own estate.

Second—To charge any person upon any special promise to answer for the debt, default, or misdoings of another.

Third—To charge any person, upon an agreement made in consideration of marriage.

Fourth—Upon any contract for the sale of lands, tenements, or hereditaments, or of any interest in or concerning them.

Fifth—Upon any agreement that is not to be performed within one year from the making thereof.

Sixth—Upon any contract to pay a debt after a discharge therefrom, under the bankrupt laws of the United States, or assignment laws of this state. 1848, c. 52, § 1.

Unless the promise, contract or agreement upon which such action is brought, or some memorandum or note thereof is in writing, and signed by the party to be charged therewith, or by some person thereunto lawfully authorized.

R. S., c. 136, § 1.

SECT. 2. The consideration of any such promise, contract or agreement, need not be expressed in said writing, but may be proved by any other legal evidence.

R. S., c. 136, § 2.

SECT. 3. No action shall be maintained upon any demand discharged by the owner, his agent or attorney, generally or specially authorized, for a less sum than the amount legally due thereon, or for any good and valuable consideration.

1851, c. 213, § 1.

SECT. 4. No action shall be maintained on any contract made by a minor, unless he or some person lawfully author-

3 ized, ratified it, in writing, after he arrived at the age of
4 twenty-one years, except for necessaries, or real estate
5 of which he has received the title and retains the benefit
6 thereof. 1845, c. 166, § 1.

SECT. 5. No action shall be maintained to charge any per-
2 son by reason of any representation or assurance concerning
3 the character, conduct, credit, ability, trade or dealings of
4 another, unless made in writing, and signed by the party to
5 be charged thereby, or by some person by him legally author-
6 ized. R. S., c. 136, § 3.

SECT. 6. No contract for the sale of any goods, wares, or
2 merchandize, for thirty dollars or more, shall be valid unless
3 the purchaser accepts and receives part of the goods, or gives
4 some earnest money to bind the bargain, or in part payment
5 thereof, or some note or memorandum thereof, is made and
6 signed by the party to be charged thereby.

R. S., c. 136, § 4.

SECT. 7. If a person who has contracted in writing, to convey
2 real estate, dies before making the conveyance, the other
3 party may have a bill in equity, if filed within one year after
4 the grant of administration, in the supreme judicial court, to
5 be heard and decided according to the proceedings in chan-
6 cery, to enforce specific performance of the contract by his
7 heirs, devisees, executor or administrator.

R. S., c. 136, § 5, 6.

SECT. 8. If it appears that the plaintiff is entitled to a con-
2 veyance, the court may authorize and require the executor
3 or administrator to convey the estate, in like manner as the
4 deceased ought to have done; and if any of the heirs or de-
5 visees are in the state, and competent to act, the court may
6 direct them, instead of the executor or administrator, to con-
7 vey the estate, or join with either in such conveyance; which
8 shall pass the estate as fully as if made by the contractor.

R. S., c. 136, § 7, 8.

SECT. 9. If the defendant neglects or refuses to convey,
2 according to the decree, the court may render judgment for
3 the plaintiff, for possession of the land, to hold according to
4 the terms of the intended conveyance, and issue a writ of
5 seizin, as in a real action, under which the plaintiff, having

6 obtained possession, shall hold the premises as effectually as
 7 if conveyed in pursuance of the decree; or the court may
 8 enforce their decree by any other process, according to chan-
 9 cery proceedings. R. S., c. 136, § 9, 10.

SECT. 10. If the person, entitled to such conveyance, dies,
 2 before bringing his suit, or the conveyance is completed, or
 3 such seizin and possession are obtained, his heir, devisee, or
 4 other person entitled to the estate under him, may bring and
 5 prosecute such suits, and shall be entitled to the conveyance,
 6 or seizin and possession, in like manner as the obligee.

R. S., c. 136, § 11.

SECT. 11. If the party, to whom any such conveyance was
 2 to be made, or those claiming under him, do not commence a
 3 suit, as before provided, and the heirs of the deceased party
 4 are under age, or otherwise incompetent to convey the lands
 5 contracted for, the executor or administrator of the deceased
 6 may file a bill in equity in the supreme judicial court, setting
 7 forth the contract and circumstances of the case; whereupon
 8 the court, by their decree, may authorize such executor or
 9 administrator to convey the estate in the manner the deceased
 10 should have done; and such conveyance shall be deemed a
 11 performance of the contract, on the part of the deceased, so
 12 as to entitle his heirs, executors or administrators to demand
 13 a performance thereof on his part. R. S., c. 136, § 12.

Chapter 112.

RECOGNIZANCES FOR DEBTS.

Sect. 1. Who may enter into recognizance.

2. Form of recognizance,

3. The justice after recording it, to deliver it to the creditor.

4. May be filed and recorded with clerk of the courts; who may issue and renew execution thereon, to be executed by all proper officers.

5. When not to run against the lands or body of the debtor.

6. Administrator of creditor may take out execution; if debtor dies, or after three years, action of debt may be brought as on a judgment.

7. Consequence, if one of several debtors or creditors die.

8. Remedy, if execution is wrongfully issued.

SECT. 1. Any person, legally capable, may enter into re-
 2 cognizance to pay a debt, as herein provided; and thereby

3 subject his goods and estate, or his person, to be taken in
4 execution. R. S., c. 137, § 1.

SECT. 2. Such recognizance may be taken before any
2 justice of the peace, and shall be in substance, as follows:

3 I, A. B., of —, in the county of —, do owe unto C.
4 D., of —, in the county of —, the sum of —, to be
5 paid to the said C. D. on the — day of —; and, if I fail
6 to pay said debt, at the time aforesaid, I will and grant, that
7 the said debt be levied of my goods and chattels, lands and
8 tenements, and in want thereof upon my body.

9 In testimony whereof, I have hereto set my hand and seal,
10 this — day of —, in the year —.

R. S., c. 137, § 2.

SECT. 3. After such recognizance is signed, sealed and
2 acknowledged before said justice, and his certificate thereof
3 is annexed, it shall be delivered to the creditor; and the
4 justice shall keep a record of all recognizances taken by him.

