

MAINE STATE LEGISLATURE

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REVISION II.

REPORT

OF THE

COMMISSIONER

APPOINTED TO

REVISE THE PUBLIC LAWS

OF THE

STATE OF MAINE.

CIVIL RIGHTS AND REMEDIES.

TITLE IX.

Augusta:
FULLER & FULLER, PRINTERS TO THE STATE.

1856.

ARTICLE NINTH.

THE FIFTH AND SIXTH ARTICLES OF THE CONSTITUTION OF NEW YORK, WHICH PROVIDED FOR THE TRIAL OF CRIMINAL CASES IN THE STATE, ARE HEREBY ABOLISHED.

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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.
82. Proceedings in civil actions in court.
83. Justices of the peace, their jurisdiction, and proceedings in civil actions.
84. Levy of executions on personal property.
85. Bail in civil actions.
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87. Action by or against executors and administrators.
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CHAP. 81.**Chapter 81.**

COMMENCEMENT OF CIVIL ACTIONS; INDORSEMENT AND SERVICE
OF WRITS; ATTACHMENT OF PROPERTY; ARRESTS; AND LIMIT-
ATION OF CIVIL ACTIONS.

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ARTICLE I. *Writs and commencement of actions.*

Forms of writs remain, &c.

R. S., c. 114, § 1.

Personal and transitory actions, &c.

*R. S., c. 114, § 2.
1856, c. 228.*

*Exceptions.
Actions on sheriffs' bonds.*

R. S., c. 114, § 3.

Exceptions, &c.

SECT. 1. The forms of writs in civil actions remain as established; but the supreme judicial court by general rules may make such alterations therein for all courts, as changes in the law or other causes require.

SECT. 2. When the parties reside in the state personal and transitory actions shall be brought in the county in which one of them lives, when the plaintiff is not an inhabitant of the state in the county where a defendant lives except process of foreign attachment, and when not so brought, on motion or inspection by the court the writ shall be abated, and the defendant allowed double costs; except as is provided in the following sections.

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

SECT. 4. All actions of debt founded on judgment rendered by any court of record in this state may be brought

3 in the county, where the same was rendered, or in the county CHAP. 81.
 4 in which either of the parties to such judgment or his ex-
 5 ecutor or administrator resides at the time of bringing the R. S., c. 114, § 4.
 6 action.

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 are found within this
 4 state and attached on the original writ; and service shall
 5 be made as provided in the eighteenth section of this chap-
 6 ter.

Jurisdiction
sustained if
defendant's
property is
attached in the
state, &c.

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

Local and
transitory
actions, in
which counties,
towns, school
districts,
parishes and
other corpora-
tions are parties;
where brought.

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 stat-
 4ute imposing it; and if on trial it does not appear, that it
 5 was committed in the county where the action is brought, the
 6 verdict shall be in favor of the defendant.

Actions for
forfeitures;
where brought.

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 shall
 5 be directed to and executed by the proper officers in each of
 6 such counties, but if there be but one defendant, such action
 7 shall be commenced in the county where he resides.

Justice actions
against several
defendants, &c.

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

CHAP. 81.

What writs
must be
indorsed, &c.

R. S., c. 114,
§ 16, 17.

Liability of
indorser, &c.

R. S., c. 114,
§ 18.

New endorser
required, &c.

R. S., c. 114,
§ 19, 20.

Writs for civil
actions; how
signed, sealed
and tested.

R. S., c. 114,
§ 21.

Writs original;
how issued and
how framed.

R. S., c. 114,
§ 22, 23.

ARTICLE II. Writs, indorsment, and other requisites of.

SECT. 9. Every writ original, of scire facias, of error, of audit querela, petition for writ of certiorari, for review, or for partition, and bill in equity, shall before entry in court be indorsed by some sufficient inhabitant of the state, when the plaintiff or petitioner is not an inhabitant thereof; and if pending such suit the plaintiff or petitioner removes from the state, such indorser shall be procured on motion of the defendant or other party to the suit; but if one of two or more such plaintiffs or petitioners is an inhabitant of the state, no indorser shall be required except by special order of the court.

SECT. 10. In case of avoidance or inability of the plaintiff or petitioner, the indorser is liable in an action on the case, brought within one year after the original judgment in the court, in which it was rendered, to pay all costs recovered against the plaintiff. A return upon the execution by an officer of the county, where the indorser lives, that he has demanded of the indorser payment thereof, and that he has neglected to pay the same, or to show the officer personal property sufficient to satisfy the execution, or that he cannot find the indorser within his precinct, shall be conclusive evidence of his liability in the suit.

SECT. 11. If pending any such suit or petition any such indorser becomes insufficient or removes from the state, the court may require a new and sufficient indorser the defendant consenting, that the name of the original indorser shall be struck out; and such new indorser shall be liable for all costs from the beginning of the suit, as if he had been the original indorser; and if such new indorser is not provided, the action shall be dismissed and the defendant recover his costs.

SECT. 12. All civil actions, except scire facias or other special writs, shall be commenced by original writs. Writs issued by a justice of the peace, or judge of a municipal or police court, shall be sealed and signed by such justice or judge.

SECT. 13. All original writs in the supreme judicial court may be issued by the clerk in term time or vacation and framed to attach the goods or estate of the defendant and for want thereof to take his body; or as an original summons with or without an order to attach goods or estate. (a)

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

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Writs against corporations, &c.
R. S., c. 114,
§ 29.

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

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

Summons ;
separate to be
left when
attachment is
made.

R. S., c. 114,
§ 24.

SECT. 16. Where the process is by original summons, wherein the law does not require a separate summons to be left with the defendant, the service shall be sufficient by reading the writ or original summons to the defendant, or by giving him in hand or leaving at his dwelling house or place of last and usual abode a certified copy thereof, fourteen days before it is returnable. (a)

Summons ; origi-
nal how served.

R. S., c. 114,
§ 26.

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

Service if
defendant is not
an inhabitant,
&c.
R. S., c. 114,
§ 27.

SECT. 18. When the goods or estate of any person not an inhabitant of the state and having no tenant agent or attorney therein are attached in any civil action, and in all other cases where the court orders notice, any justice of the court to which the writ or process is returnable may in vacation make his order by him signed on the back of the writ or process directing how the defendant shall be notified; or the court after entry may order such notice to the defendant as justice requires; and if such order is complied with and proved to the satisfaction of the court, the defendant shall be held to answer to the suit as in other cases. Such order may be made by such justice in any county in which the court is in session. A justice of the peace or judge of a municipal or police court may in like cases and with the same effect order like notice on any writ or process returnable or in actions pending before them.

Order of notice
made by any
justice, &c.

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

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Service on a
county.
R. S., c. 114,
§ 41.

Service on a
town or quasi
corporation.

R. S., c. 114,
§ 42.

Service on other
corporations.

R. S., c. 114,
§ 43.

Service on
insurance
companies out
of the state.

1846, c. 186.

Service time of,
on corporations.

R. S., c. 114,
§ 44.

Service on a
co-defendant out
of the state.

R. S., c. 114,
§ 47.

Service defective
or insufficient,
&c.

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

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

SECT. 21. In suits against all other corporations however created the summons shall be served by leaving a copy thereof with the president, clerk, cashier, treasurer, general agent, or director, of the corporation sued; if there be no such officer or agent found within the county, where such corporation is established or where its records or papers are by law required to be kept, such copy may be left with any member thereof. (a)

SECT. 22. In an action against an insurance company established in any other state or country by an inhabitant of this state on a policy of insurance signed or countersigned by an agent in this state on property or lives within this state a summons in usual form or a copy of the writ and declaration delivered to the agent or attorney of the company within this state or left at his last and usual place of abode shall be a sufficient service; or if such service is made upon the person, being an inhabitant of the state, who signed or countersigned the policy, on which such action is founded, it shall also be a sufficient service; but in either case the court may order further notice to be given to such company.

SECT. 23. In all the cases mentioned in the four preceding sections the writ shall be served thirty days before the sitting of the court, to which it is returnable.

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

SECT. 25. When the service of a writ is defective or insufficient by reason of some mistake of the officer or of the 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 practiced in this state, and such as are
 7 hereinafter mentioned. Such personal property may be at-
 8 tached 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. (a)

Attachment ;
personal
property what,
&c.

(Sect. 28.) When estates for a term of years are attached,
 2 the attachment may be preserved as provided in section
 3 thirty-five of this chapter. When sold on execution they
 4 shall be advertised, sold, and conveyed as provided by
 5 sections thirty and thirty-three of chapter seventy-six. (b)

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

All real estate liable to be taken in execution according to
 7 the provisions of chapter seventy-six may be attached on
 8 mesne process, and held as security for the purposes men-
 9 tioned in the preceding section. The officer in order to
 10 make such an attachment need not enter on such estate or
 11 be within view of it.

Attachment of
real estate ;
how made.

(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 re-
 4 deemed, or the incumbrance thereon is removed, the attach-
 5 ment shall hold the premises discharged of the mortgage or
 6 levy as effectually, as if they had not existed and the prem-
 7 ises had been attached.

R. S., c. 114,
§ 30.

Attachment of
equities of
redemption.
Effect of , if
redeemed before
levy.

(Sect. 30.) No attachment of real estate on mesne process
 2 shall create any lien on such estate, unless the officer making

R. S., c. 114,
§ 31.

Attachment ;
registry of, &c.

(a) 7, Me. 232. 18, Me. 231, 25, Me. 176. 37, Me. 221. 31, Me. 152.

(b) New provision. Estates for ninety-nine or more years are personal property. The provi-
 sion is designed to preserve attachment on such estates, and to give better notice of sale and a
 better conveyance of title than is given for common personal property.

CHAP. 81.

3 it within five days thereafter files in the office of the register of deeds in the county or district, in which all or any part 4 of said lands are situated, an attested copy of so much of the 5 return made by him on the writ, as relates to the attachment 6 together with the names of the parties, the sums sued for, 7 the date of the writ, and the court to which it is returnable. 8 If the copy is not so filed within five days, the attachment 9 shall take effect from the time it is filed if before the entry 10 of the action, although it may be after service on the defendant. 11 And such proceedings shall be had in such office by the 12 register of deeds, as are prescribed in the chapter respecting 13 the registry of deeds.

R. S., c. 114,
§ 32, 34.

Attachment not
valid, &c.

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 finds 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. (a)

R. S., c. 114,
§ 33.

Attachment,
duration of, &c.

SECT. 32. No personal property and no real estate, except 2 equities of redeeming real estate mortgaged or taken in execution, or equities of redemption which have been sold on 4 execution, or an obligee's conditional right to a deed of conveyance of real estate to him, which has been sold on execution, and except property attached and replevied, and 7 property attached belonging to a person dying after an attachment of it had been made, or specially provided for in 9 any other case, shall be held to be taken in execution by 10 virtue of an attachment longer than thirty days next after 11 the day, on which final judgment was rendered in the suit.

R. S., c. 114,
§ 35.

Attachment
dissolved by
final judgment,
&c.

SECT. 33. When final judgment is rendered for the defendant, the attachment is thereby dissolved. The final judgment mentioned in this and the preceding section is the judgment rendered in the original action and not such as may be rendered on review or writ of error. (b)

R. S., c. 114,
§ 36, 94.

Attachment of
certain property
valid, &c.

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 6 the first. (c)

(a) 18, Me. 296.

(b) 14, Me. 420. 19, Me. 420.

(c) 18, Me. 272. 19, Me. 92. 37, Me. 326.

CHAP. 81.

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 attach-
 5 ment is made, an attested copy of so much of his return on
 6 the writ, as relates to the attachment, together with the
 7 names of the parties, the sums sued for, the date of the writ,
 8 and the court to which it is returnable; and such attach-
 9 ment shall be effectual and valid, as if the property had
 10 remained in his possession and custody. The clerk shall
 11 receive the copy and note thereon the time of his receiving
 12 it, and enter it in a book kept for that purpose, and keep it
 13 on file for the inspection of those who may be interested
 14 therein, for which he shall be entitled to ten cents.

Attachment how
preserved when
property cannot
be removed, &c.

n. s., c. 114,
§ 39, 40.
1849, c. 107.

SECT. 36. The following goods and property shall be
 2 exempted from attachment and execution.

Attachment,
personal
property
exempted from

3 *First*—The debtor's wearing apparel, beds bedsteads bed-
 4 ding and household utensils necessary for himself his wife
 5 and children; but the beds and bedding so exempted shall
 6 not exceed one bed bedstead and necessary bedding for every
 7 two persons, nor the other household furniture the value of
 8 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, two
 16 swine, one of which shall weigh not more than one hundred
 17 pounds; and when he owns a cow and a heifer more than
 18 three years old, or two swine, each weighing more than one
 19 hundred pounds, he may elect the cow or the heifer, or which
 20 of the swine shall be so exempted; ten sheep and the wool
 21 from them; thirty hundred of hay for the use of the cow,
 22 and two tons for the use of the sheep, and a sufficient quan-
 23 tity for the use of the heifer. (a)

24 *Sixth*—All produce of farms until harvested; and corn and
 25 grain necessary and sufficient for the sustenance of the debtor
 26 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.

- C****A****P.** **81.** 29 *Eighth*—All potatoes raised or purchased for the consumption of himself and family; one barrel of flour; ten dollars worth of lumber wood or bark.
- 30
- 31
- 32 *Ninth*—All the firewood conveyed to his house for the use of himself and family not exceeding twelve cords.
- 33
- 34 *Tenth*—One boat not exceeding two tons burthen usually employed in fishing business belonging wholly to an inhabitant of this state.
- 35
- 36
- 37 *Eleventh*—One plough of the value of ten dollars; one cart of the value of twenty-five dollars; one harrow of the value of five dollars; one yoke with bows ring and staple all of the value of three dollars; two chains each of the value of three dollars; one ox-sled of the value of ten dollars; one cooking stove of the value of thirty-five dollars; and all anthracite coal not exceeding five tons; and bituminous coal not exceeding fifty bushels; and charcoal conveyed to his house to be consumed in his family.
- 38
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- 46 *Twelfth*—One pair of working cattle, or instead thereof one or two horses not exceeding in value one hundred dollars; and a sufficient quantity of hay to keep them through the winter season. If he has more than one pair of working cattle, or if the two horses exceed in value one hundred dollars, he may elect which pair of cattle, or which of the horses shall be exempted.
- 47
- 48
- 49
- 50
- 51
- 52

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

Attachment,
real property
exempted from.

1850, c. 207, § 1.
1855, c. 129.

Attachment,
proceedings
requisite to
secure, &c.

SECT. 37. A lot of land and the improvements made thereon purchased of the state under the provisions of chapter three shall be exempted from attachment, in the manner therein provided; land appropriated as a burying ground as described in the eighth section of chapter fifteen, also a lot of land, and dwelling house and out buildings thereon, or so much thereof as does not exceed five hundred dollars in value, the property of a house-holder in actual possession thereof not the owner of a lot purchased of the state as aforesaid shall be exempted from attachment or levy of any execution, as is hereinafter provided.

SECT. 38. Any such person, wishing to avail himself of the foregoing provision, may file in the registry of deeds of the county or district, in which the land lies, a certificate signed by him declaring such wish and describing the land and buildings; and the register for the fees for recording deeds, shall record the same in a book by him kept for that purpose; and so much of such property, as does not exceed the value aforesaid, shall be forever exempt from attachment or levy 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 regis-
 12 ter's office shall be *prima facie* evidence, that the certificate
 13 purporting to be there recorded, was made signed and filed
 14 as appears upon such record.

CHAP. 81.

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 first
 4 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.

Attachment,
proceedings
when the
unexempted
part is taken on
execution.

1850, c. 207, § 5.

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

Attachment,
interest of
widow and
minor children
in exempted
homestead.

1850, c. 207, § 2.

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

Attachment,
lien of
mechanics, &c.
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 cash-
 5 ier or treasurer of the company; and such attachment shall
 6 be a lien on the share or interest and on all accruing divi-
 7 dends; 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 willfully
 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.

Attachment of
shares in a
corporation.R.S., c. 114,
§ 45.

SECT. 43. The franchise and all rights privileges and im-
 2 munities 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,

Attachment of
franchise, &c.

CHAP. 81.

R. S., c. 114,
§ 45.

Attachment on
same writ in
different coun-
ties, &c.

R. S., c. 114,
§ 50.

Attachment on
writ of scire
facias.

R. S., c. 114,
§ 51.

Attached per-
sonal property
sold by consent.

R. S., c. 114,
§ 52.

Attached living
animals, &c.

R. S., c. 114,
§ 53.

Notice and
proceedings in
appraisal.

7 or some officer or member, of the corporation, as provided
8 in section twenty-one.

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 per-
4 son whose property is attached; but none after such service.
5 And personal property attached by a coroner may be again
6 attached by a sheriff, deputy sheriff or constable subject to
7 the former attachment by giving notice thereof to the coro-
8 ner and furnishing him with a copy of the precept within a
9 reasonable time thereafter, and vice versa; and personal
10 property attached by a constable may be again attached by
11 a coroner or by a deputy in the same manner.

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.

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 by the
7 sheriff or another deputy, by the written consent of the de-
8 fendant and all attaching creditors; and the proceeds of the
9 sale, after deducting the necessary expenses, shall be held
10 by such first attaching officer or the sheriff, subject to the suc-
11 cessive attachments as if the sale had been on execution.

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
7 the manner following.

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

9 of the appraisal; and he shall prepare a schedule of the
 10 property, and cause three disinterested persons acquainted
 11 with the nature and value of such goods to be appointed
 12 and duly sworn as appraisers thereof.

CHAP. 81.
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
 4 shall appoint one in his behalf.

Appraisers, how
appointed.
R. S., c. 114,
§ 55.

SECT. 50. The appraisers shall examine the property at-
 2 tached, and if they are of opinion that any part of it is liable
 3 to perish, or to be wasted, or greatly reduced in value by
 4 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 the
 7 proceeds held and disposed of in the manner before provided
 8 in the case of a sale by consent of parties, unless it is taken
 9 by the debtor, as is provided in the following section. (a)

Mode of
appraisal, &c.

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
 7 in the suits in which the property is attached if demanded
 8 before the attachments expire, or within thirty days after
 9 the time when the creditors respectively might have been
 10 entitled to demand payment out of the proceeds of the prop-
 11 erty sold as before provided.

Delivered to
debtor if he give
bond.

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, as bail bonds
 3 are returned, with a certificate of his doings in relation
 4 thereto; and in case of a forfeiture of the bond the credit-
 5 ors or any one or more of them may bring an action of debt
 6 thereon in the name of the officer.

Bond returned
with writ; suit
thereon.

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.

Proceedings in
the suit.

R. S., c. 114,
§ 59.

CHAP. 81.

Money recovered; how applied.

R. S., c. 114,
§ 60.

Right by priority
of attachment
preserved.

R. S., c. 114,
§ 61.

Suit upon the
bond and interest
of creditors
therein.

R. S., c. 114,
§ 62.

Right by
priority in case
of sale preserved.

R. S., c. 114,
§ 63.

Surplus proceeds
may be attached
in officer's
hands.

SECT. 54. If judgment is rendered for the plaintiff, the money recovered shall be first applied under the order of court to pay the reasonable expenses incurred by the creditors in prosecuting the suit, so far as the same are not reimbursed by the costs recovered of the defendant; and the residue shall belong to all the attaching creditors according to their respective rights.

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

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

SECT. 57. When goods, which are sold or appraised and delivered to the debtor in the manner before provided, have been attached by several creditors, any one of them may demand and receive satisfaction of his judgment notwithstanding any prior attachments; if he is otherwise entitled to demand the money, and a sufficient sum is left, of the proceeds of the goods, or of their appraised value, to satisfy all prior attachments.

SECT. 58. When goods are sold or disposed of by consent of parties, or after an appraisal as aforesaid, the proceeds thereof, whilst remaining in the hands of the officer, may be further attached by him, as the property of the original defendant, as if the goods themselves had remained in his possession; and the proceeds so attached, shall be held and disposed of in the same manner, as if the attachment had been made on the goods themselves before the sale thereof; 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.

CHAP. 81.
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 appraisement
 5 made at the request of any party in the suit; except that the
 6 part owner, who makes the application, shall appoint one of
 7 the appraisers, and the defendant shall not appoint any.

Attached prop-
erty of part
owners, &c.

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 attachment.

And delivered to
the owner on
his bond.

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.

His lien thereon
if he discharges
the attachment.

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.

Restored to
defendant, &c.
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.

Bond and
proceedings
thereon; how
returned.
R. S., c. 114,
§ 69.

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

Attachment of
personal prop-
erty, &c.

R. S., c. 114,
§ 70.
R. S., c. 117,
§ 38.

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 of
 4 his debt or demand so secured; and if he unreasonably neg-
 5 lects so to do for six hours after such demand, the officer

Mortgagee must
render a true
account, &c.

CHAP. 81.

R. S., c. 114,
§ 71.

Attached prop-
erty claimed by
third person, &c.

R. S., c. 114,
§ 72.

Attachment of
certain rights of
redeeming lands,
&c.

R. S., c. 114,
§ 73.

Cross actions
and set off, &c.

R. S., c. 114,
§ 74.

Same where
several
defendants.

R. S., c. 114,
§ 75.

Writ; in such
cases how
served.

R. S., c. 114,
§ 76.

6 may attach the property as if it was unencumbered, and such
7 attachment shall have priority over the mortgage; and any
8 overplus after satisfying the execution in the suit shall be
9 paid over to the mortgagee, pledgee or holder; or if he shall
10 receive more than is justly due him on account of the demand
11 so secured, he shall refund the excess with ten per cent. inter-
12 est thereon to the time of recovering judgment.

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 by
4 the attaching creditor to bring his action of replevin, he
5 shall not bring it afterwards, and the officer making the at-
6 tachment, 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
12 claiming the property.

SECT. 67. The right in equity of redeeming lands mort-
2 gaged, and the right of redeeming such right or equity of
3 redemption, after it is sold on execution, and the right of
4 redeeming lands levied upon or sold on execution, and the
5 right title and interest, which any person has by virtue of a
6 bond or contract to a deed of conveyance of real estate on
7 specified conditions, may be attached on mesne process,
8 and the same lien thereon shall be thereby created by such
9 attachment, as if they were tangible property.

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
4 answer to any action brought against him by the defendant,
5 if the demands are of such a nature, that one judgment or
6 execution can be set off against the other.

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, as if the latter
5 judgment had been against himself alone.

SECT. 70. The writ in such cross action may be served on
2 the attorney of the plaintiff in the original action; and such
3 service shall be as valid and effectual, as if made on the party
4 himself in the state; and in the cases mentioned in the two
5 preceding sections the court may order such continuances,

6 as justice requires, for the defense of either of the actions,
 7 or for setting off the demands as therein provided.

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 all claims for dam-
 4 ges for goods so taken from him, shall remain subject to the
 5 attachment, as if the officer had lived; and shall not be con-
 6 sidered as assets in the hands of his executors or admin-
 7 istrators.

Attached goods;
on death of
officer, how
disposed of.

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, as if the goods had remained in his possession,
 5 subject to the provisions in the three following sections.

Attached goods
replevied, &c.

R. S., c. 114,
§ 78.

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

Liability of
plaintiff in
replevin.

R. S., c. 114,
§ 79.

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

Attachment,
further of goods
replevied, &c.

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 attach-
 5 ed; and if the goods have not been replevied by leaving a
 6 certified copy of the writ omitting the declaration and of the
 7 return of that attachment with the former officer if living or
 8 dead with his executor or administrator, or if none are ap-
 9 pointed with the person having possession of the goods; or
 10 if the goods have been replevied, and the officer who made
 11 the original attachment is dead, such copy shall be left with
 12 the plaintiff in replevin or his executors or administrators;
 13 and the attachment shall be considered as made, when such
 14 copy is delivered in either of the modes before described.

Attachment;
notice how
given of such.

R. S., c. 114,
§ 81.

SECT. 76. Goods, that have been taken by replevin from
 2 an attaching officer, shall not be further attached as the prop-

Attachment,
limitation of
right of.

CHAP. 81.

R. S., c. 114,
§ 82.

Attachment of
personal prop-
erty, &c.

R. S., c. 114,
§ 83.

Attachment;
officer to allow
appraisement
of.

R. S., c. 114,
§ 84.

Attachment;
officer to restore,
&c.

R. S., c. 114,
§ 85.

If he has sold
the property, to
be liable for the
proceeds.

R. S., c. 114,
§ 86.

If proceeds are
paid to creditor
he must refund.

R. S., c. 114,
§ 87.

erty of the original defendant in any other manner, than that provided in the four preceding sections so long, as they are held by the person who replevied them, or by any one holding under him, unless the original defendant has acquired a new title to the goods.

SECT. 77. When any estate or goods and chattels are attached, and the debtor dies before they are taken in execution, the attachment shall remain in full force, as if the defendant were alive, unless the estate of the deceased is represented insolvent by his executors or administrators, and a commission of insolvency issues within one year next after the defendant's death.

SECT. 78. After the decease of any defendant and before the issuing of a commission of insolvency the executor or administrator on the estate of the deceased may demand of the officer, who made the attachment of such estate or goods and chattels, a certified copy of the return of said attachment, and a description of such property so particular as to enable him to describe the same in the inventory of the estate subject to such attachment so far, as is before mentioned; and the appraisers may also demand of the officer a view of the goods and chattels, so that they may know their value; and if the officer refuses or neglects to comply with either of such demands, he shall forfeit and pay to the executor or administrator a sum not exceeding thirty nor less than ten dollars.

SECT. 79. When a commission of insolvency is issued within one year from the death of the debtor, such attachment is thereby dissolved, and the officer on demand shall restore the goods and chattels attached to the executor or administrator to be administered according to law on payment of his legal fees and charges of keeping the goods.

SECT. 80. If, before any demand is made on the officer as above, he has sold on execution the property so attached by him, he shall not be deemed a trespasser in so doing, but be liable only for the proceeds of the sale after deducting his legal fees and charges for the keeping thereof; and such proceeds may be recovered by the executor or administrator in an action for money had and received.

SECT. 81. If the officer has paid over the proceeds to the judgment creditor before the demand, the executor or administrator may recover such sum from the creditor by a similar action.

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

SECT. 83. An action of replevin trover or trespass brought by an officer against any person for taking away from his possession any goods or chattels by him attached shall not abate by the death of either of the parties, but may be prosecuted by or against the executors or administrators of the deceased party in the same manner as actions on contracts. If judgment is recovered by the plaintiff, the goods or money shall be held and appropriated as they would and ought to be by the officer, if he had lived and recovered the same himself.

SECT. 84. If judgment is rendered against the executor or administrator, he shall return the goods or pay the damages recovered in full, though the estate of the deceased is insolvent.

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

SECT. 86. When an attachment of real or personal property is made, and the parties by a rule of court submit the action and all other demands between them to the decision of referees, and judgment is rendered on their report, the attachment shall be thereby dissolved.

SECT. 87. If by consent of parties the declaration is amended so as to embrace a larger demand, than it originally contained, and judgment be thereon rendered for the plaintiff, the attachment made on the mesne process shall be thereby dissolved, unless it appears by the record, that no claims were allowed to the plaintiff, except those originally stated in the writ.

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

SECT. 89. On the day of any military training, inspection, review, or election, no officer, whose duty it is to attend, and

CHAP. 81.

Not set off, &c.
R. S., c. 114,
§ 88.

Action by officer
for taking
property
attached, &c.

R. S., c. 114,
§ 89, 90.

Proceedings if
judgment is for
defendant.
R. S., c. 114,
§ 91.

Death of an
officer pending a
suit, &c.

1848, c. 59.

Attachments
dissolved by
reforence of all
demands.

R. S., c. 114,
§ 92.

Attachments
dissolved also by
amendment
increasing the
claim.

R. S., c. 114,
§ 93.

Arrests not to be
made on certain
days.
R. S., c. 114,
§ 101.

Arrests, officers
and soldiers
exempt from, &c.

CHAP. 81.

R. S., c. 114,
§ 102.

Electors on
election days.
R. S., c. 114,
§ 103.

No civil process
to be served on
Sunday.

R. S., c. 114,
§ 104.

What actions
must be com-
menced within
six years.

R. S., c. 146, § 1.

Actions for
escape of
prisoners within
one year, &c.

R. S., c. 146,
§ 2, 4.

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 on execution or for taxes.

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.

SECT. 91. No person shall serve or execute any civil pro-
cess 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,
5 as if he had no process.

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 one of the United States, or of some municipal or
8 police court or justice of the peace in this state. (a)

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

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

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

15 *Fifth*—All actions for waste, of trespass on land, and of
16 trespass, except those for assault and battery and false im-
17 prisonment.

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

20 *Seventh*—All other actions on the case, except actions for
21 slanderous words and for libels.

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.

(a) 15, Me. 167. 36, Me. 362.