R. S., c. 137, § 3.

SECT. 4. If the debt is not paid at the time appointed, the
2 creditor may deliver the recognizance to the clerk of the court
3 of the county where taken, who shall record it in a book kept
4 for that purpose, and place it on the files of the court; and
5 at any time within three years, after the debt becomes
6 due, without any order of court, he may issue an execution
7 thereon, including all interest due by the terms of the recog-
8 nizance, varying the form of the execution accordingly, to
9 be renewed by the clerk, served and executed by all proper
10 officers, the same as any other execution.

R. S., c. 137, § 4, 5, 6, 7.

SECT. 5. If the sum originally due on such recognizance,
2 does not exceed twenty dollars, execution shall not be issued
3 against the lands of the debtor; and if the sum is less than
4 ten dollars, it shall not be issued against his body.

R. S., c. 137, § 8.

SECT. 6. If the creditor dies before the debt is fully paid,
2 his executor or administrator may renew such execution in
3 his own name; and if the debtor dies, no execution shall
4 issue of course, but the creditor in that case, and also after the
5 expiration of three years from the time of payment in the

6 recognizance, may have an action of debt as in case of judg-
7 ment. R. S., c. 137, § 9, 10, 11.

SECT. 7. Where there are several debtors or creditors, and
2 one or more of them dies before the debt is paid, the rights of
3 the surviving creditors, and the obligations of the surviving
4 debtors, shall be the same as in case of a judgment.

R. S., c. 137, § 12.

SECT. 8. Any person injured by the suing out or service of
2 any such execution, shall have his remedy, by writ of audita
3 querela, or otherwise, as in case the execution had been sued
4 out upon a judgment. R. S., c. 137, § 13.

Chapter 113.

RELIEF OF POOR DEBTORS.

ARRESTS AND DISCLOSURES ON MESNE PROCESS.

- Sect.* 1. No arrest on mesne process, on contract, except where specially provided.
2. Debtor about to leave the state may be arrested in certain cases.
 3. Disclosure on such arrest.
 4. Notice thereof to be given to the plaintiff.
 5. Mode of making disclosure.
 6. Justices may adjourn.
 7. Adjudication of justices; effect of discharge.
 8. Lien on property disclosed, how preserved.
 9. Arrests allowed in actions not founded on contracts.
 10. Defendant may in all cases disclose on return of writ.
 11. Effect thereof; lien on property disclosed.
 12. Certificate of real estate disclosed to be filed in registry of deeds.
 13. How to preserve lien on personal estate.
 14. Disclosure on mesne process by consent of parties.
 15. Execution to issue against the body, unless there is a disclosure and discharge.
 16. Certain property, which cannot be come at to be attached, to be delivered up on disclosure.
 17. Persons arrested may give bond to disclose in a certain time after judgment.

ARRESTS AND IMPRISONMENT ON EXECUTION, AND DISCLOSURES THEREON; OR AFTER JUDGMENT.

18. No arrest on execution if debt is less than ten dollars.
19. Arrests in other cases, and object thereof.
20. Bond may be given on such arrest; condition and effect thereof.
21. Application by a debtor under bond or imprisoned, to a justice for privilege of poor debtor's oath.
22. Justice to appoint the time and place and cite the creditor.
23. Citation, how served.
24. Examination before two justices of the quorum.

25. 26. Mode of examination.
27. When the justices may administer the oath.
28. Form of the poor debtor's oath.
29. Certain property disclosed, which cannot be come at to be attached, may be appraised off to the creditor.
30. Creditor may accept it within thirty days.
31. Form of justice's certificate of administration of oath.
32. Effect of such certificate.
33. Preservation of creditor's lien on real estate disclosed.
34. Lien on personal estate disclosed ; consequences if debtor or any person transfers or conceals it.
35. Proceedings if debtor has given bond on mesne process.
36. Debtor in such case may go at large thirty days during the lien on the property disclosed.
37. Effect of creditor's election to arrest on execution or otherwise.
38. Bond taken on execution to be returned therewith, for benefit of creditor.
39. Amount recoverable thereon, if forfeited.
40. In all actions upon a debtor's bond, if it appears that such debtor has disclosed, and taken poor debtor's oath, the plaintiff to recover only actual damage.
41. The new judgment on any such bond to operate as discharge of the old judgment as far as it goes.
42. Persons incompetent as witnesses may take the poor debtor's oath.
43. Costs for creditor if debtor is not discharged.
44. Discharge of debtor's body, no discharge of debt.

GENERAL PROVISIONS APPLICABLE TO CERTAIN CASES OF ARREST AND IMPRISONMENT.

45. Bond to be valid, though not taken for the exact amount.
46. Right to bail not impaired.
47. Limitation of suits on bond.
48. Manner of selecting the justices to take the disclosure ; if two do not agree, they may select a third, and majority decide.
49. When the creditor delays to select a justice, the justice selected by debtor may adjourn.
- 50, 51. Liability of a debtor if he discloses falsely.
52. Liability of persons aiding in fraudulent concealment or transfer of property.
53. Persons arrested for taxes, entitled to the privileges of this chapter.
54. Variation in the form of the oath and certificate in such case.
55. Privileges extended to collectors and other officers, arrested for taxes committed to them.
56. Disability of persons committed for wilful trespass.
57. Service of a citation on a corporation creditor.
58. Prison keeper may require the creditor to support the debtor. Special provision, if committed on several precepts.
59. Adjustment of price of articles furnished to prisoner.
60. Citation to one of several joint creditors sufficient.
61. Effect of voluntary release by creditor, from arrest on execution.
62. Officer may endorse such release on the execution, and then levy the execution on property.
63. How judgment may be kept in force, after such release.
64. Judges of municipal and police courts may act as justices of the quorum.

PROVISIONS RELATING TO DEBTORS TO THE STATE:

65. Such debtor may apply to a justice of the supreme court.
66. Notice to be given to county attorney, or attorney general.
67. Proceedings and power to release the debtor.
68. Judge may discharge him or the debt, on payment or security for a part.
69. Jailer to comply with decision of judge.
70. Adjudication to be entered on the record.
71. Same powers vested in the county commissioners.
72. Application by such debtor to take the poor debtor's oath, and citation to the county attorney. County attorney to attend.
73. Oaths and certificates in such cases.

Arrests and disclosures on mesne process.

SECT. 1. No person shall be arrested on mesne process, in
 2 any suit on any contract, express or implied, or on any judg-
 3 ment founded on such contract, except as provided in the
 4 following section; and the writ or process shall be so varied,
 5 as not to require the arrest of the defendant.

R. S., c. 148, § 1.

SECT. 2. Any person, a resident within this state or not,
 2 may be arrested and held to bail, or committed to prison on
 3 mesne process, on any contract express or implied, when the
 4 sum demanded amounts to ten dollars, or on a judgment
 5 founded on contract, when the debt originally recovered and
 6 remaining due, is ten dollars or more, exclusive of interest on
 7 such judgment, when he is about to depart and reside beyond
 8 the limits of this state, with property or means exceeding the
 9 amount required for his immediate support, if the creditor,
 10 his agent or attorney, makes oath before a justice of the
 11 peace, to be certified by such justice on said process, that he
 12 has reason to believe, and does believe that such debtor is
 13 about so to depart and reside, and to take with him property
 14 or means as aforesaid, and that the demand or principal part
 15 thereof, amounting to at least ten dollars, is due to him.

R. S., c. 148, § 2.

SECT. 3. On the arrest or imprisonment of any debtor, by
 2 virtue of the preceding section, on request to the officer or
 3 jailer, who has him in custody, he may be taken before two
 4 disinterested justices of the peace and quorum, to be selected
 5 as provided in the forty-sixth section, to disclose the actual
 6 state of his affairs.

R. S., c. 148, § 3.

SECT. 4. Previous to the disclosure, he shall give due notice
2 to the creditor, his agent or attorney, of his intention, and of
3 the time and place for said disclosure, that the creditor,
4 agent or attorney may be present, and select one of the justi-
5 ces, and be heard thereon; such notice shall not be less than
6 one day for every twenty miles travel, exclusive of Sundays.

R. S., c. 148, § 4.

SECT. 5. If the debtor makes a full disclosure, at the ap-
2 pointed time and place, to the satisfaction of said justices, of
3 the actual state of his affairs, and of all of his estate, prop-
4 erty, rights and credits in possession, expectation or reversion,
5 and answers all proper interrogatories in regard to the same,
6 and signs and offers to make oath to the truth of his said
7 disclosure and answers, before the justices, they shall admin-
8 ister to him such oath, and may hear such further and
9 proper evidence as may be offered upon either side.

R. S., c. 148, § 5.

SECT. 6. The justices may adjourn from time to time
2 if they see cause; and if either of the justices is not
3 present at the adjournment, the other may adjourn to another
4 time, but no such adjournment or adjournments shall exceed
5 three days in the whole, exclusive of Sundays.

R. S., c. 148, § 6.

SECT. 7. On such examination, the justices may discharge
2 the debtor from arrest and imprisonment, or remand him into
3 the custody of the jailar or other officer, as the case requires;
4 and, in case of such discharge, no execution, issuing on the
6 judgment in the suit or process, shall run against the body of
7 the debtor.

R. S., c. 148, § 7.

SECT. 8. All attachable property, disclosed by the exami-
2 nation, or so much as the creditor designates to satisfy his
3 demand, shall be held as attached from the time of the dis-
4 closure, until thirty days after final judgment, as in other
5 cases of attachment; and the officer shall make return thereof
6 on the writ or process, certifying the fact that the property
7 was so disclosed; and, if it is real estate, shall certify the
8 same to the register of deeds, as provided in section thirty
9 of chapter eighty-one; and, if the creditor requires it, at any
10 time before final judgment, the officer shall take into his cus-

11 tody any part of the personal property so disclosed, sufficient
12 to secure the demand and hold it as in other cases.

R. S., c. 148, § 8.

SECT. 9. In all actions, not founded on contract, or on a
2 judgment on such contract, the original writ or process shall
3 run against the body of the defendant, and he may be thereon
4 arrested and imprisoned, or give bail, as provided in chapter
5 eighty-five.

R. S., c. 148, § 9.

SECT. 10. When any person is served with an original
2 writ, or other mesne process, founded on such contract or
3 judgment, in any other manner than by arrest of the body,
4 at any time before final judgment, he may appear before the
5 court or justice, before whom such writ or process is pending,
6 or before a disinterested commissioner or commissioners,
7 appointed by said court or justice, and submit himself to
8 examination; and such court, justice, or commissioner, after
9 giving like notice of the time and place of hearing, as pro-
10 vided in the fourth section, shall take the disclosure of such
11 person; and the like proceedings shall be had before such
12 court, justice or commissioner, as is provided in the fifth and
13 sixth sections, when before two justices of the peace and
14 quorum, and with the like effect.

R. S., c. 148, § 10.

SECT. 11. On such examination, the court, justice, or com-
2 missioner, except as is provided in the sixteenth section,
3 may determine that the execution on the judgment recovered
4 in the suit, shall run against the property only of the defend-
5 ant, or otherwise, as justice may require, on the facts so
6 disclosed or proved; and all attachable property, so disclosed
7 from the time of the disclosure, shall be held attached, as
8 provided in the eighth section, and subject to the provisions
9 of the two following sections.

R. S., c. 148, § 11.

SECT. 12. If the disclosed property is real estate, the court,
2 justice or commissioner, shall deliver to the plaintiff a cer-
3 tificate thereof, stating the names of the parties and the
4 amount of the claim in the writ, which the plaintiff shall file
5 with the register of deeds for the county or district where the
6 estate is situated, within five days after the date thereof; and
7 the register shall enter and file the same, in like manner as

8 returns of officers making attachments on real estate, and be
9 entitled to the same fees from the plaintiff.

R. S., c. 148, § 12.

SECT. 13. If personal estate, liable to attachment, is dis-
2 closed, and the plaintiff makes application, and states that
3 he is apprehensive that said property may be removed or
4 concealed, so that it cannot be taken on execution, the court,
5 in term time, or any justice thereof in vacation, or the jus-
6 tice of the peace, before whom the suit is pending, may issue
7 an order, duly signed, directing any officer authorized to serve
8 processes in the suit, to take such property into his custody,
9 and hold it as if originally attached; and such officer shall
10 execute the same accordingly. R. S., c. 148, § 13.