SECT. 94. All actions of assault and battery, false imprisonment, for slanderous words and for libels shall be commenced within two years next after the cause of action accrues.

SECT. 95. No scire facias shall be served on bail, unless within one year next after judgment rendered against the principal.

SECT. 96. All actions against an indorser of a writ must be commenced within one year next after judgment entered in the original action.

SECT. 97. None of the foregoing provisions shall apply to any action upon a promissory note signed in the presence of an attesting witness, or upon any bills notes or other evidences of debt issued by a bank. (a)

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

SECT. 99. In all actions of debt or assumpsit to recover the balance due upon a mutual and open account current, the cause of action shall be deemed to accrue at the time of the last item proved in such account. (b)

SECT. 100. If any person entitled to bring any of the aforesaid actions, at the time when the cause of action accrues, is a minor, or married woman, insane, imprisoned, or without the limits of the United States, he may bring his action within the times limited on this chapter, after the disability is removed.

SECT. 101. All personal actions on any contract not limited by any of the foregoing sections or other law of the state shall be brought within twenty years after the cause of action accrues. (c)

SECT. 102. When a writ fails of a sufficient service or return by unavoidable accident, or default, or negligence, of any officer, to whom it was delivered or directed, or when the writ is abated, or the action otherwise defeated for any matter of form, or by the death of either party, or if a judgment for the plaintiff is reversed on a writ of error, the plaintiff may commence a new action on the same demand within six months after the abatement or determination of the original suit or reversal of the judgment; and if the

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^{*}
Actions for
assault and
battery, &c.
R. S., c. 146, § 3.

Scire facias
against bail, &c.
R. S., c. 146, § 4.

^{*}
Actions against
indorsers of
writs, &c.
R. S., c. 146, § 5.

Exception of
witnessed and
bank notes.
R. S., c. 146, § 7.

Exception of
cases, &c.
R. S., c. 146, § 8.

Cases of open
and mutual
account.
R. S., c. 146, § 9.

Saving of rights
of infants and
certain others.

R. S., c. 146, § 10.

General limita-
tion of 20 years.
R. S., c. 146,
§ 11.

Saving in certain
cases of failure
of suits.

(a) 7, Me. 25. 19, Me. 72. 21, Me. 176. 31, Me. 158. 26, Me. 330. 30, Me. 118. 38, Me. 179.
38, Me. 350.

(b) 4, Me. 337. 38, Me. 149.

(c) 28, Me. 81. 30, Me. 164.

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R. S., c. 146,
§ 12.

Provision in the
case of the death
of either party,
&c.

R. S., c. 45,
§ 13.

Saving of the
rights of alien
enemies during
a war.

R. S., c. 146,
§ 14.

Limitation of
suits by individ-
uals for pen-
alties, &c.

R. S., c. 146,
§ 15, 16.

The making of a
writ, &c.

R. S., c. 146, § 17.

Limitation
extended in
cases of fraud.

R. S., c. 146,
§ 18.

Renewal of
promise must be
in writing, &c.

cause of action survives, his executor or administrator in case of his death may commence such new action within said six months. (a)

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

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

SECT. 105. All actions and suits for any penalty or forfeiture on any penal statute brought by any person, to whom the penalty or forfeiture is given in whole or in part, shall be commenced within one year next after the offense was committed; and if no individual so prosecutes, the same may be recovered by suit indictment or information in the name and for the use of the state at any time within two years next after the offense was committed and not afterwards.

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

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

SECT. 108. In actions of debt or upon the case founded upon any contract, no acknowledgement or promise shall be allowed to take the case out of the operation of the provisions of this chapter, unless the acknowledgement or promise is an express one in writing signed by the party chargeable thereby. No such acknowledgement or promise made by a

(a) 8, Me. 447.

(b) 9, Me. 131. 31, Me. 448.

7 joint contractor shall affect the liability of the other con-
8 tractors. (a)

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
4 of the defendants, but entitled to recover against the others
5 by virtue of a new acknowledgement, promise or otherwise,
6 judgment shall be rendered for the plaintiff, as to the de-
7 fendant against whom he has a right to recover, and for the
8 other defendants against the plaintiff.

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 for
6 the plaintiff.

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
8 the case out of the operation of the provisions of this chap-
9 ter; and no such payment made by a joint contractor or
10 his executor or administrator shall affect the liability of any
11 other. (b)

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

SECT. 113. All the provisions of this chapter respecting
2 limitations shall apply to any debt or contract filed by way
3 of set-off on the part of the defendant; and the time of such
4 limitation of such debt or contract shall be computed in the
5 same manner, as if an action had been commenced therefor
6 at the time, when the plaintiff's action was commenced,
7 unless the defendant is deprived of the benefit of the set-
8 off by the nonsuit or other act of the plaintiff; and when the
9 party so filing the set-off is thus defeated of a judgment on

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R. S., c. 146,

§ 19, 20.

If the action is
barred, &c.

R. S., c. 146,
§ 21.

Non-joinder of
defendants shall
not abate, &c.

R. S., c. 146,
§ 22.

Effect of
indorsement of
partial pay-
ments, &c.

R. S., c. 146,
§ 23, 24.

Presumption of
payment after
twenty years.

R. S., c. 146,
§ 25.

Application of
this chapter to
set offs.

(a) 23, Me. 453. 24, Me. 534. 29, Me. 47.

(b) 28, Me. 419. 30, Me. 253, 425. 32, Me. 260. 33, Me. 182. 38, Me. 171.

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10 the merits of such debt or contract, he may commence an
 11 action thereon within the time limited, as provided in the
 12 one hundred and second section of this chapter for bringing
 13 a new action for the reasons therein mentioned.

R. S., c. 146,
 § 26.

Provision if
 defendant is out
 of the state.

R. S., c. 146,
 § 28.

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
 8 time limited for the commencement of the action. (a)

Chapter 82.

PROCEEDINGS IN CIVIL ACTIONS IN COURT.

- Sect. 1.* Actions entered first day. Further service may be ordered.
 2. When default may be recorded, when taken off.
 3. Defendant out of state, proceedings.
 4. Execution stayed one year, unless bond is given; review.
 5. Bond left with clerk; may petition for a review.
 6. Court may permit an action on a claim against an insolvent estate.
 7. May allow appeals and complaints to be entered after first term.
 8. On petition within one year; attachment or bail not revived.
 9. On appeals original papers to be sent up, except writ and pleadings.
 10. Proceedings not abated, arrested, or reversed for want of form.
 11. Writ or process lost, leave granted to file a new one.
 12. Defendants may be struck out or new ones inserted.
 13. Distinction between trespass and case abolished.
 14. Treasurers may sue on contracts in their own names.
 15. Penalties recoverable by action of debt.
 16. Assignee of a grantee may sue on covenants of first grantor.
 17. Several breaches may be assigned and general performance pleaded.
 18. General issue may be pleaded, and brief statements filed.
 19. Demurrsers when filed, joined, amendments after decision on them.
 20. Involuntary trespasses, tender made, or money brought into court.
 21. Offer to be defaulted and its effect.
 22. Tender before entry of action. Towns may tender or offer default in actions for injuries.
 23. Property of a deceased debtor on joint contract liable.
 24. Libel actions for, truth a justification; exception.
 25. Counts misjoinder, and wrong joinder not cause for reversal.
 26. Motions in arrest not entertained.
 27. Damages assessed by a jury on certain bonds and contracts.
 28. Interest on judgments allowed.
 29. Judge not disqualified by residence in a town interested when is a waiver.
 30. Death of a party, administrator may appear or be summoned, heirs also in equity.
 31. Husband may appear in action brought by an unmarried woman.
 32. Insane parties, guardians appointed.

(a) 20, Me. 269. 23, Me. 156, 413. 37, Me. 306, 389.

Sect. 33. Motions to set aside verdicts, proceedings on them.

34. Willful trespasses, proceedings respecting them.
35. Damages on protest of bills.
36. Ten hours of actual labor a day's work ; exceptions.
37. Subsequent attaching creditors may petition to defend prior suits.
38. Subsequent attaching creditors admitted on leave and bond filed.
39. Judgment how entered, if defense fails.
40. Judgment how entered, if defense prevails.
41. Judgment at first term, may be petition for review ; proceedings.
42. Attachments made to defraud creditors void.
43. Action by a public officer not abated by his ceasing to be in office.
44. Action not maintainable on demands discharged by payment of part.
45. Bankrupt may maintain action in his own name, unless abated.

SET OFF.

46. Set off ; defendant files first day of term ; clerk enters date and notice on docket.
47. Set off kind of demands.
48. Set off must be between all of plaintiffs and all of defendants.
49. Set off of demand assigned when made.
50. Set off of demand subsequently acquired.
51. Set off of demand in suits in name of one for benefit of another.
52. Set off of sums equitably due only.
53. Set off of demands due from one deceased.
54. Set off in actions brought in a representative capacity.
55. Set off pleadings and issue how made.
56. Set off actions not discontinued, statute of limitations.
57. Set off no balance against a plaintiff suing on a demand assigned.
58. Set off proceedings before inferior tribunals.

AUDITORS.

59. Auditors appointed in certain cases, parties notified, witnesses attend.
60. Auditors all hear, majority report, may be discharged, report recommitted.
61. Auditors report evidence, may be disproved.
62. Auditors neglect to appear before them in actions of account.

JURIES.

63. Juries how empaneled and sworn.
64. Juries, supernumeraries, transfers, excuses.
65. Juries, form of their oath.
66. Juries, their foreman how chosen.
67. Juries, talesmen for, when and how returned.
68. Juries, new may be summoned during term time.
69. Juries, challenges how tried.
70. Juries may find special or general verdicts for cases of law.
71. Juries when not agreed, proceedings.
72. Juries not disqualified by residence.
73. Juries, objections known and not stated before trial.
74. Juries, their verdicts not affected by irregularities not injurious.
75. Juries, verdict set aside for improper practices with them.

WITNESSES AND EVIDENCE.

76. Witnesses may be summoned by clerks and justices of the peace.
77. Witnesses, religious belief affects credibility only.
78. Witnesses, parties to suits and others interested may be.
79. Witnesses, except where cause of action implies an offense.
80. Witnesses, attestations not affected.
81. Witnesses, testimony of a party out of the state, how taken.
82. Witnesses, testimony of a party may be contradicted.
83. Witnesses, provisions not applicable to suits in representative character.
84. Witnesses, same rules respecting them in all tribunals.
85. Witnesses, duly summoned and neglecting to appear ; attachment.
86. Witnesses, refusing to answer, may be fined.
87. Witnesses, oaths how administered to them.

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88. Witnesses, scrupulous of oath, affirm.
89. Witnesses incompetency on conviction of crime.
90. Witnesses, fees for travel and attendance first paid or tendered.
91. Records of other courts evidence.
92. Printed copy of statutes evidence.
93. Foreign and unwritten law, how proved.

COSTS.

94. Party prevailing, recovers costs.
95. Costs when plaintiff appeals from judgment in his favor.
96. Costs in actions of replevin regulated.
97. Costs in actions that should have been brought before a justice.
98. Costs when damages reduced by set off.
99. Costs of evidence not doubled or trebled.
100. Costs discretionary on petitions for review and the like.
101. Costs of first suit paid before second suit for same cause.
102. Costs a person liable for, who sues in name of the state.
103. Costs state liable for in a civil suit.
104. Costs not taxable for travel of attorney for the state.
105. Assignee's name and residence indorsed on writ in name of assignor.
106. Assignee if not known liable for costs.
107. Costs in one action when more, that should have been joined.
108. Costs not allowed in actions on judgments, on which executions might have issued.
109. Costs for travel in actions by corporations how computed.
110. Costs, power of the court over not affected.
111. Costs of a bankrupt limited.

EXECUTION.

112. Execution when issued and returnable.
113. Execution not issued after one year; exception.
114. Execution may be renewed within three years.
115. Execution, if cannot be renewed scire facias may issue.
116. Execution framed to collect interest on judgments.
117. Execution lost or destroyed new may be issued.

*Actions entered
first day, &c.*

*R. S., c. 115,
§ 1, 2.*

*When default
may be recorded;
when taken off.*

*Idem, § 2.
c. 151, § 13.*

*Defendant out of
state, &c.*

SECT. 1. No action can be entered after the first day of 2 the session of the supreme judicial court without special 3 permission. When it appears, that the defendant has not 4 had sufficient notice, the court may order such further notice, 5 as it deems proper.

SECT. 2. When a legal service of the writ has been made, 2 and the defendant does not appear by himself or attorney 3 within the three first days of the term, his default may be 4 recorded, and the charge in the declaration taken to be 5 true. If the defendant before the jury are dismissed for 6 the term enters his appearance and pays to the plaintiff such 7 costs, as the court orders, the default shall be taken off. The 8 court may permit it to be taken off for sufficient cause. (a)

SECT. 3. When the defendant was an inhabitant of the 2 state and absent from it at the time of service, and it does 3 not appear, that he has returned or has actual notice of the 4 suit, the court may continue the action, not exceeding twice

5 unless for special cause, or enter judgment on default. If
6 the defendant was not an inhabitant of the state or within
7 it, and had actual notice of the suit, the court may order a
8 continuance, if he does not appear at the first term.

SECT. 4. When judgment is rendered on default of an ab-
2 sent defendant in a personal action as provided in the preced-
3 ing section, execution cannot be issued thereon within one year
4 thereafter, unless the plaintiff first gives bond to the defend-
5 ant with one or more sureties in a sum double the amount
6 of damages and costs conditioned to repay the amount to
7 the defendant, if the judgment is reversed on review, to
8 which he is entitled of right, brought within one year or so
9 much of the amount recovered as shall be recovered back
10 on such review.

SECT. 5. The bond shall be deposited with the clerk, who
2 shall decide upon the sufficiency of the sureties subject to an
3 appeal to a justice of the court, and if the review is not so
4 prosecuted, the defendant may within one year after he first
5 has notice of the judgment petition the court for a review,
6 and the court may grant it on such terms as it deems rea-
7 sonable.

SECT. 6. When a person, whose claim on an insolvent
2 estate has been wholly or partially disallowed, has by acci-
3 dent or mistake omitted to give notice within the time
4 allowed of his intention to have it determined at law, the
5 court on application within two years after the return of the
6 commissioners may, after notice to the executor or adminis-
7 trator of the estate, give him leave to institute a suit upon
8 it at the next term of the court, but not after four years
9 from the time when administration was granted, and no dis-
10 tribution can be disturbed by a recovery in such an action.

SECT. 7. When an appeal is taken from a judgment of a
2 justice of the peace or municipal or police court and the
3 action by mistake or accident is not duly entered and the
4 judgment has not been affirmed, the court may on petition of
5 either party allow the action or complaint to be entered at
6 another term of the court upon such terms as are deemed
7 reasonable, and if entered the court shall proceed thereon
8 as if entered at the proper term.

SECT. 8. Such petition must be presented to the court or
2 filed in the clerk's office within one year after the term, at
3 which the action ought to have been entered; and no at-
4 tachment or bail shall be revived or continued by such pro-
5 ceedings.

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Idem, § 3, 4.

Execution stayed one year, unless bond is given, &c.

Idem, § 5, 7.

Bond left with clerk, if review not prosecuted, &c.

Idem, 6, 8.

Court may permit an action on a claim, &c.

Idem, § 9.

May allow an appealed action, &c.

R. S., c. 123, § 12.

Petition for it within one year, attachment or bail not revived.

Idem, § 13.

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On appeals,
original papers
to be sent up,
except writ and
pleadings.

R. S., c. 151,
§ 24.

Proceedings not
abated, arrested,
reversed, &c.

R. S., c. 115,
§ 9, 10.

Writ of process
lost, new one
may be filed, &c.

1848, c. 57, § 1.

Defendants may
be struck out on
payment of costs,
&c.

R. S., c. 115,
§ 11, 12.

Distinction
between trespass
and trespass on
the case, &c.
Idem, § 13.

Treasurers may
sue in their own
names, &c.

Idem, § 14.

Penalties
recoverable by
action of debt.
Idem, § 21.

When an
assignee of a
grantee may
sue, &c.

SECT. 9. In cases carried from a justice of the peace municipal or police court to a higher court, depositions and original papers, except the process by which the suit was commenced the return of service thereon and the pleadings, shall be certified by the proper officer and carried up without leaving copies, unless otherwise ordered by the court having original cognizance.

SECT. 10. No process or proceeding in courts of justice shall be abated, arrested, or reversed, for want of form only, or for circumstantial errors or mistakes, which by law might have been amended, when the person and case may be rightly understood. Such errors and defects may be amended on motion of either party on such terms, as the court orders.

SECT. 11. When in an action pending the loss or destruction of a writ or process after service is proved by affidavit or otherwise, the court may allow a new one to be filed corresponding thereto as nearly as may be to have the same effect as the one lost or destroyed.

SECT. 12. When there are two or more defendants, the writ may be amended by striking out one or more of them on payment of costs to him to that time. A writ founded on contract express or implied may be amended by inserting additional defendants; and the court may order service to be made on them and their property to be attached as in case of original writs; and on return of service duly made they shall be deemed parties to the suit, but not liable to costs before such service.

SECT. 13. The distinction between actions of trespass and trespass on the case is abolished. A declaration in either form is good.

SECT. 14. The treasurers, of state, counties, towns, and corporations, may maintain suits in their own names as treasurers on contracts given to them or their predecessors, and prosecute suits pending in the name of their predecessors.

SECT. 15. Penalties may be recovered by an action of debt, when no other form or mode of recovery is provided by the statute imposing them.

SECT. 16. The assignee of a grantee or his executor or administrator after eviction by an older and better title may maintain an action on a covenant of seizin or freedom from incumbrance contained in absolute deeds of the premises between the parties, and recover such damages, as the first grantee might upon eviction, upon filing at the first term in

7 court for the use of his grantor a release of the covenants
 8 of his deed and of all causes of action thereon. The prior
 9 grantee shall not in such case have power to release the
 10 covenants of the first grantor to the prejudice of his grantee.

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Idem, § 16, 17.

SECT. 17. In actions on contract in a penal sum for performance of covenants or agreements, and in actions of covenant, several breaches may be assigned, and in defence of performance generally both in affirmative and negative covenants may be alleged.

Several breaches
may be assigned,
&c.

SECT. 18. The general issue may be pleaded in all cases and a brief statement of special matter of defence filed, or a special plea, or on leave double pleas in bar, may be filed. The plaintiff must join a general issue, and may file a counter brief statement. (a)

Idem, § 15.General issue
may be pleaded,
brief statements
filed.*Idem*, § 18.

SECT. 19. A general demurrer to the declaration may be filed; and in any stage of the pleadings either party may demur, and the demurrer must be joined. If the declaration be adjudged defective and be amendable, the plaintiff may amend upon payment of costs from the time when the demurrer was filed. If the demurrer be filed at the first term and be overruled the defendant may plead anew on payment of costs from the time when it was filed, unless it be adjudged frivolous and intended for delay, when judgment shall be entered. At the next term in the county after a decision on the demurrer has been certified, judgment accordingly shall be entered and not before, unless the costs be paid and the amendment or pleadings be made on the second day of the term.

Demurrers,
when filed,
joined, &c.*Idem*, § 20.
1856, c. 211, § 1.

SECT. 20. In actions of trespass on lands the defendant may file a brief statement disclaiming all title to the land described and alleging, that the trespass was involuntary or by negligence or mistake, and that before action brought he tendered sufficient amends therefor, or that he brings money into court to satisfy the damages with costs to that time, and if on trial he establishes the truth of his allegations, he shall recover costs. (b)

Tender may be
made or money
brought into
court, &c.*Idem*, § 22, as
amended.

SECT. 21. In an action founded on judgment or contract, the defendant may in writing enter of record with its date offer to be defaulted for a specified sum. If not accepted within such time as the court orders, it shall not be offered in evidence or have any effect upon the rights of the parties

Offer to be
defaulted and its
effect.

(a) 29, Me. 471.
 (b) 36, Me. 407.

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*Idem, § 22.
1847, c. 31, § 1, 2.*

Tender may be
made before
entry of action.
Towns may
tender, &c.

Idem, § 22.

Property of a
deceased debtor
on joint contract
liable for
payment.
Idem, § 23.

In actions for a
libel the truth of
it is a justification;
exception.

Idem, § 19.

Joinder of good
and bad counts,
&c.

Idem, § 84.

Motions in
arrest, &c.
Idem, § 80.

In bonds and
contracts for
performance of
covenants, &c.

*Idem, § 78.
1842, c. 31, § 9.*

Interest on
judgments
allowed.
Idem, § 79.

6 or the judgment to be rendered except the costs. If the
7 plaintiff fails to recover a sum as due at the time of the offer
8 greater than the sum offered, he recovers for costs such only
9 as accrued before the offer, and the defendant recovers costs
10 accrued since that time, and his judgment for costs may be
11 set off against the plaintiff's judgment for debt and costs. (a)

SECT. 22. A tender with the costs then accrued may be
2 made after action brought and before its entry to the plain-
3 tiff or his attorney with the same effect as if made before
4 action brought. In actions against towns founded on the
5 sixty-first section of chapter eighteen a town may make a
6 tender before the commencement or entry of the action or
7 offer to be defaulted for a specified sum, with the same effect
8 as in actions on contract.

SECT. 23. The goods and estate of a deceased debtor in
2 joint contract express or implied or in a judgment on con-
3 tract are as liable and the creditor has his remedy as in case
4 of a joint and several contract.

SECT. 24. In a suit for writing and publishing a libel evi-
2 dence shall be received to establish the truth of the matter
3 charged as libellous. If the truth of it be established, it
4 shall be a justification, unless the publication be found to
5 have originated in corrupt or malicious motives.

SECT. 25. When in a civil action the declaration contains
2 a good count and bad ones or a wrong joinder of counts
3 and no written objection is made till after the cause is com-
4 mitted to the jury, and a general verdict has been recorded
5 the judgment cannot for such cause be reversed on writ of
6 error.

SECT. 26. No motion in arrest of judgment in a civil action
2 can be entertained.

SECT. 27. In actions on bond or contract in a penal sum
2 for the performance of covenants or agreements or on a
3 recognizance to prosecute an appeal, when a jury finds the
4 condition broken, they shall estimate the plaintiff's damages,
5 and judgment shall be entered for the penal sum and execu-
6 tion shall issue for such damages and costs. (b)

SECT. 28. Interest is to be allowed on amount found due
2 for damages and costs in actions on judgments of a court of
3 record.

(a) 20, Me. 37, 312. 21, Me. 529. 30, Me. 453. 33, Me. 216. The section presents two new provisions. It has been regarded as obscure and liable to different constructions. The design is to obviate a difficulty in practice and to make the meaning plain. The existing law provides no time, when the plaintiff shall elect. The first new provision authorizes the court to fix a time. The other new provision determines clearly the effect of an offer rejected.

(b) 22, Me. 483, 486. 24, Me. 166.

SECT. 29. A judge shall sit in the trial or disposition of
2 an action, in which the county or town, where he resides, is
3 a party or interested, if the party adverse to such county or
4 town enters on the docket a waiver of all objections.

CHAP. 82.
Judge not
disqualified by
residence, &c.
1853, c. 2.

SECT. 30. When a party in a pending suit dies and his
2 death is suggested on the record and the cause of action sur-
3 vives, his executor or administrator may become a party, or
4 at the request of the other party be summoned to appear and
5 become a party. Service of the summons shall be made on
6 him fourteen days before the term, to which it is returnable.
7 If he neglects to appear, judgment may be entered by non-
8 suit or default according to the provisions of chapter eighty-
9 seven. If the suit be in equity his executor, administrator,
10 or heirs at law may in like manner appear or be summoned
11 without a bill of revivor.

R. S., c. 115,
§ 81.
1850, c. 155.

SECT. 31. When an unmarried woman being a party to a
2 pending suit is married her husband on his request may be
3 admitted as a party as if originally joined in the suit.

Husband become
party to a suit
by an unmarried
woman.
Idem, § 82.

SECT. 32. When a party to a suit becomes insane, it may
2 be prosecuted or defended by his guardian, who on applica-
3 tion of his friend or of the other party may be appointed
4 for that purpose by a justice of the court in term time or in
5 vacation. He shall be entitled to a reasonable compensation
6 and not be liable for costs.

Guardians ad
litem may be
appointed to
insane parties.

Idem, § 86,
1849, c. 104,
§ 1, 2.

SECT. 33. When a motion is made in the supreme judicial
2 court to have a verdict set aside as being against law or
3 evidence a report of the whole evidence being drawn up
4 shall be signed by the presiding judge. When the motion
5 is founded on any alleged cause not shown by the evidence
6 reported, the testimony respecting the allegations of the
7 motion shall be heard and reported by the judge, the case is
8 then to be marked law. When the court of law is of opin-
9 ion, that the motion was for frivolous causes, or intended
10 for delay, it may award double or treble costs.

Motions to set
aside verdicts,
proceedings on
them, costs.

Idem, § 101.
1852, c. 246, § 8

SECT. 34. In actions of trespass on property the court
2 and jury or magistrate shall determine, whether it was com-
3 mitted willfully, if so found, a record thereof shall be made
4 and a memorandum of it on the margin of the execution.

Willful tres-
passes, pro-
ceedings
respecting them.
Idem, § 109.

SECT. 35. Damages on protest of bills of exchange pay-
2 able by the acceptor, drawer or endorser of one in this state
3 of one hundred dollars or more are, if payable at a place
4 seventy-five miles distant, one per cent.; if payable in the
5 state of New York or in any state northerly of it and not in
6 this state, three per cent.; if payable in any Atlantic state

Damages on
protest of bills.

CHAP. 82.**Idem, § 110, 111.****Ten hours
actual labor a
legal days work;
exceptions.****1848, c. 83, § 1.****Subsequent
attaching
creditor may
petition, &c.****R. S., c. 115,
§ 113, 114.****If leave is
granted he gives
bond and is
admitted to
defend.****Idem, § 115, 116.****Judgment to be
entered when
defense fails.****Idem, § 117.****How entered
when defense
prevails.****Idem, § 118.****When judgment
in such prior
suit at the first
term, &c.****1856, c. 262,
§ 1, 2, 3.****A first attach-
ment made to
delay or defraud
creditors is void.**

7 or territory southerly of New York and northerly of Florida,
8 six per cent.; and in any other state or territory, nine per
9 cent.

SECT. 36. In all contracts for labor ten hours of actual
2 labor shall be a legal day's work, unless the contract stipu-
3 lates for a longer time; but this rule does not apply to
4 monthly labor or to agricultural employments.

SECT. 37. When property has been attached, a plaintiff,
2 who has caused the same property to be attached in a sub-
3 sequent suit, may petition the court for leave to defend the
4 prior suit, and set forth therein the facts as he believes them
5 to be under oath, and the court may grant or refuse such
6 leave.

SECT. 38. If leave be granted he shall give bond or enter
2 into recognizance with sufficient surety in such sum, as the
3 court orders, to pay the plaintiff in the prior suit all dam-
4 ages and costs occasioned by such defense, and an entry of
5 record shall be made, that he is admitted to defend such
6 suit.

SECT. 39. When petitioner enters into recognizance and
2 fails in his defense, execution on his recognizance shall be
3 issued against him for the damages found by the court and
4 costs, and judgment rendered between the original parties,
5 as if no such defense had been made.

SECT. 40. When petitioner prevails judgment shall be ren-
2 dered against the plaintiff and in favor of the petitioner, and
3 execution issued thereon for his costs; and costs may or
4 may not be awarded to the original defendant.

SECT. 41. When judgment in such prior suit has been ren-
2 dered since April 9, 1856 at the first term of the court, the
3 plaintiff in such subsequent suit within one year thereafter
4 upon first giving bonds to each party as provided in section
5 thirty-eight may petition as provided in section thirty-seven
6 for leave to sue out a writ of review of such action; and
7 such leave may or may not be granted. If granted, and on
8 final judgment the sum originally recovered is reduced, judg-
9 ment shall be entered and execution issued for the difference
10 not exceeding the amount due from the original defendant to
11 the petitioner with costs for his sole use, and it shall oper-
12 ate as a payment of his debt to the amount of damages re-
13 covered.

SECT. 42. When it appears by the verdict or otherwise,
2 that such prior attachment was made with intent to delay
3 or defraud creditors, or that there was collision between

4 the plaintiff and defendant for that purpose, such attachment shall be void.

CHAP. 82.

R. S., c. 115,
§ 9, 119.

SECT. 43. No action commenced in his official capacity by a public officer is abated by his ceasing to hold the office; it may be prosecuted by his successors to the same uses; and the necessary amendments may be made and notices given.

Action by a
public officer
not abated, &c.

Idem, § 120.

SECT. 44. No action shall be maintained on a demand settled by a creditor or his attorney entrusted to collect it in full discharge of it by the receipt of money or other valuable consideration however small.

No action on
demands dis-
charged by a
partial payment.
1851, c. 213.