SECT. 14. At any time before or after the return day of any
2 such writ or process, the parties to the suit, by a written
3 agreement, may appear before any justice of the peace and
4 quorum, in the county where the suit is pending; and the
5 defendant shall make the disclosures, and submit to the
6 examination and proceedings, required in the tenth section,
7 before a commissioner; and the record thereof shall be re-
8 turned to the court or justice before which the suit is pending,
9 before final judgment; where the proceedings shall be the
10 same, as if the disclosure had been before a commissioner
11 appointed for the purpose. R. S., c. 148, § 14.

SECT. 15. If no such disclosure and examination are made
2 before final judgment, or if the result of such disclosure and
3 examination is adverse to the defendant's right to exemption
4 from arrest, the execution shall run against his body.

R. S., c. 148, § 15.

SECT. 16. If, on the disclosure and examination of any
2 debtor, pursuant to the fifth and tenth sections, before final
3 judgment, it appears that he possesses, or has in his power,
4 or with intent to protect the same from his creditors, has
5 assigned, secreted, or otherwise disposed of, any bank bills,
6 notes, accounts, bonds, other contracts or property, not ex-
7 empted from attachment, but which cannot be come at to be
8 attached, from its nature or otherwise, the debtor, if under
9 arrest, shall not be released, nor shall his person be exempted
10 from arrest, on execution issued on the judgment recovered.

11 in such suit, unless he assigns and delivers to such person, as
 12 the examining magistrate, court, or commissioners, appoint,
 13 all such property, or so much of it as they adjudge sufficient
 14 security for the creditor; to be held by him, under the direc-
 15 tion of the court, or justice, before which the suit is pending,
 16 in trust for the parties, that it may be applied and appropri-
 17 ated, as provided in sections twenty-nine and thirty.

R. S., c. 148, § 16.

SECT. 17. When any person is arrested or imprisoned, on
 2 mesne process, in a civil action, he may be released, by
 3 giving bond in double the sum for which he is arrested or
 4 imprisoned, to the plaintiff, with surety, or sureties, to his
 5 acceptance, or approved by two justices of the peace and
 6 quorum, of the county where the arrest or imprisonment is made;
 7 said justices to be selected in the manner prescribed in the
 8 forty-sixth section; and, if they disagree, the same proceed-
 9 ings shall be had as are there directed, and a majority shall
 10 decide on the sufficiency of the surety or sureties; the bond
 11 to be conditioned that, within fifteen days after rendition of
 12 judgment, or after the adjournment of the court, in which
 13 the judgment is rendered, he will notify the creditor, his
 14 agent or attorney to attend at a certain place in the county, at
 15 a time not more than thirty, nor less than fifteen days after
 16 such notice, for the purpose of disclosure and examination,
 17 under the provisions of the thirty-fifth section; and that he
 18 will then and there submit himself to examination, and make
 19 true disclosure of his business affairs and property, on oath,
 20 and abide the order of the justices, in manner provided in
 21 sections thirty-five, thirty-six and thirty-seven; and if the
 22 officer serving the writ, takes such bond, he shall return it to
 23 the court or justice where the suit is pending.

R. S., c. 148, § 17. 1848, c. 85, § 6.

ARTICLE II.—*Arrests and imprisonment on execution, and dis-
 closures thereon; or after judgment and effect thereof.*

SECT. 18. No person shall be arrested on an execution
 2 issued on a judgment in any suit, founded on a contract,
 3 express or implied, where the debt is less than ten dollars,
 4 exclusive of costs; or in any suit founded on any prior judg-

5 ment on contract, where the amount of the original debt,
6 remaining due, is less than dollars, exclusive of costs;
7 and the form of the process shall be varied accordingly.

R. S., c. 148, § 18.

SECT. 19. In all other cases, except where express pro-
2 vision is by law made to the contrary, executions shall run
3 against the body of the judgment debtor; and he may be
4 arrested and imprisoned thereon, for the purpose of obtaining
5 a discovery of his property, wherewith to satisfy the same,
6 as hereinafter stated.

R. S., c. 148, § 19.

SECT. 20. When any debtor, arrested or imprisoned on
2 execution issued on a judgment in a civil suit, gives bond to
3 the creditor, with sufficient surety, or sureties, approved in
4 writing, by the creditor, or by two justices of the peace and
5 quorum, of the county where the arrest is made, selected in
6 the manner prescribed in the forty-sixth section; and if they
7 disagree, the same proceedings shall be had as are there di-
8 rected, and a majority shall decide on the sufficiency of the
9 surety or sureties, in double the sum for which he is so
10 arrested or imprisoned, conditioned, that he will, within six
11 months thereafter, cite the creditor before two justices of the
12 peace and of the quorum, and submit himself to examination,
13 and take the oath prescribed in the twenty-eighth section of
14 this chapter, pay the debt, interest, costs and fees, arising in
15 said execution, or deliver himself into the custody of the
16 keeper of the jail, into which he is liable to be committed
17 under the said execution, he shall be released from his said
18 arrest or imprisonment.

R. S., c. 148, § 20.

1848, c. 85, § 6.

SECT. 21. Any debtor, who has given bond pursuant to the
2 provisions of the seventeenth and twentieth sections, within
3 the time limited by his bond, and any person in prison, by
4 force of an execution, in a civil suit, may apply, in writing,
5 to any justice of the peace of the county in which he is
6 arrested or imprisoned, claiming to have the privilege and
7 benefit of the oath authorized by the twenty-eighth section;
8 or, if the debtor is imprisoned, the keeper of the jail, if the
9 debtor requests him, shall make such application in his
10 behalf.

R. S., c. 148, § 21.

SECT. 22. The justice shall thereupon appoint a time and
2 place for the examination of the debtor, and give notice to
3 the creditor, by a citation under his hand and seal, to be
4 served and returned by any officer qualified to serve any
5 civil process between the same parties. R. S., c. 148, § 22.

SECT. 23. The citation shall be served on the creditor, by
2 reading it to him, or by leaving an attested copy thereof at
3 his last and usual place of abode, or by giving him an
4 attested copy thereof in hand, fifteen days at least, before the
5 time appointed for the examination, if the creditor is alive
6 and within the state; otherwise it shall be served in like
7 manner on the person who was his attorney in the suit, the
8 executor or administrator of a deceased creditor, or some
9 known authorized agent; and if no such representative can
10 be found in the state, a copy of the citation shall be left in
11 like time with the clerk of the court or magistrate, from
12 whom the execution issued.

R. S., c. 148, § 23. 1842, c. 31, § 19.

SECT. 24. The examination shall be before two disinter-
2 ested justices of the peace and quorum for the county, who
3 shall have like power to adjourn, as is provided in section
4 six. R. S., c. 148, § 24.

SECT. 25. The justices shall examine the citation and
2 return, and if found correct, shall examine the debtor on his
3 oath, concerning his estate and effects, and the disposal
4 thereof, and his ability to pay the debt for which he is com-
5 mitted; and hear any other legal and pertinent evidence,
6 adduced by the debtor or creditor. R. S., c. 148, § 25.

SECT. 26. The creditor may propose to the debtor any
2 interrogatories pertinent to the enquiry, and, if the creditor
3 requires it, they shall be answered in writing, and the
4 answers signed and sworn to by the debtor; and the creditor
5 may have a copy of the interrogatories and answers, certified
6 by the justices, on paying therefor twelve cents a page.

R. S., c. 148, § 26.

SECT. 27. If, upon such examination, and the hearing of
2 such evidence, the justices are satisfied that the debtor's
3 disclosure is true, and they do not discover any thing therein

4 inconsistent with his taking the oath, set forth in the next
5 section, they may administer it to him. R. S., c. 148, § 27.

SECT. 28. The oath shall be in the form following :

2 I, ———, do solemnly swear, (or affirm) that I have
3 not any estate real or personal, in possession, reversion or
4 remainder, except the goods and estate expressly exempted
5 by statute from attachment and execution, and the property
6 I have now disclosed ; and that I have not since the com-
7 mencement of this suit, or the time when the debt or cause
8 of action, or any part thereof, on which this suit was brought,
9 was contracted by me, directly or indirectly sold, loaned,
10 leased, or otherwise disposed of, or conveyed or entrusted to
11 any person or persons, whomsoever, all or any part of the
12 estate, real or personal, whereof I have been the lawful
13 owner or possessor, with any intent or design to secure the
14 same, or to receive or expect any profit, advantage or benefit
15 therefrom, to myself or others, with an intent or design to
16 defraud any of my creditors So help me God ; (or, this I
17 do under the pains and penalties of perjury, if the debtor
18 affirms.) R. S., c. 148, § 28.

SECT. 29. When from the disclosure of any debtor arrested
2 or imprisoned on execution, it appears that he possesses, or
3 has under his control any bank bills, notes, accounts, bonds,
4 or other contracts or property not expressly exempted by
5 statute from attachment, which cannot be come at to be
6 attached, and if the creditor and debtor cannot agree to apply
7 the same in part or full discharge of the debt, the justices
8 before whom the disclosure is made, shall appraise and set
9 off such property or enough of it to satisfy the debt, cost and
10 charges ; and the creditor or his attorney if present, may
11 select the property to be appraised. If the creditor accepts
12 thereof, it may be assigned and delivered by the debtor to the
13 creditor, and applied in satisfaction of his demand, in whole
14 or in part. If any particular article of property thus
15 appraised and set off, and necessary and convenient to be
16 applied in satisfaction of the execution, exceeds the amount
17 or balance due thereon, and is not divisible in its nature, the

18 creditor may take it, on advancing to the debtor the overplus,
19 or securing the same to the satisfaction of the justices.

R. S., c. 148, § 29. 1848, c. 85, § 5.

SECT. 30. If the creditor is absent, or does not accept the
2 same as aforesaid, the debtor shall deposit with the justices
3 an assignment in writing, to the creditor, of all the property
4 thus appraised and set off; and the justices shall make a
5 record of such proceedings and cause the property so dis-
6 closed, to be safely kept and secured for the term of thirty
7 days thereafter, to be delivered to the creditor with the assign-
8 ment, on demand, within [that time. If not so demanded,
9 they shall be returned to the debtor. R. S., c. 148, § 30.

SECT. 31. After administering the oath to the debtor, and
2 the property so disclosed is duly secured, the justices shall
3 make out and deliver to the debtor, a certificate under their
4 hands and seals in the form following :

STATE OF MAINE.

6 ———, ss. To the sheriff of the county of ———, or his
7 deputy, and to the keeper of the jail at ———, (or to any cor-
8 oner or constable.)

9 [L. s.] We, the subscribers, two disinterested justices of the
10 [L. s.] peace and quorum, in and for said county, of ———,
11 hereby certify that ———, a poor debtor, arrested on a cer-
12 tain execution issued by (here insert the name and style of
13 the court, or of the justice of the peace, and the amount of
14 the judgment, and date of the judgment and execution,) and
15 committed to the jail at ——— aforesaid, (or enlarged on giv-
16 ing bonds to the creditor, as the case may be,) hath caused
17 ———, the creditor, to be notified according to law, of his the
18 said debtor's desire of taking the benefit of the one hundred
19 and forty-eighth chapter of the revised statutes of this state,
20 entitled "relief of poor debtors;" that in our opinion he is
21 clearly entitled to have the oath prescribed in the twenty
22 eighth section of said chapter, administered by us, and that

23 we have, after due caution to him, administered said oath to
24 him.

25 Witness our hands and seals, this — day of —, in the
26 year —.

— —, } Justices of the peace and
— —, } of the quorum.

R. S., c. 148, § 31.

SECT. 32. The debtor, on delivering the certificate to the
2 prison keeper, or filing it in his office, if imprisoned, shall be
3 set at liberty, so far as relates to the execution; and his body
4 forever after, shall be free from arrest thereon, and on every
5 subsequent execution issued on the judgment, or on any other
6 judgment founded thereon, except as provided in sections
7 thirty-four, fifty, and fifty-one. R. S., c. 148, § 32.

SECT. 33. When a debtor in execution discloses before two
2 justices of the peace and quorum, as herein provided, any
3 real estate liable to be seized on execution, the justices
4 shall give the creditor a certificate thereof, therein stating the
5 names of the parties, and the amount of the execution; and
6 the creditor shall have a lien thereon for thirty days there-
7 after, if he files the certificate with the register of deeds of
8 the county or district, where the real estate lies, within five
9 days from the date of the disclosure; and the register shall
10 enter and file the same, in like manner as mentioned in
11 section twelve. R. S., c. 148, § 33.