SECT. 45. A person, who has been declared a bankrupt, may maintain any action respecting his former property in his own name, unless objection is made by plea in abatement, if before final judgment the assent of his assignee is filed in the office of the clerk of the court, in which the action is pending.

A bankrupt may
sue in his own
name, unless
suit is abated.

1855, c. 170.

Set off.

SECT. 46. Demands between plaintiffs and defendants may be set off against each other as follows:

Defendant must
file set off on
first day of
term, &c.

The defendant on the first day of the term, to which the writ is returnable, must file a brief statement of his demand in substance as certain as in a declaration, which by leave of court may be amended. The clerk shall enter on it and on the docket the date, and on the docket under the action notice of its filing, before the new entries are called.

R. S., c. 115,
§ 24, 25, 26, 32,
1847, c. 20.

SECT. 47. A demand originally payable to the defendant in his own right founded on a judgment or contract express or implied for the price of real or personal estate sold, for money paid or had and received or for services done, for a liquidated sum or for one ascertainable by calculation, may be set off.

Kind of demands
that may be set
off.Idem,
§ 27, 28, 29.

SECT. 48. The demand must be due from all the plaintiffs to all the defendants jointly. When there is a dormant partner claims due from the ostensible one may be set off as if there was no dormant partner.

Must be due
from all plain-
tiffs to all
defendants, &c.
Idem, § 33, 34.

SECT. 49. When a plaintiff has received notice, that a demand against him has been assigned to the defendant and has agreed to pay it to him or to receive it as payment towards his demand before his suit was commenced, it may be set off.

Demand
assigned, which
plaintiff before
action brought,
agreed to pay.
Idem, § 30.

CHAP. 82.

After notice to defendant of an assignment, &c.
Idem, § 35.

In suits by one for another, &c.
Idem, § 36.

Sum equitably due, set off.
Idem, § 31.

Damages due from a deceased person, how to be set off.
Idem, § 37, 38, 39.

In actions against persons in a representative character, &c.
Idem, § 40, 41.

Pleadings and issue, how made.
Idem, § 42, 43.

Actions cannot be discontinued without consent, &c.
Idem, § 44, 48.

No judgment for a balance against a plaintiff, &c.
Idem, § 45, 46.

Similar proceedings before inferior tribunals.
Idem, § 47.

SECT. 50. When a defendant had notice of the assignment of a demand he can not have any demand accrued or acquired since that notice set off.

SECT. 51. When an action is brought by one person for the use of another, a demand against the latter may be set off.

SECT. 52. When the demand to be set off is a bond or contract with a penalty, the sum equitably due only can be set off.

SECT. 53. Demands against a person belonging to defendant at the time of the death of such person may be set off against claims prosecuted by his executor or administrator, and if a balance be found due to defendant, judgment shall be in like form and with like effect, as if he had commenced a suit therefor; but if the estate be insolvent, it must be presented to the commissioners or added to the list of claims, as other judgments are.

SECT. 54. In actions against executors, administrators, trustees, or others, in a representative character, they may set off such demands as those, whom they represent, might have done in actions against them, but no demands due to or from them in their own right can be set off in such actions.

SECT. 55. The trial may proceed in cases of set off on issue joined without a plea of set off; and if an issue is not otherwise formed, the defendant may, except in actions of assumpsit, plead that he does not owe the sum demanded; and the plaintiff will be entitled to every defence, that he might have by any form of pleading to an action against him on the same demand.

SECT. 56. When a demand is filed in set off, the action can not be discontinued without consent of the defendant. The statute of limitations is applicable to demands filed in set off as if actions were commenced on them at the date of plaintiff's action.

SECT. 57. When no balance is found due to either party, no costs are recoverable. The party recovering a balance recovers costs. No judgment for debt can be entered against a plaintiff, when the demand sued was assigned to him before the suit was commenced, or for a balance due from another person.

SECT. 58. Similar proceedings in set off may take place before municipal and police courts and justices of the peace, the demand in set off being filed on the return day of the writ; but judgment cannot be rendered for a defendant for less than twenty dollars exclusive of costs.

*Auditors.*CHAP. 82.

SECT. 59. When an investigation of accounts or an examination of vouchers is required, the court [by consent of parties] may appoint one or more auditors to hear the parties and their testimony, state the accounts, and make a report to the court. They shall notify the parties of the time and place of hearing and have power to adjourn. Witnesses may be summoned and compelled to attend and may be sworn by an auditor. (a)

Auditors may be appointed in certain cases. Parties notified; witnesses attend.

SECT. 60. When there is more than one auditor, all must hear, but a majority may report stating whether all did hear. Their report may be recommitted. They may be discharged and others appointed. They shall be allowed a reasonable compensation fixed by the court and paid by the plaintiff and taxed in the costs, if he prevails.

Idem, § 49, 50, 52.

All hear, a majority may report; they may be discharged; report] recommitted.

Idem, § 51, 53, 55.

SECT. 61. Their report may be used as evidence by either party, and it may be disproved by other evidence.

Report, evidence, &c.
Idem, § 54.

SECT. 62. When in an action of account judgment has been entered, that the defendant do account, and he shall unreasonably neglect to appear, or appearing to render an account before auditors appointed to take it, they shall certify the fact, and the court may enter a default and judgment thereon or cause the damages to be assessed by a jury.

If defendant in an action of account neglects, &c.

Idem, § 57.

Juries.

SECT. 63. When venires for jurors are returned to court, the clerk shall prepare at the commencement of each term of the court separate alphabetical lists of the names of the several persons returned as traverse jurors; and the court in empanneling the traverse jurors shall cause the names of the first two persons who attend to be called, who shall be first sworn, and then the others in succession, as they are named on the list, and in such divisions as the court directs, or all at the same time; and the first twelve shall compose the first jury; and the next twelve on the same list shall be empanelled and sworn in like manner, and shall compose the second jury.

Jurors, how empanneled and sworn.

Idem, § 58.

SECT. 64. Supernumerary jurors may be excused from time to time till wanted, and they may be placed on either

Supernumeraries, transfers, excuses.

(a) The words enclosed in brackets exhibit the law as it is, but it is believed to be expedient to omit them. A party against whom there is a long account may for the purpose of delay insist, that every item shall be examined by a jury, and can thus obtain a continuance or occupy the court for a long time uselessly. Parties rights will be secure, if the court is allowed to send such cases to an auditor without consent.

CHAP. 82.

Idem, § 59.

Form of Jurors,
oath.

Idem, § 60.

Foreman, how
chosen.

Idem, § 61.

Talesmen,
when and how
returned.

Idem, § 62, 63.

Now jurors may
be summoned
during term.

Idem, § 64.

Challenge of
juror, how tried.

3 jury, as occasion requires; and jurors may be transferred
4 from one jury to the other, when the convenience of business
5 requires it; and for good reason any juror may be excused.

SECT. 65. The following shall be the form of the oath, ad-
2 ministered to traverse jurors in civil causes: "You and
3 each of you swear, that in all causes betwixt party and
4 party, that shall be committed to you, you will give a true
5 verdict thereon according to the law and the evidence given
6 you. So help you God;" and when a juror is conscien-
7 tiously scrupulous of taking an oath, the word "affirm," shall
8 be used instead of "swear," and the words "this you do
9 under the pains and penalties of perjury" instead of the
10 words "so help you God."

SECT. 66. Each jury shall retire after having been thus
2 empanneled 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 ab-
5 sent or excused from service, a new foreman shall be chosen
6 as aforesaid.

SECT. 67. 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.

SECT. 68. The court may in term time issue venires 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 venires for new jurors to supply
7 their places; who shall be drawn and notified to attend at
8 such time as the court directs.

SECT. 69. 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.

CHAP. 82.

Idem, § 65.

SECT. 70. 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 as
4 reported by the judge presiding at the trial.

May find special
verdicts for
cases of law.
Idem, § 66.

SECT. 71. When a jury not having agreed return into court
2 stating the fact, the judge may in his discretion explain any
3 questions of law if proposed to him, or re-state any partic-
4 ular testimony, and send them out again for further consid-
5 eration; but they shall not be sent out a third time in con-
6 sequence of their disagreement, unless on account of some
7 difficulties not stated when they first came into court.

When not
agreed,
proceedings.

Idem, § 67.

SECT. 72. 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.

Not disqualified
by residence.

Idem, § 68.

SECT. 73. 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.

Objections
known and not
stated before
trial.

Idem, § 69.

SECT. 74. 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
5 made before the return of the verdict.

Verdict not
affected by
irregularities,
if not injurious.

Idem, § 70.

SECT. 75. 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 anything 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.

Verdict set aside
for improper
practices with
jurors.

Idem, § 76.

Witnesses and evidence.

SECT. 76. The clerks of the several courts and any justice
2 of the peace may issue summonses for witnesses to attend
3 before courts to give evidence concerning any matters there
4 depending.

Witnesses may
be summoned,
&c.

Idem, § 71.

SECT. 77. No person shall be deemed an incompetent wit-
2 ness on account of his religious belief, but shall be subject to

Religious belief
affects creditibil-
ity only.

CHAP. 82.

*Idem, § 72.
1847, c. 34.*

*Parties and
others interested
may be
witnesses.*

1856, c. 266.

*Exception where
cause of action
implies an
offense.*

Idem.

*Attestation of
wills, &c., not
affected.*

*Testimony of a
party out of
the state, how
taken.*

*Testimony of a
party may be
contradicted.*

*Not applicable
to executors,
administrators
or heirs.*

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.

SECT. 78. No person shall be excused or excluded from
2 being a witness in any civil suit or proceeding at law or in
3 equity by reason of his interest in the event of the same as
4 party or otherwise, except as is hereinafter provided, but
5 such interest may be shown for the purpose of affecting his
6 credibility.

SECT. 79. Parties shall not be witnesses in suits where
2 the cause of action implies an offense against the criminal
3 law on the part of the defendant, unless the defendant shall
4 offer himself as a witness, in which case the plaintiff may
5 also be a witness, and in case the defendant in such suit
6 shall offer himself as a witness, he shall be held to waive
7 his privilege of not testifying where his testimony might
8 render him liable to prosecution for a criminal offense.

SECT. 80. Nothing herein shall in any manner affect the law
2 relating to the attestation of the execution of last wills and
3 testaments, or of any other instrument which by law is
4 required to be attested.

SECT. 81. When any party to a suit resides without the
2 state, or is absent from the state during the pendency of
3 the suit, and the opposite party desires his testimony, a com-
4 mission under the rules of court may issue to take his dep-
5 osition; and it shall be the duty of such non-resident or ab-
6 sent party upon such notice to him or his attorney of record
7 in the suit of the time and place appointed for the taking
8 his deposition, as the court shall order, to appear and give
9 his deposition. If such party shall refuse or unreasonably
10 delay giving his testimony as above provided, he may be non-
11 suited or defaulted by order of the court, unless his attor-
12 ney will admit the affidavit of the party desiring his testi-
13 mony, of what the absent party would say if present, to be
14 used as testimony in the case.

SECT. 82. When one of several plaintiffs or defendants is
2 used as a witness by the opposite party, testimony may be
3 introduced to contradict or discredit him by his co-plaintiffs
4 or co-defendants in the same manner as if he were not a
5 party to the suit.

SECT. 83. The provisions of the five preceding sections
2 shall not be applied to any cases, where, at the time of taking
3 testimony, or the time of trial, the party prosecuting or the

4 party defending, or any one of them, shall be an executor
 5 or an administrator, or made a party as an heir of a deceased
 6 party.

CHAP. 82.

SECT. 84. The rules of evidence in special proceedings of
 2 a civil nature such as before referees, auditors, county com-
 3 missioners, courts of probate, shall be the same as herein
 4 provided for civil actions.

Same rules
before all
tribunals.

Idem.

SECT. 85. When a person duly summoned and obliged to
 2 attend before any judicial tribunal fails to do so without a
 3 reasonable excuse, he shall be liable to the party aggrieved
 4 for all damages sustained thereby. The judge of such tri-
 5 bunal may issue a capias to apprehend and bring him before
 6 him; and he may be fined not exceeding twenty dollars and
 7 ordered to pay the costs of the attachment, and may be com-
 8 mitted until the same and the costs of commitment are paid.

Witnesses duly
summoned,
neglecting to
attend, may be
attached and
fined.R. S., c. 133, § 51.
1847, c. 9, § 1.

SECT. 86. When a witness in court refuses to answer such
 2 questions, as the court allows to be put, he may be fined
 3 not exceeding twenty dollars and committed until the fine
 4 and costs of commitment are paid.

Refusing in
court to answer,
may be fined.
Idem, § 51.
1847, c. 9, § 2.

SECT. 87. A person to whom an oath is administered shall
 2 hold up his hand, unless he believes that an oath adminis-
 3 tered in that form is not binding and then it may be admin-
 4 istered in a form believed by him to be binding. One not
 5 believing the christian religion may be sworn according to
 6 the ceremonuies of his religion.

Oaths, how
administered.R. S., c. 115,
§ 73.
R. S., c. 133,
§ 52, 53.

SECT. 88. Persons conscientiously scrupulous of taking an
 2 oath may make affirmation as follows: "I do affirm under
 3 the pains and penalties of perjury," which shall be deemed
 4 of the same force and effect as an oath.

Witnesses
scrupulous of
swearing, may
affirm.
Idem, § 74.
Idem, c. 133,
§ 38.

SECT. 89. Persons convicted of an infamous crime and
 2 sentenced in this state are not competent witnesses unless
 3 restored by a pardon; and a conviction out of the state of
 4 such a crime may be given in evidence to affect his credi-
 5 bility.

Not competent
when convicted
in this state of
an infamous
crime.
R. S., c. 133,
§ 54, 44.

SECT. 90. No person is obliged to attend in any court as a
 2 witness in a civil suit, or at any place to have his deposition
 3 taken, unless his legal fees for travel to and from the place
 4 and for one day's attendance are first paid or tendered; and
 5 his fees for each subsequent day's attendance must be paid
 6 at the close of the preceding day, when he requests it.

His fees for
travel and one
day's attendance
must first be
paid.

Idem, § 50.

SECT. 91. The records and proceedings of any court of
 2 the United States or of any one of the states authenticated
 3 by the attestation of the clerk or officer having charge
 4 thereof and seal of such court shall be admitted in evidence.

Records of other
courts admitted
as evidence.

Idem, § 45.

CHAP. 82.

Printed copy of statutes admitted as evidence.

Idem, § 46, 47.

Foreign laws and unwritten laws of the states, how proved.

Idem, § 48, 49.

SECT. 92. Printed copies purporting to be published under authority of government of statutes acts and resolves of the United States or of this or any other state or territory of the United States, may be admitted as evidence; those of this state as sufficient, those of other states as *prima facie*.

SECT. 93. Foreign laws may be proved by parol evidence, but when such law appears to be existing in a written statute or code, it may be rejected unless accompanied by a copy thereof. The unwritten law of any other state or territory of the United States may be proved by parol evidence and by books of reports of cases adjudged in their courts.

Costs.

Party prevailing recovers costs.
R. S., c. 115, § 56.

When plaintiff appeals from a judgment in his favor, &c.

Idem, § 85.

In certain actions of replevin, &c.

Idem, § 77.

In actions which should have been commenced, &c.

R. S., c. 151,
§ 13.
1842, c. 31, § 20.

Damages reduced by set-off below \$20, full costs allowed.

R. S., c. 115,
§ 99.

SECT. 94. In all actions the party prevailing shall recover costs, unless otherwise specially provided.

SECT. 95. When a plaintiff appeals from a judgment of a municipal or police court or justice of the peace in his favor and does not recover in the appellate court a greater sum as damages, he shall recover a quarter of the sum last recovered for costs.

SECT. 96. In actions of replevin when the jury find, that each party owned a part of the property, they shall find and state in their verdict the value of the part owned by the plaintiff when replevied without regard to the value as estimated in the replevin bond, and if such value does not exceed twenty dollars the plaintiff shall recover for costs only one quarter part of such value.

SECT. 97. In actions commenced in the supreme judicial court, except those by or against towns for the support of paupers, if it appears on the rendition of judgment, that the action should have been commenced before a municipal or police court or a justice of the peace, the plaintiff shall not recover for costs more than one quarter part of his debt or damages. On reports of referees full costs may be allowed, unless the report otherwise provides. (a)

SECT. 98. When an account is plead in set-off and plaintiff recovers not exceeding twenty dollars, he is entitled to full costs, if the jury certify in their verdict that the damages were reduced as low as that sum by reason of the amount allowed in set-off. (b)

(a) 28, Me. 204.

(b) 31, Me. 120.

SECT. 99. When a party recovers double or treble costs
2 the fees of witnesses, depositions, copies and other evidence
3 are not to be doubled or trebled.

CHAP. 82.
Costs of
evidence, &c.
Idem, § 87.

SECT. 100. On application of a private person for a writ
2 of review, certiorari, mandamus, or quo warranto, or like
3 process, the court may or not allow costs to a person ap-
4 pearing on notice as respondent.

Costs may or
not be allowed,
&c.
Idem, § 88.

SECT. 101. When costs have been allowed against a plain-
2 tiff on nonsuit or discontinuance and a second suit is brought
3 for the same cause before the costs of the former suit are
4 paid, further proceedings shall be stayed, till such costs are
5 paid, and the suit may be dismissed, unless they are paid at
6 such time as the court appoints.

Costs of first
suit to be paid,
&c.

Idem, § 89.

SECT. 102. When a suit is brought in the name of the
2 state for the benefit of a private person, his name and place
3 of residence shall be indorsed on the writ, and if the de-
4 fendant prevails, judgment for his costs shall be rendered
5 against such person and execution issued, as if he were
6 plaintiff.

A person suing
in the name of
the state is
liable for costs.

Idem, § 90.

SECT. 103. When a defendant prevails against the state
2 in a civil suit judgment for his costs shall be rendered
3 against it, and the treasurer of the county shall pay the
4 amount on a certified copy of the judgment, and the amount
5 shall be allowed to him in his account with the state.

State liable for
costs in a civil
suit.

Idem, § 91.

SECT. 104. When the state recovers costs in a civil suit no
2 fees shall be taxed for the travel of any attorney.

No fees taxed
for attorney, &c.
Idem, § 92.

SECT. 105. The name and place of residence if known of
2 an assignee shall at any time during the pendency of the suit
3 be indorsed on the back of a writ or process commenced in
4 the name of his assignor by request of the defendant, or
5 further proceedings thereon shall be stayed; and if the de-
6 fendant prevails, judgment for his costs shall be rendered
7 against the plaintiff and such assignee, as if both had been
8 originally joined in the action.

In suit in name
of assignor for
assignee, &c.

1846, c. 223, § 1.

SECT. 106. If the name of such assignee is not known to
2 the defendant, until after he has recovered judgment against
3 the plaintiff for costs, he may maintain an action on the case
4 against such assignee for his costs within six years from the
5 time of judgment; and such judgment for costs may be set
6 off between such assignee and the defendant, as if the as-
7 signee had been plaintiff in the suit.

If such assignee
is not known,
defendant may
in action on the
case recover, &c.

Idem, § 2, 3.

SECT. 107. When a plaintiff brings divers actions at the
2 same term of a court against the same party, which might
3 have been joined in one, or brings more than one suit on a

Divers actions
against the same
party at same
term, &c.

CHAP. 82.

c. 115, § 93.

Costs not allowed in actions on judgments, &c.

Idem, § 96.

Travel in actions by a corporation, how computed.

Idem, § 97.

Power of the court, &c.

Idem, § 98.

Costs of a bankrupt limited.

1848, c. 60.

4 joint and several contract, he shall recover costs in one of
5 such actions only, unless the court certifies, that there was
6 good cause for commencing them.

SECT. 108. A plaintiff shall not be allowed costs in an action on a judgment of any tribunal, on which an execution might have issued, when such suit was commenced, excepting upon trustee process.

SECT. 109. In actions of a corporation its travel is to be computed from the place where situated, if local, otherwise from the place where its business is usually transacted not exceeding forty miles, unless its agent actually travels a greater distance to attend court.

SECT. 110. The power of the court to require payment of costs or to refuse them as condition of an amendment or continuance is not affected by the provisions of this chapter.

SECT. 111. When a defendant pleads a discharge in bankruptcy obtained after commencement of the suit, he can recover no costs before the time, when the certificate was produced in court.

Executions.

Execution, when issued and returnable.

Idem, § 102.

Execution not issued after one year; exception.

Idem, § 104, as amended.

May be renewed, &c.

Idem, § 105.

When it cannot be renewed, &c.

Idem, § 106.

Interest on judgments collected.

Idem, § 107.

SECT. 112. Executions may be issued on a judgment of the supreme judicial court after twenty-four hours from its rendition returnable within three months.

SECT. 113. No first execution can be issued after one year from the time of judgment, except in cases provided for by the fourth section of this chapter; in which the first execution may be issued not less than one nor more than two years from the time of judgment.

SECT. 114. An alias or pluries execution may be issued within three years after the day of the return of the preceding execution and not afterward.

SECT. 115. When execution is not issued within the times prescribed by the two preceding sections, a writ of scire facias against the debtor may be issued to show cause, why execution on the judgment should not be issued, and if no sufficient cause be shewn, execution may be issued thereon,

SECT. 116. On executions issued on judgments or acknowledgments of debt interest shall be collected from the time of judgment or payment and the form of execution be varied accordingly.

SECT. 117. A justice of the court in which the judgment
 2 was rendered upon proof by affidavit or otherwise of the
 3 loss or destruction of an execution unsatisfied in whole or
 4 in part may order a new execution to be issued for so much
 5 as remains unsatisfied.

CHAP. 83.

New execution
 may be issued
 on proof of loss
 of one
 unsatisfied.
 1848, c. 57, § 2.

Chapter 83.

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

- Sect. 1.* Jurisdictions 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, form and service of.
 5. Judgments on default, nonsuit or trial.
 6. Costs for defendant.
 7. Appeal, when and how claimed; effect of.
 8. Appeal, recognizance for, when and how given.
 9. Appeal papers to be produced at appellate court; failure to enter, &c.,
 effect of.
 10. Subpensas 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. Executions 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 ex-
 ecutions.
 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.
 Justice plea before to be the general issue.
 Justice 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 ex-
 5 ceed twenty dollars, excepting those in which the title to
 6 real estate according to the pleadings or brief statement
 7 filed in the case by either party is in question; and except-

Jurisdiction in
 civil actions, &c.

CHAP. 83.

R. S., c. 116,
§ 1, 2.

Title to real
estate, pleaded,
&c.

R. S., c. 116,
§ 3, 4.

Copy, &c., to be
produced at
appellate court,
&c.

R. S., c. 116, § 5.

Writs, form and
service of.

R. S., c. 116,
§ 6, 18.

Judgments on
default, nonsuit
or trial.

R. S., c. 116, § 7.

Costs for
defendant.

R. S., c. 116, § 8.

Appeal, when
and how
claimed; effect
of.

R. S., c. 116, § 9.

Appeal, recog-
nizance for,
when and how
given.

8 ing that in those towns in which a municipal or police court
9 is established, his jurisdiction shall be restricted to those
10 cases provided therefor in the act establishing said courts.

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 as if the request for removal had not been made.

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.

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

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.

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
4 by the justice; and execution shall issue therefor.

SECT. 7. Any party aggrieved by the judgment of the just-
2 ice may appeal to the next supreme judicial court in the same
3 county, and may enter such appeal at any time within twenty-
4 four hours, Sunday not included, after the judgment; in which
5 case no execution shall issue, and the case shall be entered
6 and determined in the supreme judicial court.

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 condi-

4 tion to prosecute his appeal with effect, and pay all costs
5 arising after the appeal.

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.

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.

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

SECT. 12. Whenever a justice of the peace is unable by
2 reason 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 be-
5 tween 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
8 to whom the writ was returnable is not removed at the
9 expiration of the time of adjournment, such action may be
10 entered before and tried by any justice of the peace of said
11 county, at the time and place to which it was so adjourned,
12 who may render judgment and issue execution accordingly.

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.

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

SECT. 15. Every justice of the peace may issue writs of
2 scire facias against executors or administrators upon a sug-
3 gestion of waste after judgment against them, against bail
4 in civil actions, and indorsers of writs; and enter judgment
5 and issue execution, as any court might do in like cases.

CHAP. 83.

R. S., c. 116, § 10.

Appeal, papers
to be produced
at appellate
court, &c.R. S., c. 116,
§ 11.Subpoenas for
witnesses, &c.
R. S., c. 116,
§ 12.Adjournment of
his court.
R. S., c. 116, § 13.If unable to
attend another
justice may enter
a case, &c.R. S., c. 116,
§ 14.Executions
returnable in
three months.
R. S., c. 115,
§ 103.Executions may
be directed into
other counties.

1842, c. 10, § 2.

Writs of scire
facias, when he
may issue.R. S., c. 116,
§ 16.

CHAP. 83.

Writs, &c.,
when directed
into other
counties.

R. S., c. 116,
§ 17.
182, c. 10, § 1.

Records, how to
be kept, &c.

R. S., c. 116,
§ 19, 20, 21.

Execution issued
on the trans-
cribed record.

R. S., c. 116,
§ 22.

Removing from
the state, &c.

R. S., c. 116,
§ 23.

Administrators
of deceased
justice also.

R. S., c. 116,
§ 24.

Penalty on
administrator
for neglect.

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.

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

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

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

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

SECT. 21. Any person neglecting to comply with the duty required of him in either of the two preceding sections shall

3 forfeit and pay one hundred dollars to be recovered on
4 indictment.

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.

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
6 of usual fees make out and certify copies of all the papers
7 in 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.

SECT. 24. Any justice, whose commission expires and is
2 not renewed, may, during two years thereafter, issue and
3 renew 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.

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 ac-
5 tion commenced by himself; and every action so commenced,
6 shall abate.

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 and need not file any brief statement; 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.

CHAP. 83.

R. S., c. 116,
§ 25.Duty of the clerk
in such cases.
R. S., c. 116,
§ 26.Proceedings if
his records are
not completed,
&c.R. S., c. 116,
§ 27.

1853, c. 276.

Justice whose
commission has
expired, &c.R. S., c. 116,
§ 28.Justice not to
be of counsel in
any case before
himself, &c.R. S., c. 103, § 9.
R. S., c. 116,
§ 15.Justice may hold
courts at his
dwelling house
or office, &c.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. Execution; coin and bank notes, how levied on.
 3. Execution; goods, in what time sold on.
 4. Execution; how advertised.
 5. Execution; adjournment of sale, time.
 6. Execution; adjournment of sale, 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. Notice of second attachment to be given to the first attaching officer.
 25. Warrant against turnpike corporation for damages.
 26. Sale of the franchise thereon may be adjourned.
 27. In what county sale may be had.
 28. In case of a prior attachment, how the lien by seizure on execution may be preserved.
 29. Proceedings when such attachment is removed.
 30. Executions to be set off against each other.
 31. Cases in which it may be done.
 32. Proceeds of, how applied.
 33. Sale without tender.
 34. Executions and warrants of distress against towns, how issued and enforced.
 35. How levied on real estate.
 36. Notice and incidents of the sale.
 37. Remedy of owner of property sold.
 38. Payment before levy, provision for and effect of.
 39. Protection from subsequent claims.
 40. Proportion to be paid, how ascertained.
 41. Rights and remedies of the purchaser of a right to a conveyance of land.

Execution; what
goods may be
sold on.

R. S., c. 117, § 2.

Execution;
coin and bank
notes, how
levied on.

R. S., c. 117, § 3.

SECT. 1. All chattels real and personal liable at common law to attachment and not exempted therefrom by statute are liable to be taken and sold on execution, as prescribed in this chapter.

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 he will accept them; otherwise they may be sold like other chattels.

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

CHAP. 84.

Execution ;
goods, in what
time sold on.

R. S., c. 117, § 4.

SECT. 4. The officer shall post up public notice of the time and place of sale at least forty-eight hours before the time of sale in two or more public places in the town or place of sale.

Execution ;
how advertised.

R. S., c. 117, § 5.

SECT. 5. If at the time appointed for the sale the officer is prevented by sickness or other casualty from attending at the place appointed, or is present and deems it for the advantage of all concerned to postpone the sale, he may postpone it not exceeding six days next after the day appointed; and so from time to time for like good cause giving notice of every adjournment in like manner as required in the preceding section.

Execution ;
adjournment of
sale, time.

R. S., c. 117, § 6.

SECT. 6. For good reason and for the purpose of obtaining a better price for the goods to be sold he may, if he should deem it for the benefit of the debtor, adjourn the auction to another place in the same town.

Execution ;
adjournment of
sale, place.

R. S., c. 117, § 7.

SECT. 7. Where there is reasonable doubt as to the ownership of goods, or their liability to be taken in execution, the officer may require sufficient security to indemnify himself.

Indemnity ;
officer may
require.

R. S., c. 117, § 8.

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

Re-sale, if
purchaser
refuses to take,
&c.

R. S., c. 117, § 9.

SECT. 9. He shall in his return on the execution particularly describe each article or lot of the goods sold, and the price at which it was sold; and if he is guilty of any fraud in the sale or return, he shall be liable to the debtor in an action on the case to pay him five times the sum, of which he is defrauded.

Return of sale
on execution,
how made, &c.R. S., c. 117,
§ 10.

SECT. 10. The money arising from the sale of any property on execution shall be applied to pay the charges and satisfy the execution; and the residue, if any shall be returned

Proceeds of
sale, how
disposed of.

CHAP. 84.

R. S., c. 117,
§ 11.

Rents of buildings, how sale is to be made of,

R. S., c. 117,
§ 12.

Shares in incorporated companies, how sold.

R. S., c. 117,
§ 13, 29.

Notice of seizure of, how given, if not attached.

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

If attached, mode of procedure.

R. S., c. 117,
§ 16.

Officers of the corporations to certify the number of shares, &c.

R. S., c. 117,
§ 17.

Shares sold to be transferred, &c.

4 to the debtor on demand, or otherwise legally applied in the
5 manner provided in section twenty-three.

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

SECT. 12. Any share or interest of any stockholder or proprietor in any incorporated company may be taken on execution and sold in the following manner; and in no other manner notwithstanding anything in the charter of such company to the contrary.

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

SECT. 14. The officer of the company having the care of the records or account of shares or interest of the stockholders shall upon the exhibition to him of the execution give such officer holding it a certificate of the number of shares held by the judgment debtor, or of the amount of his interest under the penalty prescribed for refusal to give such certificate to an officer exhibiting a writ of attachment as provided in chapter eighty-one section forty-two.

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

SECT. 16. If the shares or interest of the judgment debtor 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.

CHAP. 84.

R. S., c. 117,
§ 18.

Notice of sale,
how given.

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
5 of 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; and
10 shall publish an advertisement of the same import and nam-
11 ing the judgment debtor three weeks successively before the
12 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 power
3 to receive toll, the franchise of such corporation may be sold
4 on execution at public auction, the officer giving notice of the
5 time and place of sale by posting a notification in any town,
6 in which the treasurer clerk or any officer of the company,
7 if there are any officers, if not where any stockholder re-
8 sides, thirty days at least before the day of sale, and by
9 causing an advertisement naming the creditor therein to be
10 inserted three weeks successively in some public newspaper
11 printed in any county where either of said officers, or if with-
12 out officers any stockholder resides, four days before the day
13 of sale; and if there be no newspaper printed in any such
14 county, then in the state paper.

R. S., c. 117,
§ 20.

SECT. 19. In the sale of such franchise whoever will pay ^{Mode of sale.}
2 and satisfy such execution and all fees and incidental expen-
3 ses in consideration of being entitled to receive to his own
4 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
7 time.

R. S., c. 117,
§ 21.

SECT. 20. Immediately after such sale the officer shall de-
2 liver 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.

Possession, what
and how given
to purchaser.

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 <sup>Rights and
duties of the
purchaser</sup>

CHAP. 84.

R. S., c. 117,
§ 23.

**Rights of
redemption by
the corporation.**

R. S., c. 117,
§ 24.

**Proceeds of sales
applied in order
of attachment.**

R. S., c. 117,
§ 25.

**Notice of second
attachment to
be given to the
first attaching
officer.**

R. S., c. 117,
§ 26.

**Warrant against
turnpike
corporation for
damages.**

R. S., c. 117,
§ 30.

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
9 may recover of said corporation any moneys paid or ex-
10 penses incurred in consequence of his said liability and
11 without any fault or negligence on his part.

SECT. 22. The corporation may at any time within three
2 months after the day of sale redeem said franchise by pay-
3 ing 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.

SECT. 23. If goods or 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 offi-
6 cer who made the sale, the proceeds of the sale shall be
7 applied to the discharge of the several judgments in the or-
8 der, in which the writs of attachments or execution were
9 served; and the residue, if any, shall be paid over to the
10 debtor.

SECT. 24. If an attachment or seizure is made on execu-
2 tion of a share of any incorporated company, or of any
3 other property which has been attached without taking and
4 keeping exclusive possession thereof, and if the same prop-
5 erty is subsequently attached or taken on execution by any
6 other officer, he shall give notice thereof to the officer, who
7 makes the sale under the first attachment or seizure; and if
8 the latter without such notice pays to the debtor the balance
9 of the proceeds of the sale, he shall not be liable therefor to
10 the person claiming under such subsequent attachment or
11 seizure.

SECT. 25. Whenever any damages are assessed in favor
2 of any person by the county commissioners or by a com-
3 mittee or a verdict of a jury for any injury sustained by
4 him by any acts of any of the corporations aforesaid au-
5 thorized to demand and receive toll, and the damages shall
6 not be paid in thirty days after order or the acceptance of
7 such verdict or of the report of the committee, such person
8 may have a warrant of distress against any such corpora-
9 tion for the damages assessed and interest and costs.

SECT. 26. The officer holding such warrant shall have the same right to adjourn the vendue, as in case of sale of goods on execution.

CHAP. 84.

Sale of the franchise, &c., may be adjourned.
R. S., c. 117, § 31.

In what county sale may be had.

SECT. 27. All proceedings respecting the attachment and sale on execution of the franchise of any corporation entitled to demand and receive toll, and sales on warrant of distress as mentioned in section twenty-five, may be had in any county, in which the creditor, the president, clerk, treasurer, or any director of said corporation, if there is any such officer, if not, where any stockholder resides.

R. S., c. 117,
§ 32.

SECT. 28. When any estate real or personal is seized on execution, and further service of the execution is suspended by reason of any prior attachment thereof, such estate shall be bound by seizure until it is set off or sold in whole or in part under the prior attachment, or until it is dissolved; provided the officer making such seizure of real estate within five days thereafter files in the office of the register of deeds in the county or district, in which the real estate is situated, a copy of his return of the seizure with the names of the parties, the court at which judgment was recovered, and the date and amount of the execution; and the register shall file and enter the same of record, as in case of attachment of real estate on writs; and like fees shall be allowed to the officer and register therefor.

In case of a prior attachment, how the lien by seizure on execution may be preserved.

R. S., c. 117,
§ 33.

§ 32, c. 31, § 11.

SECT. 29. If the estate is set off or sold in part under the prior attachment, or if it is dissolved, the estate or such part thereof as remains undisposed of shall continue bound for thirty days thereafter by such seizure on execution; and the service of the execution may be completed as if the estate had been first seized thereon at any time within thirty days although the return day of the execution has passed.

Proceedings when such attachment is removed.

R. S., c. 117, § 34.

SECT. 30. When an officer has in his hands executions, wherein the creditor in one is debtor in the other, he shall cause one execution to satisfy the other so far as it will extend; if one of such executions is in the hands of such officer, and the creditor in the other tenders his execution to him and requests him so to do, he shall set off one against the other as aforesaid; *provided*, the creditor in one execution is in the same capacity and trust as the debtor in the other.

Executions to be set off against each other.

R. S., c. 117, § 1.

SECT. 31. Executions shall not thus be set off against each other, when the sum due on one of them has been lawfully and in good faith assigned to another person, before the creditor in the other execution became entitled to the sum due

Cases in which it may be done.

CHAP. 84.

R. S., c. 117,
§ 35, 36, 37.

Proceeds of,
how applied.

R. S., c. 117,
§ 39.

Sale without
tender.

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

Executions and
warrants of
distress against
towns, how
issued and
enforced.

R. S., c. 117,
§ 42.

How levied on
real estate.

R. S., c. 117,
§ 43.

Notice and
incidents of the
sale.

5 thereon; nor when there are several creditors or debtors in
6 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.

SECT. 32. The officer shall apply the proceeds of the sale
2 of property mortgaged or pledged after deducting his fees
3 and charges of sale to the payment of the sum paid or ten-
4 dered to the mortgagee pledgee or holder and the interest
5 thereon from the time of such payment; and the residue of
6 such proceeds shall be applied to the satisfaction of the
7 plaintiff's judgment in manner by law provided.

SECT. 33. Such plaintiff may have the same seized and
2 sold on the execution, as in other cases, subject to the rights
3 and interests of such mortgagee pledgee or holder without
4 paying or tendering payment of the debt due to the mortga-
5 gee pledgee or holder.

SECT. 34. All executions or warrants of distress against
2 a 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
6 of the goods and chattels of the inhabitants in the manner
7 provided by law.

SECT. 35. 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 much
4 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 be
6 necessary to satisfy said precepts and expenses of sale.

SECT. 36. He shall advertise in the state paper, and in
2 one of the newspapers printed in the county, where the
3 lands lie, if any, three weeks successively, the names of
4 such proprietors, as are known to him, of the lands which he
5 proposes to sell with the amount of the execution or war-
6 rant 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 com-
10 plete the sale he may adjourn it from day to day not exceed-
11 ing three days. He shall give a deed to the purchaser of
12 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 re-
14 deem it at any time within one year from the time of the sale

15 on paying the sum for which it was sold, and the necessary
16 charges and interest thereon.

CHAP. 84.

R. S., c. 117,
§ 44.Remedy of
owner of
property sold.

SECT. 37. The owner of any real or personal estate so sold,
2 and any inhabitant who voluntarily pays his due pro-
3 portion or who is compelled to satisfy such warrant in whole
4 or in part, shall be entitled to recover against the town in
5 an action of assumpsit the full value thereof with interest at
6 the rate of twelve per cent. yearly with costs of suit; and
7 may prove and recover the real value thereof, whatever was
8 the price at which it was sold.

R. S., c. 117,
§ 45.
R. S., c. 99, § 22.

SECT. 38. 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
7 or proprietor, or on notice given them by the county commis-
8 sioners.

Payment before
levy, provision
for and effect of.R. S., c. 117,
§ 46.

SECT. 39. 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 dis-
4 charged both as to his person and his property from such
5 warrant or execution.

Protection from
subsequent
claims.R. S., c. 117,
§ 47.

SECT. 40. 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.

Proportion to be
paid, how
ascertained.R. S., c. 117,
§ 48.

SECT. 41. The certificate of the major part of the assessors
2 of the town shall be conclusive evidence of any person's pro-
3 portion thereof; and being delivered to the officer he shall
4 on payment thereof return the warrant or execution satisfied
5 for that sum with the name of the person who paid it.

R. S., c. 117,
§ 49.Rights and
remedies of the
purchaser of a
right to a
conveyance of
land.R. S., c. 117,
§ 49.

CHAP. 85.

CHAPTER 85.

BAIL IN CIVIL ACTIONS.

- 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 obligors shall be holden.
 4. Surrender of principal before entry; how to be done and effect thereof.
 5. Names of bail to be entered on execution.
 6. Officer to notify bail; his fees to be paid.
 7. Surrender of principal in court.
 8. In case of avoidance, officer's duty, and liability of bail.
 9. Scire facias against bail.
 10. Pleadings and defense by bail.
 11. Surrender of principal on scire facias.
 12. Proceedings when bail is taken in a justice action.
 13. Surrender and commitment of principal in such case.
 14. Officers' fees and duty.
 15. Surrender in such case after judgment.
 16. Surrender before judgment.
 17. Remedy of bail against principal.

Bail shall be by bond to the sheriff or other officer, &c.

R. S., c. 114,
§ 95, 98.

What bail he may require.

R. S., c. 114,
§ 96.

In what cases the obligors shall be holden.

R. S., c. 114,
§ 97.

Surrender of principal before entry, &c.

R. S., c. 114,
§ 99.

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 his 3 deputy, otherwise to the officer making the arrest, with con- 4 dition that the defendant shall appear and answer to the suit 5 and that he will abide the final judgment thereon and not 6 avoid. It shall be returned with the writ, and the clerk 7 shall note on the writ that a bail bond is so filed.

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

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 4 county.

SECT. 4. Any bail may before the action is entered ex- 2 erate himself from all liability by surrendering his principal 3 to the common jail in the county, where the arrest was 4 made, or in the county, where the writ is returnable, and 5 within fifteen days thereafter leaving with the jailer an at- 6 tested copy of the writ or process, whereby the arrest was 7 made, and of the return indorsed 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 as if the officer who made the 11 arrest had committed him.

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

Names of bail to
be entered on
execution.

R. S., c. 118, § 2.

SECT. 6. 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 the jailer, shall notify the bail per-
4 sonally or by leaving a notice in writing by him signed at
5 his usual place of abode, if in the officer's county, certifying
6 that he cannot find the principal debtor, or 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 dwell-
10 ing house of the bail, and shall minute in said notice the
11 amount of the fees, which the bail shall pay in twenty days,
12 unless, one day at least before the execution is returnable,
13 the bail shall produce and deliver to the officer the princi-
14 pal debtor.

R. S., c. 118, § 3.

SECT. 7. 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 suretship.

Surrender of
principal in
court.

R. S., c. 118, § 4.

SECT. 8. 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
9 facias or by other sufficient defense.

In case of
avoidance,
officer's duty,
and liability of
bail.

R. S., c. 118, § 5.

SECT. 9. When the principal so avoids, and his goods and
2 chattels or lands cannot be found to satisfy the execution,
3 the original creditor shall have a writ of scire facias in his
4 own name from the same court against the bail in vacation
5 or in term time to be sued out within one year from the
6 time, when judgment was rendered against the principal, and
7 need not declare on the bail bond, but may merely allege
8 that the defendants became bail in the original action.

Scire facias
against bail.

R. S., c. 118,
§ 6, 7, 8.

CHAP. 85.*Pleadings and defense by bail.**R. S., c. 118, § 9.**Surrender of principal on scire facias.**R. S., c. 118, § 10, 11, 12.**Proceedings when bail is taken in a justice action.**R. S., c. 118, § 13.**Surrender and commitment of principal in such case.**R. S., c. 118, § 14.**Officers' fees and duty.**R. S., c. 118, § 15.**Surrender in such case after judgment.*

SECT. 10. The bail may plead jointly or severally, that they never became bail as alleged in the writ, and under that plea may avail themselves of every defense, which would avail them in an action of debt on the bond upon the plea, that it is not their bond; or may shew any special matter of discharge filing a brief statement thereof as by law provided.

SECT. 11. The bail may surrender the principal in court before final judgment on the scire facias, and deliver him to the order of court, and on paying all the costs on the scire facias they shall be discharged, and the principal shall be committed to the county jail there to remain for the space of fifteen days; and if the creditor does not within that time take him in execution, the sheriff shall discharge him on payment of the legal prison fees.

SECT. 12. When bail is taken on mesne process in an action triable before a justice of the peace, and there is a return on the execution issued on the judgment in such suit, that the principal is not found, the justice may issue a scire facias thereon against the bail to be served seven days before the day of trial; and if no sufficient cause is shown to the contrary, he may render judgment for the debt and costs recovered with interest thereon from the time judgment was rendered against the principal, and issue execution accordingly, notwithstanding the debt and costs on the original judgment, exceed the sum of twenty dollars.

SECT. 13. If the bail at any time before final judgment in the original suit on scire facias brings the principal before the justice, and procures the attendance of an officer to receive him, the justice shall make a record of the surrender, and shall order him into the custody of such officer to be committed to jail to be proceeded with as mentioned in the preceding sections; and on payment of costs arising on the scire facias the bail shall be fully discharged.

SECT. 14. Such officer shall attend before such justice for such purpose aforesaid, when so requested; and shall be allowed therefor the same fees as for arresting and committing a defendant on mesne process; and for neglect of official duty in the above case he shall be answerable for all damages to the party injured thereby.

SECT. 15. When the principal is surrendered to such justice after final judgment in the original action, the bail shall deliver to the officer a copy attested by the justice of the 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.

CHAP. 86.

R. S., c. 118,
§ 16.

SECT. 16. If the principal is surrendered before final judgment in the original suit, the bail shall deliver to the officer a copy of the original writ with the return indorsed thereon attested by the justice, and the officer shall deliver the same copy to the jailer; and this shall be a sufficient warrant to the officer and jailer as mentioned in the preceding section.

Surrender before judgment.

R. S., c. 118,
§ 17.

SECT. 17. Bail may have their remedy against their principal by an action on the case for all damages sustained by them by reason of their suretiship.

Remedy of bail against principal.
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 a 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.

CHAP. 86.

- Sect. 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, and stockholder of a corporation.
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 the 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.
- 50, 51, 52, 53. Proceedings, if trustee discloses property mortgaged to him.
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 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,
2 replevin, actions on the case for malicious prosecution, slander
3 by writing or speaking, and those for assault and battery,
4 may be commenced by trustee process in the supreme judicial court; or when the amount demanded in damages is not
6 less than five dollars nor more than twenty dollars before a
7 municipal or police court or a justice of the peace.

CHAP. 86.

In what actions
trustee process
may be used.

R. S., c. 119, § 1.

SECT. 2. The writ shall be in the form established by law
2 authorizing an attachment of goods and estate of the principal defendant in his own hands and in the hands of the
4 trustees.

Form of the
writ.

R. S., c. 119, § 2.

SECT. 3. The officer serving the writ shall attach the goods
2 and estate of the principal, and read the writ to him or leave
3 a copy of it at his last and usual place of abode; which shall
4 be a sufficient service on the principal, whether any trustee
5 is holden or not.

Mode of service.

R. S., c. 119, § 3.

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

Effect of service
on the trustee.

R. S., c. 119, § 4.

SECT. 5. If all the trustees live in the same county, the
2 action shall there be brought, and if they reside in different
3 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.

In what county
the action shall
be commenced.

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.

Insertion of
additional names
of trustees.

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, notice shall be given
3 as provided in the eighteenth section of chapter eighty-one;
4 or proceedings may be had as provided in section three of
5 chapter eighty-two, unless in the mean time he shall come
6 into the state before the sitting of the court; and when he
7 does not appear in his own person or by attorney, any one

Notice to
principal, if
absent from the
state, &c.

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R. S., c. 119, § 7.

What corporations may be summoned as trustees.

R. S., c. 119, § 8.

Trustee, about to leave the state, may disclose before a justice.

R. S., c. 119, § 9.

Course of proceeding in such case.

R. S., c. 119, § 10.

Any trustee may so disclose, by consent.
R. S., c. 119, § 11.

An inhabitant of another state may be adjudged trustee.

R. S., c. 119, § 12.

Costs, if the trustee be discharged, tho' first term, &c.

R. S., c. 119, § 16, 17.

Disclosure to be sworn to.

R. S., c. 119, § 19.

Lien for costs on specific articles in his hands.

8 or more of the trustees having goods effects or credits in their hands and having been adjudged trustees may appear 10 in his behalf, and in his name plead and defend the cause.

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

SECT. 9. When any person summoned as trustee is about to depart from the state, or go on a voyage and not return before the term of the court where he is summoned to appear, he may apply to a justice of the peace and quorum of the county, where he resides, for a notice to the plaintiff in the suit to appear before said justice at a place and time appointed for taking his disclosure.

SECT. 10. On service made and returned according to the order of the justice, the examination and disclosure shall be taken and sworn to before the justice and being certified and returned to court, the same proceedings may be had thereon as if it had been in court.

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

SECT. 12. Any person on whom a trustee process is served shall be liable to be adjudged trustee by the court, though he was not then and never had been an inhabitant of this state; and the writ may be made returnable in the county, in which either the plaintiff or principal defendant resides.

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

SECT. 14. The disclosure when completed and subscribed by the trustee, shall be sworn to by him in open court or before some justice of the peace.

SECT. 15. Where any person is adjudged trustee for specific articles in his hands, he shall have a lien thereon for his costs;

3 and the officer, who disposes thereof on execution, shall pay
 4 the trustee the amount due him for costs, and deduct the same
 5 from the amount of sale and account to the creditor for the
 6 balance; the amount of such fees shall be indorsed on the
 7 execution by the clerk, and shall be evidence of the lien.

CHAP. 86.R. S., c. 119,
§ 18.

SECT. 16. If all the persons summoned as trustees are dis-
 2 charged, or the suit against them is discontinued, the plaint-
 3 iff shall not proceed against the principal defendant, unless
 4 there has been sufficient personal service of the original writ
 5 upon him; but he may assume the defense of the suit.

Proceedings
against the
principal, &c.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
 3 which the writ is returnable, the court shall in case of his
 4 discharge allow him in addition to his legal fee a reasonable
 5 compensation for his time and expenses in appearing and
 6 defending himself.

Additional
compensation,
if trustee dwells
in another
county.R. S., c. 119,
§ 21.

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

Liability of
trustee for not
appearing at the
first term.R. S., c. 119,
§ 22.

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

Joint liability for
costs if several
fail to appear.

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; and if the person
 4 summoned as trustee is out of the state, at the time the writ
 5 is served on him, and appears at the first term of the court
 6 after his return, he shall be allowed for his costs and charges
 7 as if he had appeared at the term, when the action was en-
 8 tered.

Exception in
favor of trustees
resident out of
the county, &c.R. S., c. 119,
§ 24.

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

If the action
fails, costs for
defendant and
trustee.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 cred-
 3 its of the principal in his hands, when the writ was served,

No costs to
trustee on dis-
continuance,
unless he appear.

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R. S., c. 119,
§ 26.

Trustee living
out of the
county may
appear by
attorney.

R. S., c. 119,
§ 27.

Proceedings in
such case.
R. S., c. 119, § 28.

If plaintiff thinks
proper to
examine such
supposed trustee,
&c.

R. S., c. 119,
§ 29.

Disclosure, how
sworn to.

R. S., c. 119,
§ 30.

Trustee not
appearing, to be
defaulted.
R. S., c. 119,
§ 31.

Trustee may
submit a state-
ment of facts to
the court.

R. S., c. 119,
§ 32.

Plaintiff may
prove other
facts, &c.

R. S., c. 119,
§ 33.
1842, c. 31, § 15.

Such proof may
be submitted to
the court or
a jury.

R. S., c. 119,
§ 34.

Testimony to be
in writing.
R. S., c. 119,
§ 40.

4 and submit himself to examination on oath, the court shall
5 not award costs in his favor, though the suit is discontinued.

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
4 suit or in a suit on scire facias; but he may appear by attor-
5 ney and declare, whether he had any goods or effects of the
6 principal in his hands, when the writ was served; and there-
7 upon offer to submit himself to examination on oath.

SECT. 24. If the plaintiff proceeds no further, the declar-
2 ation shall be considered as true.

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.

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,
4 or a justice of the peace; and being filed in court shall have
5 the same effect as if sworn to in open court.

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

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 him-
6 self thereupon to a further examination on oath; and such
7 declaration and further examination, if any, shall be sworn
8 to as before provided.

SECT. 29. The answers and statements sworn to by any
2 person summoned as a trustee shall be considered as true in
3 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 or denied by the supposed trustee,
6 which may be material in deciding that question.

SECT. 30. Any question of fact arising upon such additional
2 allegations may by consent be tried and determined by the
3 court, or may be submitted to a jury in such manner, as the
4 court directs.

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.

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

SECT. 33. Upon the trial between the attaching creditor and the person claiming as before mentioned the principal defendant may be examined as a witness for either party, if there is no other objection to his competency except his being a party to the original suit.

SECT. 34. When the plaintiff recovers judgment against the principal, and any person is summoned as trustee, who has not appeared and discharged himself, and against whom the suit has not been discontinued, the court shall award judgment and execution against the goods effects and credits in his hands as well as against the principal in the usual form.

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

SECT. 36. Any debt or legacy due from an executor or administrator and any goods effects and credits in his hands as such may be attached by trustee process. The amount, which any stockholder of a corporation may be found liable to pay to a judgment creditor of such corporation may be attached by any creditor of such judgment creditor by service in the usual manner of trustee process upon such stockholder at any time after the commencement of the action against him, and before the rendition of judgment therein.

SECT. 37. If any person summoned as a trustee in his own right dies, before the judgment recovered by the plaintiff is

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Proceedings, if trustee disclose an assignment of the principal's claim, &c.

R. S., c. 119,
§ 35, 36, 37, 38.

Principal defendant may be a witness.

R. S., c. 119,
§ 39.

Form of judgment against principal and trustee.

R. S., c. 119,
§ 41.

Trustee may appear by consent, &c.

R. S., c. 119,
§ 42.

Executor or administrator liable as trustee, &c.

R. S., c. 119, § 43.
1850, c. 259.

If a person dies, after being trustee, &c.

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R. S., c. 119,
§ 44.

If trustee dies
before judgment,
his administrator
may be cited.

R. S., c. 119,
§ 45.

If administrator
do not appear,
judgment may
be rendered.

R. S., c. 118,
§ 46.

If he does not
pay, scire facias
to issue.

R. S., c. 119,
§ 47.

Proceedings if
trustee dies
within 30 days
after judgment
is rendered.

R. S., c. 119,
§ 48.

Manner of
issuing execu-
tion if adminis-
trator is
adjudged trustee.

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 as if the
6 writ had been originally served on them.

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 as is provided in the
4 case of the death of a defendant in a common action; and
5 the further proceedings shall then be conducted as if the
6 executor or administrator had been originally summoned as
7 a trustee; except that the examination of the deceased, if
8 any had been taken and filed, shall have the same effect as
9 if he were living.

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, as if the executor or administrator had
10 been himself adjudged trustee.

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, as if the
4 judgment in the first suit had been against the executor or
5 administrator himself as trustee; but if such executor or
6 administrator is discharged, he may recover costs or not at
7 the discretion of the court.

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

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
4 a suit originally commenced against him as a trustee or
5 against the deceased, and whether in the original suit or on

6 a writ of scire facias, the execution shall not be served on
 7 his own goods or estate or on his person; but he shall be
 8 liable for the amount in his hands in like manner and to the
 9 same extent only, as he would have been to the principal de-
 10 fendant, 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 at-
 4 tachment 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
 2 bound to deliver to the principal defendant any specific
 3 articles, he shall deliver them or so much thereof as may be
 4 necessary to the officer holding the execution; and they
 5 shall be sold by the officer, and the proceeds applied and
 6 accounted for as if they had been taken on execution in coin-
 7 mon form.

Specific articles
in trustee's
hands to be de-
livered to the
officer.

R. S., c. 119,
§ 51.

SECT. 45. If the trustee neglects or refuses to deliver
 2 them or sufficient to satisfy the execution, the judgment
 3 creditor may have his remedy on a scire facias, as provided
 4 in sections from sixty-seven to seventy-two inclusive of this
 5 chapter; and the debtor his remedy for an overplus belong-
 6 ing to him as at common law.

R. S., c. 119,
§ 52.

SECT. 46. When by the terms of the contract between the
 2 trustee and the principal debtor any mode of ascertaining
 3 the value of the property to be delivered to the officer is
 4 pointed out, the officer shall on the application of the trustee
 5 notify the principal debtor previously to the delivery, that
 6 the value may be thus ascertained, as far as it may affect the
 7 performance of the contract; and in other cases the value
 8 of the property as between the principal and the trustee
 9 shall be estimated and ascertained by the appraisal of three
 10 disinterested men chosen, one by the trustee, one by the offi-
 11 cer, and one by the principal if he see cause; and if he neg-
 12 lects or refuses by the officer; and they shall all be duly
 13 sworn to appraise the same, and the officer justice and
 14 appraisers shall certify their respective doings on the exe-
 15 cution.

R. S., c. 119,
§ 53.

Mode of
settling the
value, as
between the
principal and
trustee.

SECT. 47. When a part of such goods and articles is taken
 2 in execution as aforesaid, the trustee may deliver the resi-

If part only is
taken, &c.

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R. S., c. 119,
§ 54.

Officer to restore
surplus proceeds
of sale.

R. S., c. 119,
§ 55.

Trustee process,
after commit-
ment of the
debtor. Effect
thereof.

R. S., c. 119,
§ 56, 57.

Proceedings, if
trustee discloses
property
mortgaged to
him.

R. S., c. 119,
§ 58.

On return of
scire facias,
amount of excess
determined by
the court or
jury.

R. S., c. 119,
§ 59.

3 due to the principal or tender it to him within thirty days
4 after satisfaction of the execution in the same manner, as he
5 might have delivered the whole.

SECT. 48. Any surplus money remaining in the hands of
2 the officer after satisfying the execution and fees shall be
3 paid to the principal, if within his precinct; and if not, to
4 the trustee.

SECT. 49. When a judgment creditor has caused the
2 debtor to be committed in execution, and afterwards dis-
3 covers goods effects or credits of the debtor not attachable
4 by the ordinary process of law, he may have the benefit of
5 the trustee process provided in this chapter like any other
6 creditor, if within seven days after the service of the pro-
7 cess he discharges the body of the debtor from prison by a
8 written direction to the jailer stating the occasion and rea-
9 son of the discharge; but such discharge shall not annul or
10 affect the judgment.

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 substituting 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 redemp-
12 tion exists, the person so summoned shall deliver over the
13 property to the officer serving the process to be held and
14 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.