SECT. 34. If the debtor discloses any personal estate, liable
2 to be seized on execution, the creditor shall have a lien for
3 thirty days thereon, or so much thereof as the justices in
4 their record judge necessary; and if the debtor transfers,
5 conceals or otherwise disposes thereof, within said time, or
6 suffers it to be done, or refuses to surrender it, on demand of
7 any proper officer, having an execution on the same judg-
8 ment, the debtor shall receive no benefit from the certificate
9 described in section thirty-one; and the creditor may recover
10 against him, or any person fraudulently aiding or abetting in
11 such transfer, concealment or disposal, double the amount
12 due on said execution, in an action on the case; and any
13 execution on a judgment in such action, shall run against

14 the body of the debtor, and other persons so aiding and abet-
15 ting; but the payment of such judgment shall be a satisfaction
16 of the original debt. R. S., c. 148, § 34.

SECT. 35. Any debtor, who has given bond, as provided in
2 section seventeen, after judgment, may apply to a justice of
3 the peace of the county where he was arrested, and the justice
4 shall issue a citation to the creditor, his agent or attorney;
5 and an examination and disclosure may be had before two
6 justices of the peace and quorum, within the time specified
7 in the bond; and the same proceedings shall be had, and the
8 same results follow, as in case of a debtor disclosing after
9 arrest or imprisonment on execution, except as mentioned in
10 the following section. R. S., c. 148, § 35.

SECT. 36. If the debtor, on such examination, does not en-
2 title himself, in the opinion of the justices, to the benefit of
3 the oath provided in section twenty-eight, and it appears that
4 the debtor, at the time of the examination, has any real or
5 personal estate, liable to attachment, or has other property
6 such as is described in section twenty-nine, the justices shall
7 permit him to go at large upon the bond so given, during the
8 thirty days the creditor's lien exists on the property disclosed;
9 and, during that time, the creditor may arrest the debtor on
10 execution, or enforce his lien on the property, at his election.
R. S., c. 148, § 36.

SECT. 37. If the creditor elects to arrest the debtor, within
2 the thirty days, and the officer having the execution, returns
3 that the debtor is not found, his bond shall be forfeited, and,
4 on judgment thereon, execution shall issue for the amount of
5 judgment in the original suit, and interest thereon. If the
6 debtor is not arrested, within that time, and does not avoid
7 arrest, his person shall be forever discharged from arrest on
8 any execution, issued or founded on such judgment.

R. S., c. 148, § 37.

SECT. 38. Every officer, serving an execution and taking a
2 bond, as provided in the twentieth section, shall return the
3 bond therewith, for the benefit of the creditor, who may
4 receive the same, on filing a copy thereof with the clerk of
5 the court, judge, or justice, to whom such execution and

6 bond is returned. He may also receive from the prison
7 keeper any such bond, in his hands, on the like terms.

R. S., c. 148, § 38.

SECT. 39. If the debtor fails to fulfill the condition of any
2 such bond, it shall be forfeited, and judgment in any suit
3 thereon, shall be rendered for the amount of the execution
4 and costs, and fees of service, with interest on the same,
5 against all the obligors; and a special judgment also ren-
6 dered against the said principal debtor for a further sum
7 equal to the interest on the same, at the rate of twenty per
8 cent. by the year, after the breach of the bond.

R. S., c. 148, § 39.

SECT. 40. In all actions commenced in the supreme judicial
2 court, on any bond given by a debtor on mesne process,
3 execution or warrant of distress, if it appears that prior to
4 any breach thereof, the principal therein has been allowed
5 and has taken the oath prescribed in the twenty-eighth sec-
6 tion, before two justices of the peace and quorum, the
7 damages shall be assessed by the jury, if either party requests
8 it, otherwise by the court. The amount assessed shall be
9 the real and actual damage, and no more; and either party
10 may introduce any legal evidence on that point. In all such
11 actions before a justice of the peace, municipal or police
12 judge, the plaintiff may recover the real and actual damage
13 sustained by a breach of the bond and no more.

1848, c. 85, § 2, 4.

SECT. 41. In any such action, if the whole amount due
2 upon the execution or warrant of distress is recovered, the
3 new judgment shall operate as a discharge of said execution
4 or warrant of distress; if only a part is recovered, it shall
5 operate as a discharge of such part. If the amount of dam-
6 age is not more than twenty dollars, the plaintiff's costs
7 shall not exceed a quarter part of the damage, notwithstand-
8 ing the penal sum of the bond is more than twenty dollars.
9 If the verdict or judgment, is that the creditor has sustained
10 no damage, no cost shall be allowed to either party.

1848, c. 85, § 3.

SECT. 42. No debtor shall be precluded from taking any
2 oath, prescribed in this chapter for his relief, on account of

3 having been convicted of any crime, or being otherwise
 4 disqualified to testify as a witness in judicial proceedings;
 5 and nothing herein contained, except as provided in the thirty-
 6 fourth, forty-seventh and forty-eighth sections, shall prevent
 7 any debtor, who fails to obtain his discharge, from obtaining
 8 a certificate for that reason, at a future examination for the
 9 same debt. R. S., c. 148, § 40.

SECT. 43. If any debtor fails in his application for a dis-
 2 charge from arrest or imprisonment, the creditor shall recover
 3 his costs, to be taxed as in actions before justices of the peace;
 4 and the justices shall issue execution therefor.

R. S., c. 148, § 41.

SECT. 44. No release of any debtor or prisoner, under the
 2 provisions of this chapter, shall affect or impair the right of
 3 the creditor to his debt or demand; but the same shall remain
 4 in full force against the property of the debtor, the same
 5 as if such release had not been given. R. S., c. 148, § 42.

ARTICLE III.—*General Provisions and Rules, applicable to cer-
 tain specific cases of arrest and imprisonment.*

SECT. 45. When any officer, holding a debtor under arrest
 2 or imprisonment, is required to take from him any bond
 3 herein described, and from mistake, accident or misappre-
 4 hension, in fixing the penalty thereof, exceeds or falls short
 5 of the sum required by law, the bond, notwithstanding, shall
 6 be valid, and the officer shall not be responsible to either
 7 party, beyond the actual damage. R. S., c. 148, § 43.