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 ex-
10 ceeding the above sum if any; which amount of excess shall on

11 the trial of the scire facias be determined by the court or
12 jury.

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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 or 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.

on disclosure,
trustee shall
deliver over
property to the
officer, &c.R. S., c. 119,
§ 60.

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

Officer having
sold on execu-
tion any per-
sonal property,
shall pay
plaintiff, &c.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.

Trustee not
prevented from
selling the
property
mortgaged.R. S., c. 119.
§ 62.

SECT. 55. No person shall be adjudged a trustee,
2 *First*—By reason of any negotiable bill draft note or other
3 security drawn accepted made or indorsed by him, except in
4 the cases provided in the sixty-third section of this chapter.
5 *Second*—By reason of any money or other thing received
6 or collected by him as an officer by force of any legal pro-
7 cess in favor of the principal defendant in the trustee pro-
8 cess, although the same has been demanded of him previously
9 by the defendant.

Cases in which a
person shall not
be adjudged
trustee.

10 *Third*—By reason of any money in his hands as a public
10 ix

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- 11 officer, and for which he is accountable to the principal defendant;
- 13 *Fourth*—By reason of any money or other thing due from him to the principal defendant, unless it is at the time of the service of the writ upon him due absolutely and not on any contingency;
- 17 *Fifth*—By reason of any debt due from him on a judgment, so long as he is liable to an execution thereon;
- 19 *Sixth*—By reason of any amount due from him to the principal defendant as wages for his personal labor or that of his wife or minor children for a time not exceeding one month next preceding the service of the process;
- 23 *Seventh*—Where service was made on him by leaving a copy, and before actual notice of such service or reasonable ground of belief, that it has been made, he has paid the debt due to the principal defendant or given his negotiable security therefor.

R. S., c. 119,
§ 63.
1854, c. 85.

Effect, if defendant in a suit is summoned as trustee of the plaintiff.

R. S., c. 119,
§ 13.

Costs in such cases.

R. S., c. 119,
§ 14, 15.

Proceedings, if defendant in an action pending is summoned as trustee of the plaintiff.

R. S., c. 119,
§ 64.

If first suit is not continued and judgment rendered, &c.

R. S., c. 119,
§ 65.

SECT. 56. When an action is brought for the recovery of a demand, and the defendant is summoned as a trustee of the plaintiff, the action shall be continued to await the disclosure of the trustee, unless the court otherwise orders, and if the defendant is adjudged trustee, the disclosure and the proceedings thereon may be given in evidence on the trial of the action between the trustee and his creditor. (a)

SECT. 57. If the amount disclosed is as large as the sum recovered in the action, the trustee shall be liable to no costs after the service of the trustee process upon him; otherwise he shall be liable to legal costs.

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

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

(a) The provisions of sections fifty-six and fifty-seven do not appear to be free from inconsistency with those of sections fifty-eight fifty-nine and sixty. It may be worthy of consideration, whether the last named sections would not be sufficient, if the two former were omitted.

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

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If before final judgment is rendered, &c.

R. S., c. 119,
§ 66.

SECT. 61. Any money or other thing due to the principal defendant, may be attached before it has become payable, if it is due absolutely as before mentioned; but the trustee shall not be compelled to pay or deliver it before the time appointed therefor by the contract.

Money or goods
may be attached
by trustee
process, &c.
R. S., c. 119,
§ 67.

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

Proceedings, if
trustee does not
pay costs, when
liable.R. S., c. 119,
§ 68.

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

Goods fraudu-
lently conveyed,
may be held by
trustee process.R. S., c. 119,
§ 69.

SECT. 64. Every trustee shall be allowed to retain or deduct out of the goods effects and credits in his hands all his demands against the principal defendant, of which he could have availed himself, if he had not been summoned as trustee, whether by way of set-off on trial or by a set-off of judgments or executions between himself and the principal defendant, except unliquidated damages for wrongs and injuries; and he shall be liable for the balance only, after their mutual demands are adjusted.

Trustee may
retain in his
hands pay for
any demand
justly due him,
&c.R. S., c. 119,
§ 70, 71.

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

Form of
judgment
against a
trustee.R. S., c. 119,
§ 72.

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

Discharge of
trustee no bar to
the claim of
principal.

R. S., c. 119, § 73.

CHAP. 86.

Scire facias against trustee.

R. S., c. 119,
§ 74.

Judgment on
scire facias.

R. S., c. 119,
§ 75.

All defendants in
a writ of scire
facias, &c.

R. S., c. 119,
§ 76.

If any trustee
defaulted on the
scire facias was
examined, &c.

R. S., c. 119,
§ 77.

Liability for
costs, if
discharged on
the scire facias,
&c.

R. S., c. 119,
§ 78.

If examined in
the original suit,
he may be
examined again
on scire facias.

R. S., c. 119,
§ 79.

SECT. 67. When any person adjudged a trustee in the original action does not on demand of the officer holding the execution pay over and deliver to him the goods effects and credits in his hands, and the execution is returned unsatisfied, the plaintiff may sue out a writ of scire facias against such trustee from the same court, or before the justice that rendered the judgment, to show cause why judgment and execution should not be awarded against him and his own goods and estate for the sum remaining due on the judgment against the principal defendant.

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

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

SECT. 70. If any trustee defaulted on the scire facias was examined in the original suit, judgment shall be rendered on the facts stated in his disclosure, or proved at the trial for such part, if any remains in his hands, of the goods effects and credits, for which he is chargeable as trustee, or so much thereof as is then due and unsatisfied on the judgment against the principal defendant; but if it appears that such person paid and delivered the whole amount thereof on the execution issued on the original judgment, he shall not be liable for any costs on the scire facias.

SECT. 71. If the trustee appears and answers to the scire facias and was not examined in the original suit, he may be examined as he might have been on the original suit; and if on such examination he appears not chargeable, the court shall render judgment against him for costs only, if resident in the county where the original process was returnable; but if not resident in such county, he shall not be liable to costs, nor shall he recover any costs.

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

SECT. 73. When any person is adjudged a trustee, if the goods effects and credits in his hands, are not demanded of him by virtue of the execution within thirty days next after final judgment, the attachment of them by the original process shall be dissolved; and they shall be liable to another attachment as though the prior attachment had not been made; but in those cases where the debt due from the trustee to the principal defendant is payable at a future day, or specific property is in the hands of the trustee, which he is bound to deliver at a future day, the attachment shall continue until the expiration of thirty days after such debt is payable in money, or the property aforesaid is demanded of the trustee.

CHAP. 86.

Goods and
effects liable to
another
attachment, &c.R. S., c. 119,
§ 80.

SECT. 74. If there is no second attachment, the principal defendant in the suit may recover the goods effects and credits, if not demanded as aforesaid within thirty days as if they had not been attached.

If there is no
second attach-
ment, principal
may recover
them.
R. S., c. 119,
§ 81.

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

Demand, how
made, if trustee
is out of the
state, &c.R. S., c. 119,
§ 82.
1845, c. 136.

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

Effect of
judgment
against trustee.R. S., c. 119,
§ 83, 84.

SECT. 77. If any person summoned as a trustee upon his examination willfully and knowingly answers falsely, he shall on due conviction be adjudged guilty of perjury; and shall pay to the plaintiff in the suit so much of the judgment recovered against the principal defendant, as remains unsatisfied

Penalty if
trustee discloses
falsely.R. S., c. 119,
§ 85.

CHAP. 86.

Trustee exempt from costs on scire facias in certain cases.

R. S., c. 119,
§ 86.

In case of exception, the whole case may be re-examined and remanded.

1849, c. 117.

Form and service of trustee process for justice courts.

R. S., c. 119,
§ 87.

In what county to be brought.

R. S., c. 119,
§ 88.

Default, if trustee does not appear.
R. S., c. 119,
§ 89.

Costs, if discharged.
R. S., c. 119,
§ 90.

May retain costs, &c.
R. S., c. 119, § 91.

Costs, on discontinuance.
R. S., c. 117,
§ 92.

Subsequent proceedings. Discharge of trustee, &c.

6 with interest and costs to be recovered in an action on the
7 case.

SECT. 78. If any person summoned as trustee is prevented
2 from appearing in the original suit by absence from the state,
3 or any other reason deemed sufficient by the court, and a
4 default is entered against him, he shall not be liable for any
5 costs on the scire facias; but on his disclosure the court
6 may allow him his reasonable costs and charges to be re-
7 tained or recovered as if he had appeared in the original
8 suit.

SECT. 79. In all cases under the trustee process in the
2 supreme judicial court where exceptions are taken to the rul-
3 ing 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.

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 in
3 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 as a
6 trustee process issued by a judicial court seven days before
7 the return day.

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

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.

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

SECT. 84. If on such disclosure he is adjudged trustee, he
2 may retain the amount of his costs.

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

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

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

CHAP. 87.
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.

Proceedings, if
trustee is
discharged, &c.

R. S., c. 119,
§ 96.

Chapter 87.

ACTIONS BY OR AGAINST EXECUTORS OR ADMINISTRATORS.

- Sect. 1.* Executors and administrators, writs and executions against them how issued.
 2. Executors and administrators, executions for costs against them how issued.
 3. Executions against deceased returned unsatisfied, proceedings.
 4. Administrators de bonis non may prosecute and defend suits.
 5. Executor or administrator ceasing to be such after judgment, proceedings.
 6. Writs of error by or against administrators de bonis non.
 7. When an only party to an action dies, proceedings.
 8. Actions surviving enumerated, may be prosecuted or defended.
 9. Actual damages only recoverable in actions of tort, goods in replevin.
 10. When all plaintiffs or all defendants die, proceedings.
 11. No suit within one year after appointment; exceptions.
 12. No suit after four years from notice of appointment; exceptions.
 13. When action does not accrue within four years, claim to be filed.
 14. Estate liable for such claims, how suits sustained on them.
 15. When such claims not filed only remedy is against heirs and devisees.
 16. Limitation of actions against administrators de bonis non.
 17. Limitation of actions against administrators when no notice by first administrator.
 18. Limitation of actions not applicable to actions for legacies; liability for unfaithful administration on administration bond.

SECT. 1. Writs and executions against executors and ad-
 2 ministrators for costs, for which they are not personally lia-
 3 ble, and for debts due from the deceased, run against his
 4 goods and estate in their hands.

Writs and
executions, how
issued, &c.
R. S., c. 120,
§ 1, 4, 14.

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Executions,
wheu issued
against their
own goods and
estate for costs.

Idem, § 2, 3, 4,
5, 14.

Execution
against the estate
of deceased,
returned
unsatisfied,
proceedings.

Idem, § 6.

Administrator
de bonis non,
may prosecute
and defend, &c.

Idem, § 7.
1852, c. 280, 275.

When an execu-
tor or adminis-
trator ceases to
be such, &c.

Idem, § 8.

Writ of error,
&c.

Idem, § 9.

When an only
party to an
action dies,
proceedings.

Idem, § 10, 11,
12, 13.
1854, c. 98, § 1.

SECT. 2. Executions for costs shall run against the goods and estate and for want thereof against the bodies of executors and administrators in actions commenced by or against them; and in actions commenced by or against the deceased, in which they have appeared, for costs accrued after they assumed the prosecution or defense to be allowed to them in their administration account, unless the judge of probate decides, that the suit was prosecuted or defended without reasonable cause.

SECT. 3. When a proper officer makes his return on an execution issued under the first section, that he can not find personal property of the deceased or other means to satisfy it, a writ of scire facias suggesting waste may be issued against the executor or administrator, and if he does not shew cause to the contrary, execution shall issue against him for the amount of the judgment and interest not exceeding the amount of waste if proved.

SECT. 4. When an executor or administrator ceases to be such, an action pending in his favor or against him may be prosecuted by or against an administrator de bonis non; and if he does not appear after due notice judgment may be rendered, as if the suit had been commenced by or against him for debt and for costs as provided in this chapter.

SECT. 5. When an executor or administrator ceases to be such after judgment against him, a writ of scire facias may be issued against the administrator de bonis non, and after due notice an execution may issue as provided in the preceding section, the costs, for which the executor or first administrator was personally liable, may be enforced against his executor or administrator. (a)

SECT. 6. A writ of error may be maintained by or against an administrator de bonis non, when it would be by or against an executor or first administrator.

SECT. 7. When the only plaintiff or defendant dies while an action that survives is pending or after its commencement and before its entry, his executor or administrator may prosecute or defend as follows: the action, or an appeal if made, may be entered, the death of the party suggested on the record, and the executor or administrator may appear voluntarily; if he does not appear at the second term after such death or after his appointment, he may be cited to

9 appear, and after due notice thereof judgment may be entered
10 against him by nonsuit or default.

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SECT. 8. In addition to those surviving by the common law
2 the following actions survive: replevin, trover, assault and
3 battery, trespass, trespass on the case, and petitions for and
4 actions of review; and these actions may be commenced by
5 or against an executor or administrator or when the de-
6 ceased was a party to them may be prosecuted or defended
7 by them. (a)

Actions which
service enum-
erated, may be
prosecuted or
defended.

SECT. 9. When an action of trespass or trespass on the
2 case is commenced or prosecuted against an executor or
3 administrator the plaintiff can recover only the value of the
4 goods taken or damage actually sustained; and when judg-
5 ment is rendered against an executor or administrator in an
6 action of replevin for a return of goods, those returned shall
7 not be considered assets and such return shall discharge him.

Idem, § 15, 16,
as amended.In trespass,
actual damage
or value only,
recoverable, &c.

SECT. 10. When one of several plaintiffs or defendants in
2 an action surviving dies, his death may be suggested on the
3 record and the action may be further prosecuted or defended
4 by the survivors; and when all the plaintiffs or defendants
5 die the action may be prosecuted or defended by the execu-
6 tor or administrator of the last surviving plaintiff or de-
7 fendant.

Idem, § 17, 18.

When plaintiffs
or defendants
die, in actions
by or against
two or more,
proceedings.

Idem, § 19, 20.

SECT. 11. No suit can be commenced against an executor
2 or administrator within one year after his appointment, ex-
3 cept on a demand not affected by an insolvency of the estate
4 or on a demand by an appeal from a decision of commis-
5 sioners of insolvency.

No suit within
one year after
appointment;
exceptions,

Idem, § 21, 22.

SECT. 12. And none after four years from the time of giv-
2 ing notice of his appointment (b) except as follows. When
3 assets come to his hands after that time, he shall be account-
4 able therefor in the probate court, and an action may be com-
5 menced within four years after the receipt thereof and within
6 one year after the creditor has notice of the receipt of them.

And none after
four years from
time of giving
notice of it;
exceptions.

Idem, § 23, 24.

SECT. 13. And when an action on a covenant or contract
2 does not accrue within said four years, the claimant may file
3 such demand in the probate office within that time, and the
4 judge of probate shall direct, that sufficient assets, if such
5 there be, shall be retained by the executor or administrator,
6 unless the heirs or devisees of the estate give bond with one
7 or more sureties approved by the judge of probate to the
8 executor or administrator to respond the same.

When action
does not accrue
within four
years, claim
filed; proceed-
ings.

Idem, § 25.

(a) 3, Me. 174. 17, Me. 409. (b) 32, Me. 72. 29, Me. 458.

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Estate remains liable to such claims; how suits maintained on them.

Idem, § 26, 27, 28.

If such claim is not filed, only remedy is against heirs or devisees.

Idem, § 30.

Time within which actions can be brought against administrators de bonis non.

Idem, § 32, 33.

Limitation of actions against an administrator de bonis non, &c.

Idem, § 34, 35.

Actions for legacies not affected, &c.

Idem, § 29, 31.

SECT. 14. When a bond is so given, no assets shall be retained, but the estate shall be liable in the hands of heirs or devisees or those claiming under them to answer such demand; and an action may be brought on such bond, or when no bond is given against the executor or administrator, and if anything is found due the claimant shall have judgment therefor and for his costs.

SECT. 15. When such claim has not been filed in the probate office within said four years, the claimant may have remedy against the heirs or devisees of the estate within one year after the same becomes due, and not against the executor or administrator.

SECT. 16. Upon the appointment of an administrator de bonis non the time, within which actions may be brought, is extended as follows: to such portion of the four years as remained unexpired before a vacancy shall be added so much time after the new appointment as will make five years; and every new administrator shall in all cases be liable to actions of creditors for two years after notice given of his appointment, although the whole time may be extended beyond five years.

SECT. 17. When an executor or administrator does not give legal notice of his appointment, actions may be commenced against a new administrator within four years after notice of his appointment, and if he fails to give legal notice of it, he can have no benefit of the limitations contained in this chapter.

SECT. 18. An action for the recovery of a legacy shall not be affected by the provisions of this chapter. When an executor or administrator is guilty of unfaithful administration he shall be liable on his administration bond for all damages occasioned thereby.

Chapter 88.

PARTITION OF REAL ESTATE.

- Sect* 1. Partition may be made by writ at common law.
 2. Partition may be made by petition; what must be stated in it.
 3. Petition may be filed in vacation if all cotenants are named.
 4. Petition may be presented in any county, if all are not named, and notice ordered.
 5. When persons not fully notified may appear; pleadings how made.
 6. Plaintiff or petitioner may reply.
 7. Guardians for infants and insane persons and agents for persons out of the state.
 8. Division of time for occupation of saw mills.

Sect. 9. Respondent having no interest pays costs.

10. Petitioner owning a less share than claimed pays costs.
11. Petitioner dying or conveying, his heirs devisees or grantees admitted.
12. Respondent dying his heirs or devisees may be cited.
13. Commissioners to set off shares together or separately.
14. Commissioners to be sworn and certificate of oath made.
15. Commissioners to give notice of time and place for partition, majority may decide.
16. Commissioners to assign shares so as to include exclusive possessions.
Value of improvements to be considered.
17. Commissioners may assign to one a parcel greater than his share on payment.
18. Court to determine share of expenses to be paid by each.
19. When a share too large or of too much value is set off, a new division.
20. How a new division shall be made.
21. Report of commissioners confirmed, recommitted, or set aside.
22. Judgment conclusive of all rights except as after provided.
23. When an unequal share is left for one out of the state, proceedings.
24. Person not a party claiming in severalty not precluded.
25. Person claiming a share assigned or left not precluded.
26. Person owning to whom no share assigned or left not precluded.
27. Person evicted of his share to have a new partition.
28. Mortgages, attachments and liens remain in force on a share.
29. Lots reserved for public uses to be first set off.

SECT. 1. Persons seized or having a right of entry into real estate in fee simple or for life as tenants in common, joint tenants, or copartners, may be compelled to divide the same by writ of partition at common law. (*a*)

Partition may be made by writ at common law.
R. S., c. 121, § 1.

SECT. 2. Persons so entitled, and those in possession or having a right of entry for a term of years as tenants in common, may present a petition addressed to the supreme judicial court held in the county where such estate is, clearly describing it and stating, whether it is fee simple, for life, or for years, and the proportion claimed by him, the other tenants in common and their places of residence if known, and whether any or all of them are unknown.

May be made by petition. What must be stated in it.

Idem, § 2, 3, 4.

SECT. 3. The petition may be filed in the clerk's office in vacation, if all the cotenants are named in it. A copy thereof attested by the clerk left with each or at his last and usual place of abode twenty days before the session of the court to which it is addressed shall be sufficient service.

When all cotenants are named, petition may be filed, &c.

Idem, § 5.

SECT. 4. When the cotenants are not all named in the petition, it may be presented to the court in that or in any other county returnable in the county, where the estate is, and such notice shall be given to the other cotenants, as the court orders; and in case of noncompliance therewith or other imperfection of notice, the court may order further notice to be given. (*b*)

When not all named, it may be presented in any county, &c.

Idem, § 6, 7, 8.

(a) 12, Me. 142, 320, 398. 17, Me. 423. 21, Me. 47. 16, Me. 388. 35, Me. 107. 31, Me. 486.

(b) 5, Me. 458.

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When persons
not fully notified
may appear.
Pleadings, how
made, by brief
statement.

Idem, § 9, 11, 15.

Plaintiff or
petitioner may
reply, &c.

Idem, § 12, 15.

Guardians for
infants and
insane persons,
and agents for
those out of the
state to be
appointed.

Idem, § 10, 22.

Division of time
for occupation of
saw mills may
be made.

1818, c. 56.

Respondent hav-
ing no interest,
pays costs.
R. S., c. 121, § 13.

When petitioner
owns a less
share than
claimed, he pays
costs, &c.

Idem, § 14, 17.

When a peti-
tioner dies or
conveys, his
heirs devisees
or grantees may
be admitted to
proceed.

Idem, § 16.
1822, c. 31, § 14.

Death of a
respondent, his
heirs or devisees
may be cited in.

1854, c. 97.

SECT. 5. A person interested and not named in the petition, or out of the state, and not so notified as to enable him to appear earlier, may be permitted to appear and defend at any time before final judgment. (a) And any person defendant in an action at law, or respondent in a petition for partition, may jointly with others or separately by brief statement without a plea of the general issue allege any matter tending to shew, that partition ought not to be made as prayed for. (b)

SECT. 6. The plaintiff or petitioner may reply by counter brief statement alleging, that the defendant or respondent has not any interest in the premises or other matter to shew the insufficiency of the defense.

SECT. 7. When an infant or insane person living in the state has no guardian and appears to be interested, the court shall appoint a guardian ad litem for him, and an agent for persons interested, who have been out of the state one year before the petition was presented and have not returned before judgment for partition is to be made.

SECT. 8. Tenants in common of a saw mill may have a division of the time, during which each may occupy according to his interest, as partition is made of an estate, and the court may make all necessary decrees in relation thereto.

SECT. 9. When it appears on trial, that the respondent has no interest in the estate, he shall no further be heard, and the petitioner shall recover of him the costs of the trial.

SECT. 10. When a petitioner is found to own a less share than is claimed in his petition, he shall have partition of such share, but the respondent shall recover costs. When found entitled to have partition of the share claimed he shall recover costs of the respondent. In such cases or on default a judgment, that partition be made, shall be entered.

SECT. 11. The owners may join or sever in their petitions. When they join and one dies or conveys his share, or when a several petitioner dies or conveys his share, the petition by leave of court may be amended by erasing his name and inserting the names of his heirs devisees or grantees, and they may proceed with the process for their respective shares.

SECT. 12. The petition is not abated by the death of a party respondent. His heirs or devisees, or if the estate be for a term of years his executor or administrator, may be cited to appear, and upon service on them, they shall become parties

5 to the proceedings, and the court may order such judgment CHAP. 88.
 6 and with such costs as the law and facts may require.

SECT. 13. After judgment that partition be made the court
 2 shall appoint three or five disinterested persons as commis-
 3 sioners to make partition and set off to each his share, which
 4 shall be expressed in the warrant. Their shares may be set
 5 off together or in one tract, or the share of each may be as-
 6 signed to him at his election.

Commissioners
to set off shares
together or
each share
separately.

R. S., c. 121,
§ 19, 20.

SECT. 14. Before proceeding to discharge their duty the
 2 commissioners shall be sworn to the faithful and impartial
 3 performance of it; and the justice of the peace before whom
 4 they were sworn shall make his certificate thereof on the
 5 back of their warrant.

To be sworn and
certificate of
oath made on
warrant.

Idem, § 21.

SECT. 15. They shall give reasonable notice of the time
 2 and place for making partition to all concerned who are
 3 known and within the state. They must all be present at
 4 the performance of their duties but the report of a majority
 5 shall be valid. (a)

Give notice of
time and place
for partition, &c.

Idem, § 23, 24.

SECT. 16. When one of the tenants in common by mutual
 2 consent has had the exclusive possession of a part of the
 3 estate and has made improvements thereon, his share shall
 4 be assigned from or including such part; and the value of the
 5 improvements made by a tenant in common shall be consid-
 6 ered and the assignment of shares be made in conformity
 7 therewith.

The share of a
tenant to be
assigned from or
to include his
exclusive
possession, &c.

1855, c. 157.

SECT. 17. When any parcel of the estate to be divided is
 2 of greater value than either party's share and cannot be
 3 divided without great inconveniences, it may be assigned to
 4 one party by his paying such sum of money as may be awarded
 5 to the parties, who have less than their share; but the report
 6 shall not be accepted, until the sums so awarded are paid or
 7 secured to the satisfaction of the parties entitled thereto. (b)

A parcel of
greater value
than a share
may be assigned
to one who
pays to others;
when.

R. S., c. 121, § 25.

SECT. 18. An account of the charges attending the parti-
 2 tion shall on request of a petitioner be presented to the
 3 court, which shall determine after giving notice to all con-
 4 cerned the proportion to be paid by each; and execution
 5 therefor may be issued against any one neglecting to pay.

Court to
determine share
of expenses to be
paid by each,
and execution
may be issued
therefor.
Idem, § 26.

SECT. 19. If a share larger than his real interest or more
 2 than equal in value to his proportion is set off to a part
 3 owner, an aggrieved part owner, who at the time of parti-
 4 tion was out of the state and not notified in season to pre-
 5 vent it, his heirs, or assigns, may within three years there-

When a larger
share or one of
greater value
than his share
is set off to a
party, &c.
Idem, § 27.
1852, c. 235.

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How the new partition shall be made.

Idem, § 28.

Written report to be made which may be confirmed, recommitted, or set aside. When confirmed, to be recorded.

Idem, § 29, 30.

Judgment conclusive of all rights, except as after provided.

Idem, § 31.

When an unequal share is left for one out of state, a new partition may be made.

Idem, § 32.

Person not a party claiming in severalty not precluded by the judgment.

Idem, § 33.

A person claiming a share assigned or left, not precluded.

6 after apply to the court, which made the partition and it
7 shall cause a new partition to be made.

SECT. 20. In such new partition so much and no more
2 shall be taken from a share, as it is considered more than
3 its proportion of the whole estimated as in the state when
4 divided; and if any improvements have been made on the
5 part taken off, reasonable satisfaction therefor to be estima-
6 ted by the commissioners shall be made to him, who made
7 them by him to whose share they are added; and the court
8 may issue execution therefor and for costs of the new par-
9 tition.

SECT. 21. Commissioners in all cases shall make and sign
2 a written return of their proceedings and make return thereof
3 with their warrant to the court, from which it issued. Their
4 report may be confirmed, recommitted, or set aside and new
5 proceeding be had as before. When confirmed judgment
6 shall be entered accordingly and recorded by the clerk, and
7 by the register of deeds of the district where the estate
8 is. (a)

SECT. 22. Such judgment shall be conclusive on all rights
2 of property and possession of all parties and privies to the
3 judgment including all persons, who might have appeared
4 and answered, except as hereinafter provided. (b)

SECT. 23. When a person, to whom a share was left, was
2 out of the state, when notice was served on him and did not
3 return in season to become a party to the proceedings, he
4 may within three years after final judgment apply to the
5 same court for a new partition; and if it appears to the
6 court, that the share left for him was less than he was enti-
7 tled to, or that it was not equal in value to his proportion
8 of the premises, it may order a new partition as provided in
9 section twenty.

SECT. 24. When a person not a party to the proceedings
2 claims to hold the premises described or any part thereof in
3 severalty, he shall not be precluded by the judgment for par-
4 tition, but may bring his action therefor, as if no such judg-
5 ment had been rendered.

SECT. 25. When a person not a party to the proceedings
2 claims a share assigned to or left for a part owner, he shall
3 be concluded so far as it respects the assignment of the
4 shares, but shall not be prevented from maintaining an ac-
5 tion within the time, in which it might have been brought, if

6 no judgment for partition had been rendered, for the share
 7 claimed against the tenant in possession as if the demand-
 8 ant had claimed the piece demanded instead of an undivided
 9 part of the whole.

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Idem, § 34, 35.

SECT. 26. When a person not a party to the proceedings
 2 claims to have been a part owner of the estate, to whom
 3 no share was assigned or left, he shall be concluded so far
 4 as it respects the partition, but not from maintaining an
 5 action against each person holding a share for his proportion
 6 of each share as owned before partition was made.

A part owner to whom no share was assigned or left, not precluded from recovering his proportion of each share.
Idem, § 36.

SECT. 27. When a person, to whom a share has been
 2 assigned or left, has been evicted by an elder and better
 3 title, than that of the parties to the judgment, he shall be
 4 entitled to a new partition of the residue, as if no partition
 5 had been made.

A person evicted of his share to have a new partition.
Idem, § 37.

SECT. 28. A person having a mortgage attachment or other
 2 lien on the share in common of a part owner shall be con-
 3 cluded by the judgment so far as it respects the partition,
 4 but his mortgage or lien shall remain in force on the part
 5 assigned or left to such part owner.

A mortgage attachment or lien on a share in common holds the share set out.
Idem, § 38.

SECT. 29. When portions or lots are reserved for public
 2 uses in a tract of land to be divided, they shall first be set
 3 out of an average quality and situation and a return made
 4 thereof to the land office with a description of its quality
 5 and location, and the commissioners' return of partition being
 6 accepted and recorded as before provided shall be a valid
 7 location of such reserved lands. (a)

Lots reserved for public uses to be first set off.
Idem, § 40.

Chapter 89.

PETITIONS AND ACTIONS OF REVIEW.

- Sect. 1.* One review granted on petition within three years after judgment.
2. Petition presented in any county and notice ordered.
 3. When discovery of new evidence is alleged, proceedings.
 4. Supersedeas granted in term time or vacation on bond filed.
 5. Writ of review in county where judgment rendered, copies produced.
 6. Writ of review describes former action, summons, and service.
 7. Original plaintiff being plaintiff in review property attached.
 8. Pleadings, how made, amended on leave, trial on former issue.
 9. Plaintiff recovering greater sum than before, judgment.
 10. Plaintiff recovering less sum than before, judgment.
 11. In actions of replevin and in actions, in which a claim in set-off was filed defendant in position of a plaintiff for damages.
 12. Party prevailing has costs, court may impose terms respecting them.

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One review may be granted on petition within three years after judgment.

R. S., c. 123,
§ 1, 2, 5, 6.
1850, c. 183, § 1.
1852, c. 246, § 13.

Petition presented in any county and notice ordered, &c.

Idem, § 3, 4.

When discovery of new evidence is alleged, proceedings. *Idem*, § 7.

Any justice in term time or vacation may grant a supersedeas if execution on bond filed.

Idem, § 8.
1844, c. 95, § 3.

Writ of review entered at first term and trial in the county where judgment rendered, &c.

Idem, § 10.
c. 124, § 1, 5.

Writ of review describe former action, &c.

R. S., c. 124,
§ 2, 3.

When original plaintiff is plaintiff in review property of defendant may be attached, &c.

SECT. 1. The supreme judicial court holden by one justice may grant one review in civil actions including petitions for partition and proceedings for the location of lands reserved for public uses, when judgment has been rendered in any judicial tribunal, if petition therefor be presented within three years after the rendition of judgment.

SECT. 2. The petition may be presented in any county, and notice be there ordered returnable in the county where the judgment was rendered. Such reasonable notice must be given to the adverse party as the court orders.

SECT. 3. When the discovery of new evidence is alleged in the petition, the names of the witnesses to prove it, and what each is expected to testify must be stated under oath.

SECT. 4. On presentation of a petition for review any justice of the court may in term time or in vacation stay execution on the judgment complained of, or grant a supersedeas upon a bond filed with sureties approved by him or by such person as he may appoint in double the amount of the damages and costs conditioned to pay said amount or the amount of the final judgment on review with interest thereon at the rate of twelve per cent. from the date of the bond to the time of final judgment.

SECT. 5. When a review is a matter of right as provided by the fourth section of chapter eighty-two, or when granted on petition, a writ of review shall be issued and the trial take place in the supreme judicial court in the county in which the judgment was rendered. It shall be entered at the next term after the review is granted, unless leave be granted to enter it at the second term; and the plaintiff in review shall produce and file attested copies of the writ, judgment, proceedings, and depositions or their originals, in the former suit.

SECT. 6. In the writ of review it shall be sufficient to describe the former action and judgment so as to identify it. The writ shall contain a summons to appear and answer to the plaintiff in review, and it may be served as other writs, and when the party is not an inhabitant of or found within the state, it may be served on his attorney in the original suit.

SECT. 7. When the original plaintiff is plaintiff in review the property of the defendant may be attached, as it might have been in the original suit, and the form of the writ be varied accordingly; but no attachment made on bail taken

5 in the original action shall be holden to satisfy the judgment
6 on review.

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Idem, § 4, 11.

SECT. 8. The proper pleadings shall be made in the original action on review when no issue had been joined before judgment; when issue has been joined, the cause shall be tried thereon; but amendments, brief statements, and other issues, may be made by leave of court, and the cause may be tried and disposed of as if it were an original writ.

When pleadings
had been made,
cause tried on
that issue, if not
on new plead-
ings, amend-
ments may be
made on leave.
Idem, § 6, 7, 8.

SECT. 9. Judgment in the suit reviewed shall be given without regard to the former judgment except as follows. When the original plaintiff recovers a greater sum than he did by the first judgment as debt or damage, he shall have judgment therefor, or for so much thereof as remains unsatisfied, and for costs on the review.

When original
plaintiff recovers
a greater sum
than before
judgment, how
rendered.

Idem, § 9, 13.

SECT. 10. When the sum first recovered is reduced the original defendant shall have judgment for the difference with costs on the review; and if the former judgment has not been satisfied, one judgment may be set off against the other and execution issued for the balance.

When sum first
recovered is
reduced, how
judgment is
rendered.
Idem, § 12.

SECT. 11. When actions of replevin and actions in which a claim in set-off was filed are reviewed, the defendant shall be regarded as in the position of a plaintiff so far as it respects the damages awarded to him.

In actions of
replevin, &c.
Idem, § 14.
Party prevailing,
has costs.
Idem, § 10.

SECT. 12. The party prevailing in the action recovers costs, but this shall not prevent the court granting a review from imposing terms respecting costs.

Party prevailing
has costs, &c.
Idem, § 10.

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 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. Fraudulent mortgage.

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- Sect. 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 mortgages made or assigned to the state.
 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.

How mortgages of real estate are made.

R. S., c. 125, § 1.

Mortgage may enter before breach, unless otherwise agreed.

R. S., c. 125, § 2.

Modes of obtaining possession for foreclosure.

SECT. 1. Mortgages of real estate mentioned in this chapter include those made in the usual form, in which the condition is set forth in the deed, those made by a conveyance appearing on its face to be absolute with a separate instrument of defeasance executed at the same time or as part of the same transaction.

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

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

First—He may commence an action at law and obtain possession under a writ of possession issued on the judgment in the action, as provided in the eighth section duly executed by an officer. An abstract of such writ stating the time of obtaining possession certified by the clerk shall be recorded in the registry of deeds of the district, in which the estate is, within thirty days after possession obtained. (a)
Second—He may enter into possession and hold the same by consent in writing of the mortgager or the person holding under him.

15 *Third*—He may enter peaceably and openly, if not opposed,
 16 in the presence of two witnesses and take possession of the
 17 premises; and a certificate of the fact and time of such entry
 18 shall be made and signed and sworn to by such witnesses
 19 before any justice of the peace; and such written consent
 20 and certificate shall be recorded in each registry of deeds in
 21 which the mortgage is or by law ought to be recorded within
 22 thirty days next after the entry is made.

R. S., c. 125, § 3.
1849, c. 105.

SECT. 4. Possession obtained in either of these three modes continued for the three following years shall forever foreclose the right of redemption. (a)

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

Foreclosed in
three years,
R. S., c. 125, § 4.

5 *First*—He may give public notice in a newspaper printed in the county, where the premises are situated if any, or if not in the state paper, three weeks successively of his claim by mortgage on such real estate describing the premises intelligibly and naming the date of the mortgage, and that the condition in the same is broken, by reason whereof he claims a foreclosure; and cause a copy of such printed notice, and the name and date of the newspaper in which it was last published, to be recorded in each registry of deeds, in which the mortgage deed is or by law ought to be recorded, within thirty days after such last publication. (b)

Mode of fore-closing without taking possession.

16 *Second*—He may cause an attested copy of such notice to be served by the sheriff or his deputy of the county, in which the mortgager or his assignee lives, if in this state, by a delivery to him in hand or by leaving it at his place of last and usual abode; and cause the original notice and the sheriff's return thereon to be recorded within thirty days after such service in manner aforesaid; and in all cases the certificate of the register of deeds shall be *prima facie* evidence of the fact of such entry, notice, publication of foreclosure, and of the sheriff's return.

R. S., c. 125, § 5.

SECT. 6. The mortgager or person claiming under him may redeem the mortgaged premises within three years next after the first publication or the service of the notice mentioned in the preceding section, and if not so redeemed his right of redemption shall be forever foreclosed. (c)

Mortgager may
redeem within
three years.

R. S., c. 125, § 6.

(a) 23, Me. 25. 7, Me. 31, 102. 24, Me. 155. (b) 25, Me. 383. 38, Me. 256, 548. 37, Me. 386.
(c) 21, Me. 126. 20, Me. 269.

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*Form of declar-
ing in a suit to
obtain possession
on mortgage, &c.*

SECT. 7. The mortgagee, and where the mortgage has been assigned, the person claiming under him, in an action for possession may declare on his own seizin in a writ of entry without naming the mortgage or assignment; and if it appears to the court on default, demurrer, verdict or otherwise, that the plaintiff is entitled to the possession of the premises for breach of the condition of the mortgage, the court shall on the motion of either party award the conditional judgment hereinafter mentioned, unless it appears that the tenant is not the mortgager, or a person claiming under him, in which case judgment may be entered as at common law, unless the plaintiff consents that the conditional judgment shall be entered.

R. S., c. 125,
§ 7, 8.

*Form of condi-
tional judgment,
&c.*

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

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

*Judgment for
defendant if
nothing be due.*

R. S., c. 125, § 10.

*Action for
foreclosure by
executor or
administrator.*

R. S., c. 125, § 11.

*Mortgages to be
assets in the
hands of
administrators,
&c.*

R. S., c. 125,
§ 13.

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

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

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

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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 all
 4 cases be joined with him as a cotenant, whether he then has
 5 any interest or not in the premises ; but he shall not be lia-
 6 ble for costs, when he has no interest in the premises, and
 7 makes his disclaimer thereto upon the records of the court.

Against whom
action on a
mortgage shall
be brought.

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 condi-
 9 tion of the mortgage, he may bring his bill in equity for the
 10 redemption of the mortgaged premises within the time lim-
 11 ited in the sixth section of this chapter ; and therein offer to
 12 pay the sum found to be equitably due or to perform any
 13 other condition, as the case may require ; and such offer shall
 14 have the same force as a tender of payment or performance
 15 before the commencement of the suit ; and the bill shall be
 16 sustained without such tender, and thereupon he shall be
 17 entitled to judgment for redemption and costs. (a)

Proceedings in
equity to redeem
a mortgage.

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.

When the
amount due on a
mortgage has
been paid or
tendered, &c.

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
 4 him is out of the state and has not had actual notice, the
 5 court shall order proper notice to be given to him, and con-

Courts to order
notice if mort-
gagor be out of
the state, &c.

CHAP. 90.

*Section 125
of the Revised Statutes
of the Commonwealth of Massachusetts
in the year 1841.*
R. S., c. 125,
§ 19.

**Provisions for
redemption
when the mort-
gagor is out of
the state.**

*Section 20
of the Revised Statutes
of the Commonwealth of Massachusetts
in the year 1841.*

1841, c. 1, § 23.

**Limitation of
such a bill in
equity.**

R. S., c. 125,
§ 20.

**Court may allow
other persons
joined as defend-
ants, and
notified.**

R. S., c. 125,
§ 21.

**Award of execu-
tion on decree of
court.**

R. S., c. 125,
§ 22.

**Deduction of
rents and profits
from the sum
brought into
court for
redemption.**

R. S., c. 125,
§ 23.

6 tinue the cause as long as necessary. *When a mortgage is
alleged and proved to be fraudulent in whole or in part, an
innocent assignee of the mortgagor for a valuable consider-
ation may file his bill within the time allowed to redeem
and be allowed to redeem without any tender.* (a)

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

SECT. 17. No bill in equity shall be brought for redemption of mortgaged premises founded on a tender of payment or performance of the condition made before the commencement of the suit, unless within three years next after making such tender.

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

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

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

(b) New. There is no express provision respecting fraudulent mortgages; and does it seem desirable to make a tender to pay, what ought not to be paid.

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

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State treasurer may discharge or foreclose mortgages made or assigned to the state.

R. S., c. 125,
§ 12.

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

Bill in equity for redemption may be filed against the state.
R. S., c. 125,
§ 24.

SECT. 23. The court shall order notice to be served on the treasurer of state in the usual form, and shall hear the cause and decide, what sum is due on said mortgage to the state and award costs, as they may deem equitable; and it shall be the duty of the treasurer to accept the sum adjudged by the court to be due and discharge and release the mortgage.

Where to be filed, and proceedings thereon.

R. S., c. 125,
§ 25.

SECT. 24. If any person entitled to redeem any mortgaged estate, or to redeem an equity of redemption which has been sold on execution, or the right to redeem such right, or the right to redeem lands set off on execution, dies without having made any tender for that purpose, a tender may be made and a bill for redemption commenced and prosecuted by the executors or administrators or the heirs or devisees of the deceased person; and if the plaintiff in any such bill in equity dies pending the suit, it may be prosecuted to final judgment by his heirs or devisees or his executors or administrators.

On decease of a person entitled to redeem, &c.

R. S., c. 125,
§ 26.

SECT. 25. When the mortgagee or person holding under him is under guardianship, a tender may be made to the guardian, and he shall receive the sum due on the mortgage; and upon receiving it, or on performance of such other condition, as the case requires, shall execute a release or discharge of the mortgage.

Tender to guardian of mortgagee, if under guardianship.

R. S., c. 125,
§ 27.

SECT. 26. In all cases the mortgage may be discharged by the deed of release of the person authorized to discharge it, or by his causing satisfaction and payment to be entered in the margin of the record of such mortgage in the register's office under his hand. (a)

How mortgages may be discharged.

R. S., c. 128,
§ 28.

SECT. 27. If the purchaser of an equity of redemption sold on execution has satisfied and paid to the mortgagee or

Redemption of mortgaged estate from purchaser of the equity of redemption.

CHAP. 91.

An Act to amend and
supplement the
Mortgage Law
and to make
certain other
provisions.

R. S., c. 125,
§ 29.

- 3 those claiming under him the sum due on the mortgage, the mortgager or those claiming under him having redeemed the equity of redemption within one year after such sale shall have a right to redeem such mortgaged estate of such purchaser or any person claiming under him within the time and in the manner, he might have redeemed the same of the mortgagee had there been no such sale made, and within 10 such time only.

Chapter 91.

MORTGAGES OF PERSONAL PROPERTY. LIENS AND THEIR ENFORCEMENT.

MORTGAGES OF PERSONAL PROPERTY.

- Sect.* 1. Mortgages not valid except between the parties, unless recorded, or possession of the property taken.
2. Clerk records mortgages in a book noting therein and on the mortgage when received.
 3. Property may be redeemed within sixty days after breach of condition.
 4. Property may be redeemed by tender of sum due and charges; if not restored proceedings.
 5. Contracts for liens and transfers of vessels and goods at sea or abroad not defeated.

LIENS ON VESSELS.

6. Lien on a vessel building and on one repaired for labor and materials, how enforced.
7. Officer attaching to file with clerk of the town and deliver to owner a copy of his return.
8. Service of writ by sheriff deputy or coroner, and subsequent attachments by same officer.
9. Attachments preserved till thirty days after judgments in all suits, disposition of property.

LIENS ON BUILDINGS AND LOTS.

10. Liens on buildings and lots for labor and materials under contract with owner.
11. When owner dies before suit, how to be brought and when.
12. Lien on buildings for rent placed on leased land, how enforced.

LIENS ON LOGS AND LUMBER.

13. Liens on logs and lumber for personal labor for sixty days after arrival at destination.
14. Boomage to be paid by attaching officer. Lien not defeated by taking note. Notice to owner.

GENERAL PROVISIONS FOR ENFORCEMENT OR DISCHARGE.

15. Attachments to have precedence. Suits after death and insolvency.
16. Tender of amount due discharges lien.

LIENS ON GOODS IN POSSESSION HOW ENFORCED.

17. Lien on goods in possession enforced by sale.
18. Petition to be filed; contents of it.
19. Service on owners within the state.
20. Service on owners when unknown or out of the state.

- Sect. 21.** When owner appears, proceedings.
 22. When owner appears may be required to give bond.
 23. Court may order property to be sold.
 24. Disposition of the proceeds.
 25. Liens less than twenty dollars enforced by justices of the peace.

Mortgages not valid except between the parties, unless recorded or possession of the property taken.

SECT. 1. No mortgage of personal property made to secure payment of more than thirty dollars shall be valid against any other person than the parties thereto, unless possession of such property be delivered to and retained by the mortgagee, or the mortgage be recorded by the clerk of the town, in which the mortgagor resides. (a) When a corporation makes a mortgage, it shall be recorded in the town, where it has its established place of business. When the mortgagor resides in an unincorporated place, the mortgage shall be recorded in the oldest adjoining town in the county.

R. S., c. 125, § 32.
 1849, c. 103.
 1850, c. 180.
 1852, c. 282.
 1854, c. 103.

SECT. 2. The clerk on payment of the same fees allowed to registers of deeds for like services shall record all such mortgages delivered to him in a book kept for that purpose noting therein and on the mortgage the time, when it was received, and it shall then be considered as recorded. (b)

Clerk records mortgages in a book, noting therein and on the mortgage when received.
 Idem, § 33.

SECT. 3. The property may be redeemed by the mortgagor or person claiming under him within sixty days after breach of the condition, unless it has been sold by virtue of a contract, or on execution against the mortgagor. (c)

Property may be redeemed within sixty days after breach of condition.
 Idem, § 30.

SECT. 4. To redeem the sum due on the mortgage with reasonable charges incurred must be paid or tendered; and if the property is not immediately restored, it may be replevied; and damages for withholding it may be recovered in an action on the case.

Sum due and charges to be paid or tendered to redeem, &c.
 Idem, § 31.

SECT. 5. Nothing in the preceding sections shall defeat a contract of bottomry, respondentia, transfer, assignment, or hypothecation, of a vessel or goods at sea or abroad, if possession be taken as soon as may be after their arrival within the state. (d)

Contracts for liens and transfers of vessels or goods at sea or abroad, not defeated.
 Idem, § 34.

Liens on vessels.

SECT. 6. A person, who furnished labor or materials for a vessel building before launched shall have a lien on such vessel therefor, which may be enforced by an attachment of the vessel within four days after launched. (e) And a person, who does so *after she is launched*, or for repair of a vessel,

Lien on a vessel building, and on one repaired for labor and materials, how and when enforced.

(a) 22, Me. 560. 31, Me. 73. 37, Me. 181, 543. (b) 19, Me. 167.
 (c) 24, Me. 131. 29, Me. 429. 31, Me. 104, 501. 36, Me. 47.
 (d) 19, Me. 9. (e) 33, Me. 474.

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R. S. c. 125,
§ 35.

Officer attaching
to file with clerk
of the town, and
deliver to an
owner or master
workman a
copy of his
return.

1848, c. 78, § 1.
R. I.

Service of writ
must be made
by a sheriff,
deputy or
coroner, &c.

Idem, § 2, 3.

Attachments
preserved until
thirty days after
judgments in all
suits, &c.

Idem, § 4.

Liens on build-
ings and lots for
labor and
materials
furnished, &c.

Idem, § 37, 38.
1850, c. 159, § 1.

When owner
dies before
suit, &c.

1850, c. 159, § 2.

Lien on build-
ings for rent
placed on land
leased, how
enforced.

6 shall have a lien on her therefor, which may be enforced by
7 attachment *within four days after the work has been com-*
8 *pleted.*

SECT. 7. The officer making such attachment shall within
2 twenty-four hours thereafter file with the clerk of the town,
3 in which the vessel is, and deliver to some owner or master
4 workman of the vessel, a copy of his return of such attach-
5 ment *with the date of the writ, the amount sued for, and the*
6 *names of the parties*, which shall be sufficient to preserve the
7 attachment without a keeper.

SECT. 8. Service of such writ must be made by the sheriff
2 or his deputy or a coroner; and all subsequent attachments
3 to enforce a lien, made before the first attachment is dis-
4 solved, must be made by the officer, who made the first one,
5 unless disqualified, when they may be made by another com-
6 petent officer, by giving notice thereof to him, *as he is required*
7 *to give notice to the clerk*, and such attachment shall secure
8 a share of the proceeds as if made by the first attaching
9 officer.

SECT. 9. All the attachments shall remain in force until
2 thirty days after judgment is rendered in all the suits, when
3 the vessel shall be sold and the net proceeds shall be paid
4 to the creditors, or if not sufficient to pay in full, distrib-
5 uted to them equally in proportion to the amounts of their
6 judgments.

Liens on buildings and lots.

SECT. 10. A person, who performs or furnishes labor or
2 materials for erecting altering or repairing a house building
3 or appurtenances by virtue of a contract with the owner
4 thereof, shall have a lien on such house or building and the
5 lot of land, on which it stands or equity of redemption, if
6 under mortgage, to secure payment thereof, to continue in
7 force ninety days from the time when payment becomes due,
8 to be enforced by attachment. (a)

SECT. 11. When the owner dies within the ninety days
2 and before commencement of a suit, it may be commenced
3 within sixty days after notice given of the appointment of
4 an executor or administrator, and the lien shall be extended
5 accordingly.

SECT. 12. When a lease with a rent payable is made of
2 land to have a mill or other building placed thereon, the

3 buildings placed thereon and all the interest of the lessee
 4 shall be subject to a lien and liable to be attached for the
 5 rent due. Such attachment made within six months after
 6 the rent becomes due shall be effectual against any transfer
 7 of the property by lessee.

R. S., c. 125, § 40.

CHAP. 91.

Liens on logs and lumber.

SECT. 13. A person who labors at cutting hauling or driving logs or lumber, shall have a lien thereon for the amount due for his personal services to take precedence of all other claims, except liens reserved to the state, and to continue for sixty days after the logs or lumber arrive at the place of destination for sale or manufacture and to be enforced by attachment. (a)

Lien on logs and lumber for personal labor for sixty days after arrival at place of destination.

SECT. 14. The officer making an attachment of such logs or lumber may pay the boomage due thereon, not exceeding the rate per thousand on the amount attached, and return the amount paid on the writ, which shall be included in the damages recovered. The action or lien shall not be defeated by taking a note, unless it was taken in discharge of the amount due and of the lien. Notice of the suit, such as the court orders, shall be given to the owner of the logs or lumber, and he may be admitted to defend it.

1848, c. 72, § 1.
1851, c. 216, § 1.

Boomage may be paid by attaching officer. Lien not defeated by taking a note. Notice to owner of logs.

1848, c. 72, § 1, 2.
1855, c. 144.*General provisions for enforcement or discharge.*

SECT. 15. Suits to enforce *any of the liens before named in this chapter* shall have precedence of all attachments and incumbrances made after the lien attached and not made to enforce a lien, and may be maintained, although the employer or debtor is deceased and his estate represented to be insolvent; and his executor or administrator may be summoned and held to answer to an action brought or pending to enforce the lien. (b)

Attachments to have precedence of other incumbrances, &c.

SECT. 16. All liens named in this chapter may be discharged by tender of a sum sufficient to pay all, that is justly due, made by the debtor or owner of the property or their agents.

1850, c. 159, § 1.
1851, c. 216, § 1.Tender of amount due, discharges lien.
R. S., c. 125, § 36, 39.*Liens how enforced on goods in possession.*

SECT. 17. Any person, who has a lien on anything of which he has possession, may enforce said lien, and have the thing

Lien on goods in possession, enforced by sale.

CHAP. 91.
1856, c. 273, § 1.

Petition to be
filed, contents of
it.

Idem, § 2.

Service on
owners within
the state.

Idem, § 3.

Service when
owners
unknown or
out of the state.

Idem, § 4.

When owner
appears,
proceedings.

Idem, § 5.

Owner may be
required to give
bond.

Idem, § 6.

Court may
order property to
be sold.

3 sold for the satisfaction thereof in the manner herein pro-
4 vided.

SECT. 18. The person claiming the lien may file in the
2 supreme judicial court in the county where he resides, or in
3 the office of the clerk thereof, a petition briefly setting forth
4 the nature and amount of his claim, a description of the
5 article possessed, and the name and residence of the own-
6 ers of the article if known to him, and a prayer for process
7 to enforce his lien.

SECT. 19. If the owners are set forth in a petition filed
2 in the clerk's office and are residents of this state, the clerk
3 may issue an order of notice on such owners by serving them
4 with a copy of the petition with the order thereon fourteen
5 days before the next term of the court in such county.

SECT. 20. If the owners are not known or not residents
2 in the state, or the petition is filed in court, the court may
3 order such notice to the owners and others interested as it
4 may deem fit, and said notice may be returnable at the same
5 or a subsequent term, and may be by personal service of a
6 copy of the petition with the order of court thereon, or by
7 publication in a newspaper, or both, as the court shall direct.
8 But such order shall always allow at least fourteen days from
9 the service or publication before the time fixed for the ap-
10 pearance of the persons notified.

SECT. 21. At the time fixed in the notice, any party inter-
2 ested in the article as owner, mortgagee, or otherwise, may
3 appear, and from the time of such appearance the proceed-
4 ings shall be the same as in an action on the case, in which
5 the petitioner is plaintiff and the parties appearing are de-
6 fendants. Questions of fact, at the instance of either party,
7 shall be submitted to a jury upon an issue to be framed
8 under the direction of the court.

SECT. 22. If in the opinion of the court the article on
2 which the lien is claimed is not of sufficient value to pay
3 the petitioner's claim, with the probable costs of the suit,
4 the court may order the persons appearing in defense to
5 give bond to the petitioner with sufficient sureties to be
6 approved by the court to pay such costs as may be awarded
7 against him, so far as they are not paid out of the proceeds
8 of the articles on which the lien is claimed.

SECT. 23. After trial of the cause and final adjudication
2 in favor of the petitioner, the court may order any officer
3 competent to serve precepts in civil actions to sell the article
4 on which the lien is claimed, in the manner in which personal

5 property is sold on execution, and out of the proceeds, after
 6 deducting his fees and the expenses of sale, to pay to the
 7 petitioner the amounts awarded him with the costs awarded
 8 him, and to pay the balance to the person or persons legally
 9 entitled to receive it, if such persons are known to the court,
 10 otherwise to pay the same into court.

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Idem, § 7.

SECT. 24. Money paid into court may be paid over to the
 2 person legally entitled to receive it, upon petition and order
 3 of the court. If it is not called for at the first term after
 4 it is paid into court, it shall be paid into the county treasury,
 5 and if afterwards the person legally entitled to it petitions
 6 and establishes his claim to it, the court may order the county
 7 treasurer to pay it to him.

Disposition of
the proceeds.

Idem, § 8.

SECT. 25. Liens for less amount than twenty dollars may
 2 be enforced before any justice of the peace for the county
 3 where the person having the lien resides, in the manner
 4 herein provided, so far as the nature of the tribunal will
 5 admit, and the justice shall have the same power to order
 6 notice and sale; and the balance if any remaining after
 7 payment of the lien shall be paid as hereinbefore provided,
 8 or deposited in the county treasury subject to be drawn out
 9 upon petition, as is provided in section twenty-four. Either
 10 party may appeal, and in case of appeal the proceedings
 11 shall be the same as provided in appeals in civil actions
 12 before justices of the peace.

Lien less than
\$20, justices
have jurisdiction.

Idem, § 9.

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.

CHAP. 92.*Sect. 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.

**Right to erect
and maintain
mill dams, and
to divert water
by a canal for
mills.**

R. S., c. 126, § 1.
1855, c. 133, § 1.

**Not to injure a
mill or canal
previously built.**

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

**Restriction as to
height of dam
and quantity of
water.**

1855, c. 133, § 3.
R. S., c. 126, § 4.

**Damages for
flooding, &c.**

1855, c. 133, § 1.
R. S., c. 126, § 5.

SECT. 1. Any man may erect and maintain a water mill and dams to raise water for working it on his own land upon and across any stream, that is not navigable; or for the purpose of propelling mills or machinery may cut a canal and erect walls and embankments upon his own land not exceeding one mile in length, and thereby divert from its natural channel the water of any stream not navigable upon the terms and conditions and subject to the regulations herein-after expressed.

SECT. 2. No such dam shall be erected or canal constructed to the injury of any mill or canal lawfully existing on the same stream; nor to the injury of any mill site, on which a mill or mill dam has been lawfully erected and used, unless the right to maintain a mill on such last mentioned site has been lost or defeated. (a)

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

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

SECT. 5. The complaint shall contain such a description of the land flooded or injured, and such a statement of the damage, that the record of the case shall show the matter heard and determined in the suit. (a)

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Form of
complaint.
R. S., c. 126, § 6.

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

How presented
and served.R. S., c. 126,
§ 7, 8.

SECT. 7. The owner or occupant of such mill or canal may plead in bar, that the complainant has no right title or estate in the lands alleged to be injured; or that he has a right to maintain such dam and flow the lands or divert the water for an agreed price, or without any compensation; or any other matter, which may show that the complainant cannot maintain the suit; but he shall not plead in bar of the complaint, that the land described therein is not injured by such dam or canal. (b)

What may be
pleaded in bar.

R. S., c. 126, § 9.

SECT. 8. When any such plea is filed, and an issue in fact, or in law is joined, it shall be decided as similar issues are decided in cases at common law; and if judgment is for the respondent, he shall recover his costs.