SECT. 46. Nothing herein contained, shall impair the right
 2 of any person to bail on mesne process. R. S., c. 148, § 44.

SECT. 47. No suit for the breach of any bond herein author-
 2 ized to be given, shall be sustained, unless commenced within
 3 one year after the forfeiture; except that the provisions of
 4 sections twelve and thirteen of chapter one hundred and six,
 5 shall be applicable to such suits. R. S., c. 148, § 45.

SECT. 48. In all cases of disclosure herein provided for, the
 2 justices selected to hear it, shall reside in the town where it
 3 is to be made, or in an adjoining town: the debtor may select
 4 one justice, and the creditor, his attorney or agent, if com-
 5 venient, may select one; otherwise the officer having the

6 debtor in charge, or if he is at large, the sheriff, deputy, con-
 7 stable or coroner who might legally serve the precept on
 8 which he was arrested, may select one, and such officer may
 9 select, if the parties or either of them decline; if the creditor
 10 selects a justice, he shall procure his attendance at the time
 11 and place appointed in the citation for hearing the debtor's
 12 disclosure. If the justices do not agree, they may select a
 13 third, and a majority shall decide; and if the justices cannot
 14 agree on a third, he may be selected by the officer, as before
 15 mentioned.

R. S., c. 148, § 46. 1844, c. 88, § 1. 1848, c. 85, § 1.

SECT. 49. When the creditor neglects, refuses or unreason-
 2 ably delays to select a justice, the justice selected by the
 3 debtor may adjourn once, if he deems it necessary, not
 4 exceeding twenty-four hours, Sunday excluded, to enable the
 5 debtor to procure the attendance of another justice.

1846, c. 215, § 1.

SECT. 50. When a debtor, herein authorized or required to
 2 disclose on oath, wilfully discloses falsely, withholds or
 3 suppresses the truth, the creditor may bring a special action
 4 on the case against him, whether he is criminally prosecuted
 5 or not, particularly alleging the false oath and fraudulent
 6 concealment of his estate or property, and, on oath before
 7 some justice of the peace, may declare his belief of the truth
 8 of the allegations in the writ and declaration, and the justice
 9 administering the oath, shall certify the same on the writ;
 10 and thereupon the debtor shall be held to bail, or in default
 11 thereof, committed to jail to abide the judgment in the suit.

R. S., c. 148, § 47.

SECT. 51. If the creditor prevails in the suit, judgment
 2 shall be rendered against the debtor, for double the amount
 3 of the debt and charges on the former judgment; and the
 4 debtor may be arrested and committed to prison on any exe-
 5 cution, issued on the judgment last recovered, without any
 6 privilege of release or discharge, except by payment or the
 7 consent of the creditor.

R. S., c. 148, § 48.

SECT. 52. Any person, who knowingly aids or assists a
 2 debtor or prisoner, in a fraudulent concealment or transfer of
 3 his property, to secure it from creditors, and prevent its

4 seizure by attachment or levy on execution, shall be liable,
5 in a special action on the case, to any creditor who sues
6 therefor, in double the amount of property so fraudulently
10 concealed or transferred, but not to exceed double the amount
11 of such creditor's demand. R. S., c. 148, § 49.

SECT. 53. Any person, arrested or imprisoned, by virtue of
2 a warrant for the collection of a public tax, shall be entitled
3 to the privileges, and subject to the obligations under the
4 provisions of this chapter, in all respects, as if arrested or
5 committed on execution for debt, and for all the purposes of
6 notice and other proceedings, relating to the discharge from
7 arrest or imprisonment of the person taxed, the assessors by
8 whom such warrant was issued, shall be regarded as the
9 creditors. R. S., c. 148, § 50.

SECT. 54. In case of taking the oath, set forth in the
2 twenty-eighth section of this chapter, it may be varied by
3 substituting for the words, "commencement of the suit," or,
4 "the time when the debt or cause of action, or any part
5 thereof, on which this suit was brought, was contracted by
6 me," the following, "assessment of the tax for which I have
7 been arrested;" and for the words, "any of my creditors,"
8 the following, "any town, plantation, or parish;" and the
9 certificate of discharge shall be varied, by substituting the
10 words, "a warrant for taxes," for "execution," and "asses-
11 sors" for "creditors." R. S., c. 148, § 51, 52.

SECT. 55. When a constable, collector or deputy sheriff is
2 arrested or committed to jail, for default on account of any
3 taxes committed to him to collect, he shall be subject to the
4 provisions and have the privileges of this chapter; and, in
5 all proceedings under it, the assessors assessing the taxes,
6 shall be deemed the creditors, and corresponding verbal
7 alterations shall be made in the oath and certificate of
8 discharge. R. S., c. 148, § 53.

SECT. 56. When in the trial of an action of trespass upon
2 property, the court, jury, or magistrate, determines that
3 such trespass was committed wilfully, and record is made of
4 the fact, and the same is noted on the margin of the execu-
5 tion on such judgment, if the debtor is thereon arrested and
6 committed to prison, he shall not be entitled to give any bond

7 provided in this chapter, for his liberation ; and if he applies
8 to take the oath described in section twenty-eight, no notice
9 shall be issued to the creditor, till at least thirty days after
10 his commitment. R. S., c. 148, § 54.

SECT. 57. When in any proceeding for the relief of a debtor
2 under this chapter, the creditor is a corporation, the citation
3 may be served on any individual on whom the service of a
4 writ could be legally made, or on the attorney of the corpo-
5 ration in the suit ; but it shall not be necessary to extend the
6 time of notice beyond the times herein mentioned.