Mode of trial.
Appeal, &c.
R. S., c. 126,
§ 10, 11.

SECT. 9. If the issue is decided in favor of the complainant or if the respondent is defaulted or does not plead or show any legal objection to proceeding, the court shall appoint three or more disinterested commissioners of the same county, who shall go upon and examine the premises and make a true and faithful appraisement under oath of the yearly damages, if any done to the complainant by the flowing of his lands or the diversion of the water described in the complaint, and determine how far the same is necessary and ascertain and make report what portion of the year such lands ought not to be flooded or water diverted, or what quantity of water shall be diverted.

Proceedings, if
complainant
recovers.R. S., c. 126,
§ 12.

SECT. 10. If either party requests that a jury may be impaneled to try the cause at the bar of the court, the report of the commissioners shall under the direction of the court be given in evidence to the jury; but evidence shall not be admitted to contradict it, unless misconduct, partiality, or

Trial by jury.
Commissioners'
report to be
evidence.Idem, § 13.
1856, c. 269.

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6 unfaithfulness on the part of some commissioner shall be
 7 shown.

SECT. 11. If neither party requests a trial by jury the report of the commissioners may be accepted by the court and judgment rendered thereon.

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

SECT. 13. Such verdict or accepted report of the commissioners and judgment thereon shall be the measure of the yearly damages, until the owner or occupant of the lands or the owner or occupant of the mill or canal shall on a new complaint to the court and by proceedings as in the former case obtain an increase or decrease of such damages.

SECT. 14. When any person, whose lands are so flowed or from whose lands the water is thus diverted, files his complaint for ascertaining or increasing his damages, or brings his action of debt as provided in the following section, moves the court to direct the owner or occupant of such mill or canal to give security for the payment of the annual damages, and the court so orders, the owner or occupant refusing or neglecting to give such security shall have no benefit of this chapter; but shall be liable to be sued for the damages occasioned by such flowing in an action at common law.

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

SECT. 16. The person entitled to receive the annual compensation shall have a lien therefor from the time of the institution of the original complaint on the mill and mill dam, or on the canal and the mill supplied thereby with the appurtenances and the land under and adjoining the same, and used therewith; *provided*, that it shall not extend to any sum due more than three years before the commencement of the complaint. (b)

Acceptance of commissioners' report.
R. S., c. 126, § 14.

Verdict or report to bar any future action.
R. S., c. 125, § 15.

Yearly damages, how fixed.
R. S., c. 126, § 17.

Security to be given for yearly damages, if required.
R. S., c. 126, § 18.

Complainant may sue for damages, if unpaid.
R. S., c. 126, § 20.

Lien upon mill and land for damages.
R. S., c. 126, § 19.
1855, c. 133.

SECT. 17. The execution on such judgment if not paid may at any time within thirty days be levied on the premises subject to the lien; and the officer may sell the same at public auction, or so much thereof in common with the residue, as shall be necessary to satisfy the execution proceeding in giving notice of such sale in the same manner, as in making sale of an equity of redemption upon execution. Such sale shall be effectual against all persons claiming the premises by any title, which accrued within the time covered by the lien.

Mill and land
may be seized
and sold on
the execution
after thirty
days, &c.

R. S., c. 126,
§ 21, 22.

Right of
redemption.

SECT. 18. Any person entitled to the premises may redeem the same within one year after the sale by paying to the purchaser or the person holding under him the sum paid therefor with interest at the rate of twelve per cent. deducting therefrom any rents and profits received by such purchaser or person holding under him; and may have the same process to compel the purchaser to account, as might be had against a purchaser of an equity of redemption.

R. S., c. 126,
§ 23.

SECT. 19. When either party is dissatisfied with the annual compensation established as before provided, a new complaint may be filed, and proceedings had and conducted substantially in the manner before provided in case of an original complaint.

Either party
may file a new
complaint.

R. S., c. 126,
§ 24.

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

Restriction of
this right.

R. S., c. 126,
§ 25.

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

Owner may
offer an
increased
compensation.
Consequence.

R. S., c. 126,
§ 26.

SECT. 22. The owner of the land injured may within said month offer in writing to the owner of the mill or dam or canal to accept any sum smaller than the annual compensation established to be paid thereafter for maintaining said dam or canal; and if the owner of the mill or dam or canal declines to pay such reduced compensation, but brings a new complaint to obtain a reduction of the same, he shall not recover costs, unless such compensation is reduced to a less sum than was offered.

Injured party
may offer to
accept a less
compensation.
Consequence.

R. S., c. 126,
§ 27.

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Restriction of
suits for
damages.

R. S., c. 126,
§ 28.

Tenants may
make such offers
as well as
owners.

R. S., c. 126,
§ 30.

Double damages
if dam is raised
higher, &c.

1848, c. 86.

Agreement of
parties binding,
if recorded.

R. S., c. 126,
§ 31.

Judgment no
bar to a new
complaint.

R. S., c. 126,
§ 32.

Tender of
damages, and
effect thereof.

R. S., c. 126,
§ 33.

Complaint not to
abate by death
of either party.

R. S., c. 126,
§ 34.

If complaint
abates, rights
may be pre-
served by new
complaint
within a year.

R. S., c. 126,
§ 35.

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

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

SECT. 25. If after judgment the restrictions imposed by the report of the commissioners or finding of the jury respecting the flowing or diverting of the waters shall be violated, the party injured thereby may recover of the wrong-doers double damages for the injury sustained in an action at common law.

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

SECT. 27. A judgment against a complainant as not entitled to any compensation shall be no bar to a new complaint for damages, which have arisen after the former verdict and for compensation for damages subsequently sustained.

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

SECT. 29. No complaint for so flowing lands or diverting water shall abate by the death of any party thereto; but it may be prosecuted or defended by the surviving complainants or respondents, or the executors or administrators of the deceased.

SECT. 30. If such complaint is abated or defeated for want of form, or if after a verdict for the complainant judgment is reversed, he may bring a new complaint at any time within one year after such abatement or reversal, and thereon recover such damages as were sustained during three years

6 next before the institution of the first complaint or at any CHAP. 93.
 7 time afterwards.

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

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.

Provisions of
this chapter
apply to streams
forming the
boundary of the
state.

1855, c. 133, § 4.

Compensation of
commissioners.
Costs.
R. S., c. 126,
§ 16, 29.

Chapter 93.

INQUESTS OF OFFICE, AND INFORMATIONS FOR INTRUSION.

- Sect. 1.* Proceedings to revest in the state 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
 2 province of Massachusetts Bay, the commonwealth of Mas-
 3 sachusetts, or by this state, or shall be hereafter granted on
 4 certain conditions alleged to have been violated, and the
 5 state claims to be revested therein, the following proceedings
 6 shall be had.

Proceedings to
revest in the
state lands
granted on
condition.

R. S., c. 127, § 1.

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

Attorney general
to file
information.

R. S., c. 127, § 2.

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Scire facias to issue. Service.

R. S., c. 127, § 3.

Judgment on default.

R. S., c. 127, § 4.

Consequence of disclaimer by defendant.

R. S., c. 127, § 5.

Proceedings, if defendant claims title.

R. S., c. 127, § 6.

Proceedings, if it is adjudged that defendant holds too much land.

R. S., c. 127, § 7.

Such part shall be located by persons appointed by the court, &c.

R. S., c. 127, § 8.

Cases in which information may be filed, &c.

R. S., c. 127,
§ 9, 10.

Proceedings, judgment and costs.

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

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

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 respects the lands disclaimed; and the defendant and all subsequently claiming under him shall be estopped from claiming or holding such disclaimed lands.

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 state treasury.

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 bounds so much of the land held by him, as shall be equal in quantity to what he has a right to hold under the grant, and in such part thereof as shall be judged reasonable by the court.

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

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

SECT. 10. If no person appears and answers to the information, or if a verdict is found, that the state has good title to such estate, judgment shall be rendered, that the state be

4 seized thereof and recover costs; but if the verdict is in
 5 favor of the defendant, he shall recover his costs of suit to
 6 be taxed and paid as provided in section six.

CHAP. 93.
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.

Information to
recover escheats.
Notice.

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
 4 is the tenant or agent of such alien or other person.

Tenant to set up
no title, unless
he claims under
it.
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
 3 his costs to be paid as aforesaid.

Costs, if defend-
ant recovers.
R. S., c. 127,
§ 14.

SECT. 14. If it is found, that he was not legal owner of
 2 such estate, nor had any right as tenant or agent, when the
 3 process was commenced against him, but afterwards acquired
 4 a good title or became tenant or agent, the attorney general
 5 shall cease further to prosecute the suit; but when the de-
 6 fendant proves no such title to the estate as owner or inter-
 7 est 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 and any judgment so
 4 rendered shall conclude all privics and parties and those
 5 claiming under them so long as it remains in force subject
 6 to the provisions of the following section.

Effect of judg-
ment, that the
state be
reseeded.

R. S., c. 127,
§ 16.

SECT. 16. Should any person appear and by due process of
 2 law prove himself to have a legal title to such estate and re-
 3 cover 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.

Tenant under
the state to have
betterments, &c.

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 proceedings shall
 5 be had thereon as in other cases in equity to ascertain and
 6 adjust the amount.

Proceedings by
attorney general
to obtain
betterments.

R. S., c. 127,
§ 18.

CHAP. 94.

Execution
therefor, how
levied.
R. S., c. 127,
§ 19.

SECT. 18. The sheriff by virtue of such execution shall sell at public auction so much of said land, as will be sufficient to satisfy the execution and charges unless otherwise paid.

Chapter 94.

FORCIBLE ENTRY AND DETAINER. TENANCIES.

- Sect.* 1. Forcible entry and detainer, when may be commenced.
2. Tenancy at will, how terminated.
 3. What magistrates have jurisdiction.
 4. Complaint how made, summons issued and served.
 5. When defendant fails to shew sufficient cause or is defaulted, proceedings.
 6. When defendant files a brief statement claiming title in himself or another, proceedings.
 7. Complainant may allege, that brief statement is intended for delay, proceedings.
 8. Either party may appeal, proceedings.
 9. When judgment is for complainant, he may in all cases have possession.
 10. Sums due for rent and claims for damages may be recovered by action of assumpsit.

Forcible entry
and detainer,
when may be
commenced.

R. S., c. 128, § 5.
1847, c. 4.
1850, c. 160.
1853, c. 39, § 1.
New.

SECT. 1. A process of forcible entry and detainer may be commenced against a disseizor, *who has not acquired any claim by possession and improvement*; and against a tenant holding under a written lease or contract, or person holding under such tenant, at the expiration or forfeiture of the term without notice; if the process be commenced within seven days from the expiration or forfeiture of the term; and against a tenant at will, whose tenancy has been terminated as provided in the following section.

Tenancy at will,
or sufferance,
how terminated.

SECT. 2. A tenancy at will may be terminated by a written notice to quit served on the tenant thirty days before the time named for its termination; but if no rent is due *when a rent is payable*, it shall not be terminated, except at the option of the tenant, until rent shall become due. When terminated the tenant shall be liable to the process aforesaid without further notice and without proof of any relation of landlord and tenant, unless he has paid after service of the notice rent accrued after the termination of the tenancy.

R. S., c. 95,
§ 19, 20.
1849, c. 98.
1853, c. 39, § 1.

What magis-
trates have juris-
diction of cases
of forcible entry
and detainer.

R. S., c. 128,
§ 1, 6.

SECT. 3. Justices of the peace and judges of municipal and police courts have jurisdiction of cases of forcible entry and detainer respecting estates within their counties. Such judges have exclusive jurisdiction of them within their cities or towns unless interested.

CHAP. 94.

SECT. 4. On a written complaint sworn to charging a forcible and unlawful entry or detainer of real estate in manner aforesaid, a summons may be issued to a proper officer commanding the person complained of to appear and shew cause, why judgment should not be rendered against him, which shall be served, as other writs of summons are required to be, seven days before the day for his appearance.

Complaint, how made, summons issued and served.

Idem, § 2.

SECT. 5. When he is defaulted or fails to shew sufficient cause, judgment shall be rendered against him for possession of the premises, and a writ of possession issued to remove him, which may be served by a constable.

When fails to show sufficient cause, &c.
Idem, § 3.
1853, c. 39, § 5.

SECT. 6. When the defendant pleads not guilty and files a brief statement of title in himself or in another person, under whom he claims the premises, he shall, except as hereafter provided, recognize in a reasonable sum to the complainant with sufficient sureties conditioned to pay all intervening damages and costs and a reasonable rent for the premises; and the complainant shall in like manner recognize to the defendant conditioned to enter the suit at the next term of the supreme judicial court and pay all costs adjudged against him. If either party neglects so to recognize, judgment shall be rendered against him as on nonsuit

When defendant files a brief statement, &c.

Idem, § 4.

or default.

SECT. 7. But the complainant may make a written allegation, that the brief statement of the defendant is frivolous and intended for delay, and the magistrate may then examine the case so far as to ascertain the truth respecting it, and if satisfied of the truth of such allegation, he may proceed to try the cause upon the plea of not guilty, and if determined in favor of the complainant may issue a writ of possession for removal of the defendant; but this shall not prevent an appeal as provided in the following section.

Complainant may allege that brief statement is intended for delay ; proceedings

1853, c. 39, § 3.

SECT. 8. Either party may appeal from a judgment to the supreme judicial court next to be holden in the same county. When the complainant appeals, he shall recognize in manner aforesaid to the defendant, except as hereafter provided, conditioned to enter the suit and pay all costs adjudged against him. When the defendant appeals, he shall recognize in like manner to the complainant conditioned to enter the suit and pay all intervening costs and such reasonable rent of the premises, as the magistrate shall adjudge, if the judgment is not reversed.

Either party may appeal ; proceedings.

R. S., c. 128, § 4.
1853, c. 39, § 2.

SECT. 9. When judgment is rendered for the complainant a writ of possession shall issue in all cases, if the complain-

When judgment is rendered, &c.

CHAP. 95.

3 ant recognizes to the defendant in manner before provided
4 conditioned to pay all such damages and costs, as may be
5 awarded against him, if final judgment is rendered for the
6 defendant; and on trial if the jury find for the defendant,
7 they shall find the damages sustained by him; and in case
8 of nonsuit his damages shall be assessed by the court; and
9 the complainant may give evidence of any claim for rent of
10 the premises to be set off against damages claimed by the
11 defendant. If the defendant prevails, the court may or not,
12 as justice requires, issue a writ to restore to him possession
13 of the premises.

1853, c. 29, § 2.

Sums due for
rent and claims
for damages
recoverable in
assumpsit.

Idem, § 4.

SECT. 10. Sums due for rent on leases under seal or otherwise and claims for damages to premises rented may be recovered in an action of assumpsit on amount annexed to the writ specifying the items and amount claimed.

Chapter 95.

WASTE AND TRESPASS ON REAL ESTATE.

- Sect. 1.* Remedy if tenant for life or years commits waste; the heir may sue for waste committed in his ancestor's 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. Trespasses on public buildings or property.
 11. Trespasses 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.

Remedy if
tenant for life or
years commits
waste, &c.

SECT. 1. If any tenant in dower, by courtesy, 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 4 action of waste against such tenant may recover the place 5 wasted and the damages done to the premises; and an heir

6 in the same action may recover for waste done in his own
7 time and the time of his ancestor.

CHAP. 95.R. S., c. 129,
§ 1, 2,Proceedings in
court, &c.

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

Reversioner and
remainder man
may sue.

R. S., c. 229, § 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.

The action will
lie against the
executor or
administrator.

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 mortgagees 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, may
17 sue for and recover their proportion of such damages.

R. S., c. 129,
§ 7, 8.

1842, c. 31, § 15.

1854, c. 78, § 1.

Part owners not
to commit waste
without giving
thirty days'
notice, &c.

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.

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R. S., c. 129,
§ 14.
1848, c. 188,
§ 12.

Treble damages
may be recovered
for waste
on lands pending
a suit therefor.

R. S., c. 129,
§ 11.

Trespass on
lands of another
without his
consent.

R. S., c. 129,
§ 10.

Trespasses on
public buildings
or property.

R. S., c. 129,
§ 12.

Trespasses by
taking grass,
fruit, or other
vegetables from
improved lands.

R. S., c. 129,
§ 13.

Penalty for
waste on lands
of a person
deceased
insolvent.

R. S., c. 129,
§ 15.

Liability of
executor or
administrator for
committing
waste.

R. S., c. 129,
§ 16.

7 to the adverse party to appear and answer, unless the applicant files a bond with sufficient sureties to respond all damages and costs; and the court may enforce obedience to such injunctions by such process as may be employed in an equity case, and dissolve it when deemed proper.

SECT. 8. If during the pendency of any action for the recovery of land, the tenant makes any strip or waste by cutting, felling, or destroying any wood, timber, trees, or poles, standing on said land, he shall pay to the aggrieved party treble damages to be recovered in an action of trespass.

SECT. 9. If any person cuts down, destroys, injures, or carries away, any ornamental or fruit trees, timber, wood, underwood, stones, gravel, ore, goods, or property of any kind, from land not his own without license of the owner, or injures or throws down any fences, bars, or gates, or leaves such gates open or breaks any glass in any building, he shall be liable in damages to the owner in an action of trespass.

SECT. 10. Where any trespasses are committed on any buildings, inclosures, monuments, or mile stones, belonging to any county, town, or parish, the treasurer of such corporation may sue for the damages in the name of the corporation; and if the property injured belongs to a school district, the treasurer of the town may sue in the name of such district.

SECT. 11. If any person enters on any grass land, orchard, or garden, and takes therefrom without permission of the owner, any grass, hay, fruit, vegetable, or shrub, he shall be liable to the party injured in a sum equal to three times the value of the articles so taken away in an action of trespass.

SECT. 12. If an heir or devisee of a person deceased, whose estate is represented as insolvent, shall afterwards and before sale of the real estate for payment of debts or before all the debts are paid remove, or injure, any building or trees, except what is needed for fuel or repairs, or commit any strip or waste on such estate, he shall forfeit treble the amount of damages to be recovered by the executor or administrator in an action of trespass.

SECT. 13. If such executor or administrator is heir or devisee, and commits any such trespass or waste, on proof thereof before the judge of probate he shall be liable to the same extent as the heirs or devisees; and in both cases the damages, when recovered by the executor or administrator or adjudged against him by the judge of probate, shall be accounted for in the administration account.

SECT. 14. All or any of the tenants in common coparceners or joint tenants of any lands may join or sever in personal actions for injuries done to the same setting forth in the declaration the names of all other cotenants, if known.

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One or more
tenants in
common may
join, &c.

R. S., c. 129, § 17.

SECT. 15. When any such action is brought, the court may order notice to be given to all other cotenants known, and all or any of them at any time before final judgment may become plaintiffs in the action, and prosecute the suit for the benefit of all concerned.

Notice to the
other co-tenants
to be given, &c.R. S., c. 129,
§ 18.

SECT. 16. The court shall enter judgment for the whole amount of the injury proved; but shall award execution only for the proportion thereof sustained by the plaintiffs.

Judgment to be
rendered for the
whole damage,
&c.

R. S., c. 129, § 19.

SECT. 17. The remaining cotenants may afterwards either jointly or severally sue out a scire facias on such judgment, and execution shall be thereupon awarded for their proportion of the damages adjudged in the original suit.

Scire facias on
such judgment
by the other
co-tenants for
their shares,
R. S., c. 129,
§ 20.

SECT. 18. If any one or more of the joint tenants or tenants in common take the whole rents or income of the joint estate, or more than their share without the consent of their cotenants, and refuse after demand in a reasonable time to pay such tenants their share thereof, any one or more of said cotenants may have an action of special assumpsit against their cotenants so withholding the rents and income to recover their proportion thereof.

1848, c. 61,

§ 1, 2.

If one or more
joint tenant
takes the whole
rent, &c.

Chapter 96.

REPLEVIN OF BEASTS AND CHATTELS.

REPLEVIN OF BEASTS.

*See*t. 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.

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- Sect. 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 a writ of reprisal may issue.
 18. Defendant's remedy on the replevin bond.
 19. Limitation of surety's liability on replevin bond.

Owner of beasts
distrained, may
replevy them.

R. S., c. 130, § 1.

The mode of
proceeding,
process, &c.

R. S., c. 130, § 2.

Bond to be given
before service of
writ, &c.

R. S., c. 130, § 3.

If the beasts
are lawfully
distrained, &c.

R. S., c. 130, § 4.

If unlawfully
distrained, &c.

R. S., c. 130, § 5.

Either party
may appeal.

R. S., c. 130, § 6.

In what cases a
cause may be
transferred from

Replevin of beasts.

SECT. 1. Any person, whose beasts are distrained or impounded 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 before any justice of the peace for the county in the form prescribed by law. (a)

SECT. 2. The writ shall be sued out served and returned and the cause shall be heard and determined as is provided in the case of other civil actions before a justice of the peace except as otherwise prescribed.

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.

SECT. 4. If it appears 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 irrepleviable by plaintiff and for the defendant's damages and costs in the replevin suit.

SECT. 5. If it appears, that the beasts were taken or distrained without justifiable cause, the plaintiff shall have judgment for his damages and costs.

SECT. 6. Either party may appeal from the final judgment of the justice, as in other civil actions.

SECT. 7. When it appears, that the sum demanded for the 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
 6 transferred to the supreme judicial court to be there dis-
 7 posed of, as is provided by law respecting 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 in such reasonable sum, as the justice
 11 orders, to enter the action at the next term of said court
 12 and prosecute it with effect and pay all intervening damages
 13 and costs.

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a justice to the
supreme judicial
court.

R. S., c. 130, § 7.

Replevin of goods.

SECT. 8. When any goods unlawfully taken or detained
 2 from the owner or person entitled to the possession thereof,
 3 or 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. (a)

Any goods,
unlawfully
detained, may
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
 6 the county where the goods are detained.

In what courts
replevin may be
brought.

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. (b)

Bond to be
given before
service.

R. S., c. 130,
§ 10.

SECT. 11. If it appears, that the defendant is entitled to
 2 a return of the goods, he shall have judgment and a writ of
 3 return accordingly with damages for the taking and costs.

If plaintiff fails
in his suit, &c.
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 of
 5 a judgment for a return shall not be less than at the rate of

Assessment of
damages on
judgment for
return of
property to an
attaching officer.

R. S., c. 130,
§ 12.

(a) 12, Me. 261. 15, Me. 373. 19, Me. 255. 20, Me. 267. 22, Me. 537. 30, Me. 184, 370.
 31, Me. 296, 340. 32, Me. 192, 322. 37, Me. 326.

(b) 27, Me. 443. 29, Me. 566. 34, Me. 84. 35, Me. 53.

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*for payment
of debts,
detainments,
and expenses.*
Disposal of the
money recovered
by the officer.

R. S., c. 130,
§ 13.

*Appropriation
of the money
received by the
creditor in such
cases.*

R. S., c. 130,
§ 14.

*Judgment for
damages and
costs if plaintiff
recovers.*
R. S., c. 130, § 15.

*Continuance
of attachment, if
goods are
replevied.*

R. S., c. 130,
§ 16.

6 twelve per cent. by the year on the value of the goods for so
7 long a time, as the service of the execution is so delayed. (a)

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:

5 *First*—To pay the lawful fees and charges of the officer,
6 and the reasonable expenses of the replevin suit and of the
7 action on the bond, so far as they are not reimbursed by the
8 costs recovered.

9 *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.

15 *Third*—If the attaching creditor in such case does not re-
16 cover judgment in his suit, or if any balance remains of the
17 money so recovered by the officer after paying the creditor
18 his due, such balance or the whole amount, as the case may
19 be, shall be applied, as the surplus of the proceeds of sale
20 should be applied, if the same goods had been sold on exe-
21 cution.

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 ap-
5 plied 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
8 the judgment.

SECT. 15. If it appears that the goods were taken attached
2 or detained unlawfully the plaintiff shall have judgment for
3 his damages caused thereby and for his costs.

SECT. 16. If the goods replevied had been attached, in case
2 of judgment for a return they shall be held by the attachment
3 until thirty days after judgment in the suit, in which they were
4 attached; and if such final judgment is rendered before the
5 return of the goods, or if the goods when replevied were
6 seized on execution, they shall be held by the same attach-
7 ment or seizure for thirty days after the return liable to be
8 taken and disposed of, as if they had not been replevied.

(a) 28, Me. 241. 32, Me. 182. 33, Me. 384.

SECT. 17. When the officer in the service of the writ of return and restitution is not able to find in his precinct the beast or other property directed to be returned in his receipt, he shall certify that fact in his return; and the court whence it issued upon notice may grant a writ of reprisal of the form prescribed by law against the plaintiff in replevin to take his goods or beasts, not exempted from attachment, of the full value to be delivered to the defendant to be held and disposed of by him according to law, until the plaintiff restores the beast or other property replevied by him.

CHAP. 97.
When writ of
reprisal may
issue.

R. S., c. 130,
§ 17.

SECT. 18. The foregoing provisions shall not preclude the defendant from resorting to his remedy on the replevin bond, or to his remedy against the officer for the insufficiency of sureties on the bond, to recover the value of the goods together with the damage or loss occasioned by the replevin thereof, notwithstanding he has endeavored to recover the same by the writs of return and of reprisal as aforesaid.

Defendant's
remedy on the
replevin bond.

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.

Limitation of
surety's liability
on replevin
bond.

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.

CHAP. 97.

*Accusations by
a woman pregnant with a
bastard child, and her
examination.*

R. S., c. 131, § 1.

Justice may issue a warrant.

R. S., c. 131, § 2.

Person arrested to give bond.

R. S., c. 131, § 3.

On refusal, to be committed.

R. S., c. 131, § 4.

Cause to be continued, &c.

R. S., c. 131, § 5.

Surrender of principal by his sureties, &c.

R. S., c. 131, § 6.
R. S., c. 114,
§ 100.

Declaration must be filed before trial; form thereof.

R. S., c. 131, § 7.

Complainant may be a witness, &c.

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. (a)

SECT. 2. He may issue his warrant for the apprehension of such person directed to the sheriff of any county, in which the accused is supposed to reside, accompanied by such accusation and examination.

SECT. 3. When the person is brought before such or any other justice, he may require him to give bond to the complainant with sufficient sureties, in such reasonable sum as he orders, conditioned for his appearance at the next supreme judicial court for the county in which she resides, and for his abiding the order of court thereon. (b)

SECT. 4. If the accused refuses or neglects to give such bond, the justice shall commit him to the jail of the county of such justice, until such bond is given.

SECT. 5. If at such next or any subsequent court the complainant has not been delivered of her child, or is unable to attend court, or for other good reason, the cause may be continued, and the bond shall remain in force until final judgment, unless it becomes void as mentioned in the following section.

SECT. 6. The sureties of the accused may surrender him in court at any time before final judgment, and thereupon they shall be discharged; and he shall be committed until a new bond is given.

SECT. 7. Before proceeding to trial the complainant must file a declaration, stating that she has been delivered of a bastard child begotten by the accused, the time and place when and where it was begotten, with as much precision as the case will admit, that being put on the discovery of the truth during the time of her travail she accused the respondent of being the father of the child, and that she has been constant in such accusation.

SECT. 8. When the complainant has made said accusation, been examined on oath as before mentioned, and been put

3 upon the discovery of the truth of the same accusation at
 4 the time of her travail, and thereupon has accused the same
 5 man with being the father of the child of which she is about
 6 to be delivered, and has continued constant in such accusa-
 7 tion, and prosecutes him as the father of such child before
 8 such court, the man shall be held to answer to such com-
 9 plaint, and she may be a witness in the trial, unless incom-
 10 petent by reason of a conviction of some crime. (a)

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 the
 5 assistance of the mother, as the court may order; and shall
 6 give a bond with sufficient sureties approved by the court to
 7 the complainant to perform said order, and a bond with suffi-
 8 cient sureties approved as aforesaid to the town that may
 9 be liable for the maintenance of such child; the latter bond
 10 to be deposited with the clerk of the court for the use of
 11 such town; and he shall be committed till he gives 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.

If not guilty, &c.
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 to bar or affect any such complaint with-
 5 out the consent in writing of the overseers of the poor of the
 6 town interested in the support of such mother or child. (b)

Complainant
not to settle
with the father,
&c.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, as persons committed on execution: but
 5 he shall give fifteen days notice of his intention to take
 6 the benefit of such oath to the complainant, if then living,
 7 and to the clerk of the town where the child has its legal
 8 settlement if in this state. The mother of such child and
 9 said town may, after such liberation of such prisoner, recover
 10 of him by action of debt any sum of money, which ought
 11 to have been paid pursuant by the order of court. (c)

The father may
be discharged
from imprison-
ment, &c.R. S., c. 131,
§ 12, 13.

(a) 23, Me. 573. 34, Me. 237. 35, Me. 433. (b) 18, Me. 150. (c) 32, Me. 21.