R. S., c. 148, § 55.

SECT. 58. When any person is committed to prison on
2 mesne process or execution, or having given bond on execu-
3 tion to be discharged from arrest or imprisonment, delivers
4 himself into the custody of the jailer, to save the condition of
5 his bond, the keeper of the prison may require of the creditor,
6 his agent or attorney, security for his support, in case he
7 claims relief as a pauper ; and unless the security is furnished
8 within eight days after the request, satisfactory to the keeper,
9 or money paid in advance, from time to time, as needed
10 for the debtor's support, the keeper may release him ; but,
11 when any debtor is committed on more than one execution
12 at the same time, the keeper shall be entitled to pay for
13 board, only on the first execution, and such board shall be
14 paid for equally by all the creditors, on whose executions the
15 debtor is committed ; and the creditor, first committing, shall
16 have a right of action against the other committing creditors
17 for their proportion of such board ; and if the debtor commit-
18 ted on several executions is discharged on the first, the jailer
19 shall give a new notice to the creditor, on whose execution
20 the debtor was next committed, of his liability to pay for the
21 support of such debtor, in like manner as on the first
22 execution. R. S., c. 148, § 56. 1842, c. 23, § 1.

SECT. 59. In case of dispute about the price of any articles
2 furnished a prisoner confined for debt, the county commis-
3 sioners may determine the same, not in any case exceeding
4 the amount specified in section nine, chapter one hundred
5 and nineteen. R. S., c. 148, § 57.

SECT. 60. When notice is given by any jailer, under the 2 fifty-seventh section, to the creditors, or by any debtor to his 3 creditors, of an intended disclosure, under the provisions of 4 this chapter, and there is more than one creditor in the same 5 suit, such notice given to one of them, who is in the state, 6 shall be deemed sufficient for all. R. S., c. 148, § 58.

SECT. 61. Any creditor, who has caused his debtor to be 2 arrested or imprisoned on execution, may discharge him 3 therefrom, by giving to the officer making the arrest, or leav- 4 ing with the prison keeper, a written permission for the 5 debtor to go at large; and such discharge shall not release 6 the goods and estate of the debtor from the debt and costs; 7 but his body shall be forever exempted from arrest or impris- 8 onment on such execution, or any process founded on the 9 same judgment. R. S., c. 148, § 59.

SECT. 62. If the body of any debtor, arrested or imprisoned 2 on execution, is released in any of the modes hereby author- 3 ized, the officer having such debtor in custody, at any time 4 after such release, on the creditor's request, shall indorse 5 on the execution a certificate of the fact and cause of such 6 release; and if it is before the return day of the execution, 7 notwithstanding the release, it may be levied on the debtor's 8 goods and estate; and, if the return day is passed, it may be 9 renewed like other executions, except that it shall not run 11 against the debtor's body. R. S., c. 148, § 60.

SECT. 63. Whether such indorsement is made on the exe- 2 cutions or not, the judgment on which it was issued, may be 3 revived or continued in force with the said exception, by an 4 action of debt, or scire facias to be brought, as in other cases 5 of judgment. R. S., c. 148, § 61.

SECT 64. The judge of any municipal or police court 2 within his county, shall have the same powers, and be sub- 3 ject to the like duties and obligations, under this chapter, as 4 any justice of the peace and quorum in the same county.

R. S., c. 148, § 62.

ARTICLE IV.—*Special provisions relating to debtors to the state.*

SECT. 65. Any person committed to jail, in any county, on 2 execution, warrant of distress, or other final civil process for

3 debt, penalty or costs due to the state, may make application
4 in writing, to a justice of the supreme judicial court, for
5 relief, whether the court is in session or not; and, on such
6 application, he shall appoint a convenient time and place to
7 inquire into the circumstances of the petitioner.

R. S., c. 148, § 63.

SECT. 66. Before a hearing thereon, the justice shall give
2 such notice as he thinks proper of the pendency thereof, to
3 the county attorney for the county where the commitment is
4 made, or to the attorney general; and he shall attend the
5 hearing in behalf of the state.

R. S., c. 148, § 64.

SECT. 67. The justice shall consider all proper evidence,
2 offered on either side, and may require the oath of the
3 petitioner to all or any of the facts by him stated; and if
4 satisfied that the prisoner is unable to pay any part of the
5 amount due on the process, on which he is committed, may
6 order his discharge from imprisonment, having first adminis-
7 tered to him; if he thinks proper, an oath substantially in the
8 form of the oath, prescribed by the twenty-eighth section.

R. S., c. 148, § 65.

SECT. 68. If on examination, it appears to the justice
2 that the prisoner is able to pay only a part of the amount
3 due, he shall order his release from imprisonment; and if he
4 thinks it more for the interest of the state, may order the
5 whole debt to be discharged, upon his paying or securing
6 such sum of money, or assigning to the state such securities
7 or other property, at such time and in such manner, and to
8 be deposited with such public officer, as he directs.

R. S., c. 148, § 66.

SECT. 69. The prison keeper having charge of the debtor,
2 shall thereupon release him from confinement, or give him a
3 full discharge from the demand, on the terms prescribed.

R. S., c., 148, § 67.

SECT. 70. If such proceedings are had when the supreme
2 judicial court is not in session for the county, the justice shall
3 cause his adjudication and discharge to be entered of record,
4 as of the last preceding term of the court in the county.

R. S., c. 148, § 68.

SECT. 71. The courts of county commissioners in their 2 counties, at a regular session, or a majority thereof in vaca- 3 tion, may exercise the same powers, and their proceedings 4 shall have the like effect, on application made to them, as is 5 provided in the six preceding sections. R. S., c. 148, § 69.

SECT. 72. Any person committed on execution, as men- 2 tioned in section sixty-five, who is desirous of taking the oath 3 prescribed in section twenty-eight, may make applicatton to 4 the jailer having him in custody, and the jailer shall apply 5 in writing, in his behalf, to a justice of the peace; and the 6 said justice shall thereupon issue a citation, as prescribed in 7 the twenty-second section, directed to the county attorney of 8 the county for which the commitment is made; and the said 9 citation shall be served and returned, and proceedings there- 10 upon may be had, in the same manner and with the like 11 effect, as in cases where notice is served on individual 12 creditors or their attorneys; and the county attorney, on such 13 notice, shall attend, by himself or some competent substitute, 14 at the time and place, as attorney for the state.

R. S., c. 148, § 70, 71.

SECT. 73. Upon such examination, the justices of the peace 2 and quorum, before whom the debtor appears, may, if they 3 see cause, administer to him an oath, substantially like that 4 prescribed in the twenty-eighth section, with proper verbal 5 alterations to conform to the case, and may grant a similar 6 certificate of discharge, which shall have a like effect, as in 7 the cases before mentioned. R. S., c. 148, § 72.