CHAP. 98.

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 the town treasurer.
 15. Penalty, if finder neglects to give notice.

Seizure of forfeited personal property, &c.

R. S., c. 132, § 1.

To be restored to claimant, on his giving bond.

R. S., c. 132, § 2.

The same to be appraised.

R. S., c. 132, § 3.

Inventory and appraisal, if there is no claimant.

R. S., c. 132, § 4.

If the value exceeds \$20, &c.

R. S., c. 132, § 5.

SECT. 1. When any personal property is forfeited for any offense, and no special mode is prescribed for recovering it, any person entitled to the whole or part of the same may seize and keep it till final judgment, unless restored on the bond as herein provided.

SECT. 2. If the person claiming it for himself or another gives bond to the party seizing with sufficient surety to pay the appraised value thereof, when it is decreed forfeited, it shall be restored to such claimant.

SECT. 3. The value shall be ascertained by the appraiserment of three disinterested men mutually chosen by the parties; or if they cannot agree, by a justice of the peace of the same county.

SECT. 4. If no person claims the property, after it has been so seized, the party seizing shall cause an inventory and appraisement thereof to be made by three disinterested persons under oath appointed by a justice of the same county; which shall be the rule for deciding where the libel shall be filed.

SECT. 5. If the property seized exceeds twenty dollars, the party seizing within twenty days thereafter shall file a libel in the clerk's office of the supreme judicial court in the county, where the offense was committed, stating the cause of seizure and praying for a decree of forfeiture. The clerk thereupon shall make out a notice to all persons to appear at such court at the time appointed to show cause, why such decree should not be passed.

SECT. 6. Such notice shall be published in some newspaper printed in the same county if any, if not in the state paper, at least fourteen days before the time of trial.

CHAP. 98.

How notice of libel to be given, R. S., c. 132, § 6.

SECT. 7. When there is a claimant the court may hear and determine the cause by a jury, or without if the parties agree, and may allow costs against the claimant; if there is no claimant, the court shall decree the forfeiture and disposition of the property according to law, and a sale and distribution of the proceeds after deducting all proper charges.

Proceedings and decree thereon.

R. S., c. 132, § 7.

SECT. 8. If the libel is not supported or is discontinued, the court shall decree a restoration of the property with costs. If the jury or court finds the seizure without probable cause, reasonable damages shall be decreed for the claimant.

If the libel is not supported or is discontinued, &c.

R. S., c. 132, § 8.

SECT. 9. When the property seized does not exceed twenty dollars, the libel shall be filed before a justice of the peace of the county, where the offense was committed, and after notice as before mentioned has been posted at two or more public places in the same county seven days at least before the day of trial, such justice shall try and decide the cause, and make such decree therein as the law requires.

If the value is less than \$20, &c.

R. S., c. 132, § 9.

SECT. 10. Either party may appeal to the next supreme judicial court in the same county recognizing as in other cases of appeal; if the appeal is not prosecuted, the court on complaint may affirm the decree of the justice with costs; and depositions duly taken may be used in the trial of the action.

Appeal; decree to be affirmed, &c.

R. S., c. 132, § 10, 11, 12.

SECT. 11. The finder of any money or goods of the value of three dollars or more, if the owner is unknown, within ten days next following shall give notice thereof in writing to the clerk of the town where they are found, and post up a notification thereof in some public place in said town, and cause the same to be publicly cried therein on three several days, if there is any public crier in said town. And if the value of said money or goods is ten dollars or more, the same shall be cried and notice given by posting as aforesaid in two towns adjoining in addition.

Duty of finder of goods worth \$3, or more, &c.

R. S., c. 132, § 13, 14.

SECT. 12. Every finder of lost goods of the value of ten dollars or more within two months after finding and before using them to their disadvantage shall procure a warrant from the town clerk or a justice of the peace directed to two persons appointed by said clerk or justice not interested, except as inhabitants of the town, returnable within seven days from the date in the said clerk's office to appraise said goods under oath.

Also, worth \$10, or more.

R. S., c. 132, § 15.

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Proceedings, if owner appears in one year.

R. S., c. 132,
§ 16.

If no owner appears within one year, &c.

R. S., c. 132,
§ 17.

Penalty, if finder neglects to give notice.

R. S., c. 132,
§ 18.

SECT. 13. If the owner of such lost money or goods appears within one year after said notice to the clerk, and gives reasonable evidence of his ownership to the finder, he shall have restitution of the same or the value thereof allowing and paying all necessary charges and reasonable compensation to the finder to be adjudged by some justice of the peace of the county, if the owner and finder cannot agree.

SECT. 14. If no owner appears within one year, such money or lost goods shall belong to the finder by paying one half their value to the treasurer of said town after deducting all necessary charges; but if he neglects to pay the same on demand, it may be recovered in an action brought by said treasurer in the name of the town.

SECT. 15. If the finder of any lost money or goods, of the value of three dollars or more neglects to give notice to the town clerk and cause the same to be cried and advertised as herein provided, he shall forfeit the full value thereof, one half to the use of the town, and the other half to him who sues therefor, and be liable to the owner for the lost money or goods.

Chapter 99.

HABEAS CORPUS.

Sect. 1. Who may prosecute the writ, as matter of right.

2. Minors enlisting in 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 discharged.
- 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.

- Sect.* 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 mesne process, or execution.

*Hab.**Hab.**Hab.*

SECT. 1. Every person unlawfully deprived of his personal liberty by the act of another, except in the cases hereinafter mentioned, shall of right have a writ of habeas corpus according to the provisions herein contained.

Who may prosecute the writ, as matter of right.
R. S., c. 140, § 1.

SECT. 2. Any minor enlisted within this state into the army or navy of the United States without the written consent of his parent guardian or master shall have all the benefits of this chapter on the application of himself parent guardian or master.

Minors enlisting into the army or navy, &c.

R. S., c. 140,
§ 37.

SECT. 3. The parent master or guardian of any minor imprisoned or restrained of his liberty shall be entitled to the writ of habeas corpus for such minor, in case the minor would be entitled to said writ on his own application.

Parent, master or guardian of minor restrained, &c.
1845, c. 138, § 1.

SECT. 4. The supreme judicial court or any justice thereof on application of any person may issue the writ of habeas corpus to bring before them any party alleged to be imprisoned or restrained of his liberty, who would be entitled to said writ on his own application, when from any cause he is incapable of making such application.

Supreme judicial court may grant such writ, &c.

1845, c. 138, § 2.

SECT. 5. The following persons shall not of right have such writ:

Who are not so entitled as of right.

First—Persons committed to and confined in prison for treason, felony, or suspicion thereof, or as accessories before the fact to a felony, when the same is plainly and specially expressed in the warrant of commitment.

Second—Persons convicted or in execution upon legal process criminal or civil.

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R. S., c. 140, § 2. 9 *Third*—Persons committed on mesne process in any civil action, on which they are liable to be arrested and imprisoned.

Application ;
how made by
persons not of
right entitled.

R. S., c. 140, § 3.

To be returnable
before the court,
&c.

R. S., c. 140, § 4.

Application to
be in writing,
&c.

R. S., c. 140, § 5.
1845, c. 138,
§ 2, 3.

When the writ
shall not issue.

R. S., c. 140, § 6.

Proceedings, if
excessive bail is
demanded.

R. S., c. 140, § 7.

If the officer
refuses a copy of
the precept, &c.

R. S., c. 140, § 8.

Form of writ in
cases mentioned
in the fifth
section.

SECT. 6. Every application for such writ by any such person shall be made to the supreme judicial court in the county where the restraint exists, if it is in session; if not to any justice thereof; and when issued by the court, it shall be returnable thereto; but if the court is adjourned without day or for more than seven days, it may be returned before any justice thereof and heard and determined by him.

SECT. 7. When issued by a justice of the court, it may be made returnable before the court or himself or any other justice thereof.

SECT. 8. The application shall be in writing and signed and sworn to by the person making it. The applicant shall state the place where and the person by whom, he or the person in whose behalf the application is made is restrained; and produce to the court or justice a copy of the precept by virtue of which he or such other person is so restrained attested by the officer holding it.

SECT. 9. If on inspection of the copy of such precept it appears to the court or justice, that such person is lawfully imprisoned or restrained of his liberty by virtue thereof, a writ of habeas corpus shall not be granted.

SECT. 10. If it appears by such copy that such person is committed and imprisoned on mesne process for want of bail, and the court or justice is of the opinion that excessive bail is demanded, the court or justice shall decide what bail is reasonable, and on giving such bail to the plaintiff he shall be discharged.

SECT. 11. If the prison keeper or other officer having the custody of such person refuses or unreasonably delays to deliver to the applicant an attested copy of the precept by which he restrains him on demand therefor, the court or justice on proof of such demand and refusal shall forthwith issue the writ of habeas corpus as prayed for.

SECT. 12. When such writ is issued on application in behalf of any person described in the fifth section, it shall be substantially as follows:

4 STATE OF MAINE.

5 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 the 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 _____,
 18 in 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.

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
 5 is 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 refusal
 9 or neglect to deliver on demand to the applicant a copy of
 10 the precept by which he restrained the person of his liberty,
 11 in whose behalf application was made, then the officer shall
 12 be bound to obey the writ without payment or tender of
 13 expenses.

Time of service
and return, &c.

R. S., c. 140, § 9.

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 sickness or infirmity of such party.

R. S., c. 140,
§ 10.

Officer, when he
makes return, to
bring the body
of the person
restrained.
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 proved
 4 to the satisfaction of the court or justice, any justice of the
 5 court may proceed to the place where the party is confined
 6 and there make his examination, or may adjourn the same
 7 to another time, or make such other order in the case as
 8 law and justice requires.

Proceedings, if
the person is
sick, and cannot
be brought.

R. S., c. 140,
§ 12.

SECT. 16. On the return of the writ the court or justice
 2 without delay shall proceed to examine the causes of impris-
 3 onment or restraint; and may adjourn such examination from
 4 time to time.

Examination of
the causes of
restraint.
R. S., c. 140,
§ 13.

CHAP. 99.

Persons interested to be notified before discharge.

R. S., c. 140,
§ 14.

Proceedings and decision upon the application.

R. S., c. 140,
§ 15.

If no legal cause is shown for imprisonment or restraint of party, court or justice shall discharge, &c.

R. S., c. 140, § 16.

Party imprisoned and detained for any offense which is bailable, shall be admitted to bail.

Bail, &c.
R. S., c. 140,
§ 17.

Form of writ, if the restraint is not by an officer.

SECT. 17. When it appears that the party is detained on any process, under which any other person has an interest in continuing such imprisonment or restraint, the party shall not be discharged until notice has been given to such other person or his attorney if within the state or within thirty miles of the place of examination to appear and object, if he see cause; and if imprisoned on any criminal accusation he shall not be discharged, until sufficient notice has been given to the attorney general or other attorney for the state, that he may appear and object, if he thinks fit.

SECT. 18. The party imprisoned or restrained may deny any facts stated in the return or statement and may allege any other facts, that are material; and the court or justice may in a summary way examine the cause of imprisonment or restraint, and hear evidence produced by any person interested both in support of such imprisonment or restraint and against it; and thereupon may dispose of the party, as law and justice requires.

SECT. 19. If no legal cause is shown for the imprisonment or restraint of the party, the court or justice shall discharge him; but this provision shall not apply to the case of a person committed on mesne process, where excessive bail is demanded. (a)

SECT. 20. If the party is imprisoned and detained for any offense, which is bailable, he shall be admitted to bail, if sufficient bail is offered; and if not he shall be remanded with an order of the court or justice expressing the sum in which he shall be held to bail and the court at which he shall be bound to appear; and any justice of the peace may at any time before the sitting of the court bail the party pursuant to such order.

SECT. 21. In cases of imprisonment or restraint of personal liberty by any person not a sheriff, deputy sheriff, coroner, constable, jailer, or marshal, deputy marshal, or other officer of the courts of the United States, the writ shall be in the following form viz:

6 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.

CHAP. 99.R. S., c. 140,
§ 18.

SECT. 22. Such writ may be issued by the supreme judicial court, when sitting in any county in which the person in whose behalf application is made is restrained, or by any justice thereof, the form to be varied so far as necessary, when issued by a justice of the court, and served in any county in the state.

By whom issued
and where
served.R. S., c. 140,
§ 19, 20.

SECT. 23. The person having custody of the prisoner may be designated by the name of his office, if he has any, or by his own name; or if both are unknown or uncertain, he may be described by an assumed name; and any one, who is served with the writ, shall be deemed the person thereby intended.

If the person
restraining is
unknown, &c.R. S., c. 140,
§ 21.

SECT. 24. The person detained and to be produced shall be designated by his name if known; and if unknown or uncertain he may be described in any other way, so as to make known who is intended.

If the person
restrained is
unknown, &c.
R. S., c. 140,
§ 22.

SECT. 25. In cases provided for in the thirteenth section the person who makes the return, and in cases provided for in the twenty-first section the person in whose custody the prisoner is found, shall state in writing to the court or justice before whom the process is returned plainly and unequivocally,—

Form of return
in the cases men-
tioned in the
13th and 21st
sections.

First—Whether he has or has not the party in his custody or power or under restraint;

Second—If he has, he shall state at large the authority and the true and whole cause of such imprisonment or restraint upon which the party is detained; and,

Third—If he has had the party in his custody or power or under his restraint, and has transferred such custody or restraint to another, he shall state particularly to whom, at what time, for what cause, and by what authority, such transfer was made.

R. S., c. 140,
§ 23.

SECT. 26. Such return or statement shall be signed and sworn to by the person making it, unless he is a sworn public officer, and makes and signs his return in his official capacity.

How such return
shall be authen-
ticated.R. S., c. 140,
§ 24.

CHAP. 99.

Manner of keeping the party before judgement.
R. S., c. 140, § 25.

Penalty for neglect of an officer to give a copy of his precept, &c.

R. S., c. 140,
§ 26.

Punishment, if an officer neglects to serve a writ of habeas corpus.

R. S., c. 140,
§ 27.

If attachment is issued against a sheriff.

R. S., c. 104,
§ 28.

Proceedings in such case for release of the person for whose benefit the writ issued.

R. S., c. 140,
§ 29.

Persons discharged on habeas corpus, &c.

R. S., c. 140,
§ 30.

Conveyance to prison of persons ordered to be committed, &c.

R. S., c. 140,
§ 31.

SECT. 27. The party may be bailed to appear from day to day, until judgment is rendered, or remanded, or committed to the sheriff, or placed in custody, as the case may require.

SECT. 28. If any officer refuses or neglects for four hours to deliver a true and attested copy of the warrant or process, by which he detains any prisoner, to any person who demands it and tenders the fees therefor, he shall forfeit to such prisoner two hundred dollars.

SECT. 29. If any person or officer, to whom such writ is directed, refuses to receive it, or neglects to obey and execute it, as hereby required, and no sufficient cause is shown for such refusal or neglect, he shall forfeit to the aggrieved party four hundred dollars; and the court or judge before whom the writ was returnable shall proceed forthwith by attachment, as for a contempt, to compel obedience to the writ, and to punish for the contempt.

SECT. 30. If such attachment is issued against a sheriff or his deputy, it may be directed to a coroner or any other person therein designated, who shall thereby have power to execute it; and the sheriff or his deputy may be committed to jail on such process in any county but his own.

SECT. 31. If the person to whom the writ is directed refuses to obey and execute it, the court or judge may issue a precept to any officer or other person therein named commanding him to bring the person for whose benefit the writ was issued before the court or judge; and the prisoner shall therupon be discharged bailed or remanded as if brought in on habeas corpus.

SECT. 32. No person, who has been enlarged by habeas corpus, shall be again imprisoned or restrained for the same cause, unless indicted therefor, convicted thereof, or committed for want of bail, or after a discharge for defect of proof, or some material defect in the commitment in a criminal case, he is arrested on sufficient proof and committed by legal process for the same offense.

SECT. 33. Any person ordered to be committed to prison on any criminal charge shall be carried to such prison, as soon as may be and shall not be delivered from one officer to another, except for easy and speedy conveyance; nor removed without his consent from one county to another unless by habeas corpus; and if any one, who has in his custody or under his power any person entitled to a writ of habeas corpus, whether issued or not, transfers such person to the custody of another, or changes his place of confinement, with intent

10 to elude the service of such writ, he shall forfeit to the party
 11 aggrieved the sum of four hundred dollars.

SECT. 34. No penalty established by this chapter shall bar
 2 any action at common law for damages for false imprison-
 3 ment.

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, who
 4 shall stipulate for the payment of costs as the court orders.

SECT. 36. Nothing in this chapter shall be construed to
 2 restrain the supreme judicial court in term time, or any jus-
 3 tice thereof in vacation, from bailing any person for any
 4 offense 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.

SECT. 37. When any person is confined in a jail for a bail-
 2 able offense or for not finding sureties on a recognizance,
 3 any two justices of the peace and of the quorum on applica-
 4 tion may inquire into the case and admit any such person to
 5 bail, and exercise the same power which any one of the jus-
 6 tices of the supreme judicial court may do; and may issue
 7 a writ of habeas corpus and cause such person to be brought
 8 before them for the purpose expressed in this section, and
 9 may take such recognizance.

SECT. 38. Any court may issue a writ of habeas corpus,
 2 when necessary, to bring before them any prisoner for trial in
 3 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.

SECT. 39. When an 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 a
 5 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.

Penalties no bar
to actions for
damages.
R. S., c. 140,
§ 32.

A third person
may appear for
the party, &c.
R. S., c. 140,
§ 33.

Supreme court
may allow
bail, &c.

R. S., c. 140,
§ 34.

Admission of a
person to bail,
&c.

R. S., c. 140,
§ 35.

Habeas corpus
may issue to
bring a prisoner
as a witness.
R. S., c. 140,
§ 36.

Habeas corpus
may issue, on
application, &c.

Act of amend-
ment, 1841, § 24.

Chapter 100.

WRIT OF AUDITA QUERELA.

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Sect. 1. Form of the writ.

2. In what court and county to be sued out.
3. Proceedings in court.
4. Complainant may recover special damages.
5. Pleadings, and filing exceptions.
6. Proceedings, if complainant is in prison.
7. Effect of a surrender to jail.

Form of the writ.

R. S., c. 141, § 1.

In what court and county to be sued out.

R. S., c. 141, § 2.

Proceedings in court.

R. S., c. 141, § 3.

Complainant may recover special damages.

R. S., c. 141, § 4.

Pleadings, and filing exceptions.

R. S., c. 141, § 5.

Proceedings, if complainant is in prison.

R. S., c. 141, § 6.

Effect of a surrender to jail.

R. S., c. 141, § 7.

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. (a)

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, 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.

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.

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.

SECT. 5. The defendant may plead the general issue of not guilty with or without a brief statement or any special matter in bar; and exceptions may be alleged to the rulings of instructions and opinion of the court as in civil actions.

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 respondent, the complainant within thirty days thereafter shall surrender himself to the jail keeper to be detained on the execution, or within that time satisfy the execution, and such final judgment as the respondent recovers.

SECT. 7. If the complainant surrenders himself to jail, he shall be in lawful custody on such execution and there detained, until discharged according to law.

Chapter 101.CHAP. 101.

WRIT FOR REPLEVYING 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 elogned the plaintiff, he may be arrested.
 9. Defendant may be enlarged by giving bail.
 10. Discharge and costs, if not guilty of eloigning.
 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 liberty, or held in duress, unless by a lawful writ warrant or other process civil or criminal, he shall be entitled of right by his own application or by any one in his behalf without any express power to the writ for replevying a person. (a)

who is entitled
to the writ.

SECT. 2. The writ shall issue from and be returnable to the supreme judicial court in the county where the plaintiff is confined, and directed to a proper officer and served as soon as may be fourteen days at least before the return day.

R. S., c. 142,
§ 1, 18.

SECT. 3. The form of the writ shall be as follows:

writ to issue
from the S. J.
court. Service.

2 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 cause
 6 C. D., who, as it is said, is taken and detained in a place called
 7 N, in our said county of S——, by the duress of G. H. that
 8 said C. D. may appear at our supreme judicial court, next to
 9 be held at —— within and for the county of S——, on the
 10 — day of — next, then and there in our said court to
 11 demand right and justice against said G. H., for the duress
 12 and imprisonment aforesaid, and to prosecute his replevin,
 13 as the law directs; provided that the said C. D. (the plaintiff,) before his deliverance gives bond to the defendant in
 14 such sum as you judge reasonable with two sufficient sureties with condition to appear at said court to prosecute his
 15 replevin against the defendant, and to have his body there
 16 to be redelivered, if thereto ordered by the court, and to pay
 17 all such damages and costs as are awarded against him; and
 20 if the plaintiff is delivered by you at a day before the sitting

R. S., c. 142, § 2.

Form of the
writ.

CHAP. 101. 21 of said court, you are to summon the defendant to appear
22 at said court.

R. S., c. 142, § 3.
1821, c. 63, § 10.
23 Witness J. S.; Esquire, at —, the — day of —, in the
24 year of our Lord —. L. M., Clerk.

Bond to be given.

R. S., c. 142, § 4.

Officer responsible for sureties.

R. S., c. 142, § 5.

What judgment, if the action is or is not maintained.

R. S., c. 142,
§ 6, 7.

What judgment, if defendant is entitled to the custody of the plaintiff.

R. S., c. 142, § 8.

If defendant has elogned the plaintiff, he may be arrested.

R. S., c. 142, § 9.

Defendant may be enlarged by giving bail.
R. S., c. 142,
§ 10.

Discharge and costs, if not guilty of elogning.
R. S., c. 142,
§ 11.

If guilty, to be imprisoned, &c.

R. S., c. 142,
§ 12, 14.

SECT. 4. No person shall be delivered by such writ until a bond is given by the plaintiff or person suing on his behalf; and the bond shall be returned to the court with the writ.

SECT. 5. The officer serving the writ shall be answerable for the sufficiency of the bond, as in case of bail in civil actions. (a)

SECT. 6. If the plaintiff maintains his action, he shall be discharged and recover his costs; but if not, the defendant shall recover his costs and such damages as the jury assess; or if the defendant is defaulted, or the parties consent, the court may assess the damages.

SECT. 7. If it appears that the defendant is bail for the plaintiff, or that as his child, ward, apprentice or otherwise, he is entitled to his custody, he shall have judgment for a redelivery of his body to be held or disposed of according law.

SECT. 8. If it appears, that the defendant has elogned the plaintiff's body, so that the officer cannot deliver him, the court on motion shall issue a writ of reprisal to take the defendant's body and him safely keep, so that he may be at the then next term of the court to traverse the return of said writ for replevying the plaintiff.

SECT. 9. The defendant may be enlarged by giving bail for his appearance at court with two sufficient sureties, in such sum as the officer requires.

SECT. 10. The defendant may traverse the return on the writ for replevying the plaintiff; and if it appears, that he is not guilty of elogning the plaintiff, he shall be discharged and recover costs.

SECT. 11. If such return is not traversed, or if on such traverse it appears that the defendant did elogn the plaintiff, an alias writ of reprisal shall issue, on which he shall be committed to the common jail to remain irrepleviable, till he produces the body of the plaintiff or proves his death. He may suggest the plaintiff's death, and the court shall empanel a jury to try the fact at the defendant's expense; and if the death is proved, he shall be discharged.

SECT. 12. Said writs shall be substantially in the form
2 heretofore established and used in this state.

SECT. 13. If the defendant after the return of a¹ judgment
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.

CHAP. 102.

Form of writs
of replevin.
R. S., c. 142, § 13.
Proceedings, if
the plaintiff is
produced.

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 application, or on final decisions.
 15. Limitations of applications for certiorari.

Writs of Error.

SECT. 1. Writs of error in civil cases may issue out of the
2 supreme judicial court in vacation or term time returnable
3 to the same court. (a)

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.

Writs of error
may issue from
S. J. Court, &c.
R. S., c. 143, § 1.

Execution not to
stay, unless bond
is given.

R. S., c. 143, § 2.

(a) 16, Me. 81. 19, Me. 219. 23, Me. 251. 29, Me. 360. 30, Me. 194. 31, Me. 57, 420.
32, Me. 185. 33, Me. 25, 265, 350, 368. 35, Me. 92. 36, Me. 198.

CHAP. 102.

Bond to be approved by a justice of the court, or clerk.
R. S., c. 143, § 3.

Filing of the bond deemed a delivery thereof, &c.

R. S., c. 143, § 4.

Costs to prevailing party, &c.

R. S., c. 143, § 5.

Form of writ of error.

SECT. 3. The penal sum and sufficiency of the bond shall be determined by any justice of the supreme judicial court, or by the clerk from whose office the writ is issued in accordance with the rules of court.

SECT. 4. When the bond is given, the filing of it in the clerk's office for the use of the defendant shall be deemed a delivery thereof; and no execution shall be issued on the judgment complained of, while such suit is pending; and if execution has already issued, the clerk shall make a certificate of the issuing of such writ and filing of the bond; and after notice thereof to the officer holding the execution, all further proceedings thereon shall be stayed.

SECT. 5. The prevailing party in such writ in a civil action in all cases shall be entitled to his costs; and if the judgment is affirmed, the defendant in error shall be entitled to not less than six nor more than twelve per cent. a year on the amount of his former judgment as damages for his delay, and in such case the court in their discretion may allow him double costs.

SECT. 6. The writ of error may be a scire facias issued substantially as follows without any assignment of errors or other preliminary proceedings:

STATE OF MAINE.

[L. S.] — ss. To the sheriff, &c.

Greeting.
We command you, that you make known unto — of — to appear, if he sees cause, before our supreme judicial court to be holden at — within and for our said county of — on the — to answer to — of — in a plea of error, whereas the said — alleges that in the process proceedings and judgment had before — at — on —, wherein the said — was plaintiff and the said — was defendant, there occurred the errors hereinafter specified, by which the present plaintiff was injured, and for which he therefore seeks that said judgment may be reversed recalled or corrected, as law and justice require; that is to say the following errors: —.

Hereof fail not, and have you there this writ with your doings thereon.

Witness, — Esq., at — the — day of —.

— Clerk.

1852, c. 269,
§ 1, 2.

Scire facias to specify the errors of fact and law.

SECT. 7. The scire facias shall specify the errors of fact and law, upon which the plaintiff relies; and a transcript of the record process and proceedings attested by the clerk

4 of the court or justice of the peace rendering the judgment CHAP. 102.
 5 without further authentication or the introduction of the
 6 record shall be competent evidence in such trial; and in
 7 case of mistake in the transcript the court may grant leave
 8 to amend. 1852, c. 269, § 3.

SECT. 8. The proceedings upon writs of error not herein provided for shall be according to the common law as modified by the practice and usage in this state and the general rules of court. Proceedings on writs of error, &c. R. S., c. 143, § 9. 1852, c. 269, § 4.

SECT. 9. No writ of error upon a judgment for a capital offense shall issue, unless allowed by one of the justices of the law court after notice to the attorney general or other attorney for the state. Writs of error in capital cases, &c. R. S., c. 143, § 7.

SECT. 10. Writs of error shall issue of course upon all other judgments in criminal cases, but not to stay or delay execution of sentence or judgment, unless allowed by a justice of the supreme judicial court with an express order thereon to stay all proceedings on such judgment or sentence. Effect of writ of error in other criminal cases. R. S., c. 143, § 8.

SECT. 11. When a stay of proceedings is thus ordered, the judge may make such order as the case requires for the custody of the plaintiff in error or letting him to bail; or upon a writ of habeas corpus if entitled he may procure his enlargement by giving bail. Provision for keeping plaintiff in error on stay of proceedings. R. S., c. 143, § 9.

SECT. 12. No writ of error shall be sustained, unless brought within six years next after the entering up of the judgment sought to be reversed or avoided; but if the person entitled to such writ is a minor, a married woman, insane, imprisoned, or not in the United States, when becoming so entitled, then he his heirs executors or administrators may sue out the writ within five years after the removal of such disability. Limitation of writs of error. R. S., c. 143, § 10.

Writs of Certiorari.

SECT. 13. All writs of certiorari to correct errors in proceedings, that are not according to the course of the common law, shall be issued from the supreme judicial court according to the practice heretofore established and subject to such further regulations, as are made from time to time by such court. (b) How writs of certiorari to be issued. R. S., c. 143, § 11.

SECT. 14. Upon every application for a certiorari, and on the final adjudication thereof, the court in their discretion Costs on applications, or on final decisions.

(a) 23, Me. 9, 511. 25, Me. 69. 26, Me. 353. 28, Me. 121. 30, Me. 19, 270, 302, 351. 31, Me. 578. 32, Me. 450, 452. 33, Me. 237, 260. 35, Me. 373. 36, Me. 74. 37, Me. 561. 38, Me. 492.

CHAP. 103.R. S., c. 143,
§ 12.Limitation of
applications for
certiorari.R. S., c. 143,
§ 13.

- 3 may award costs against any party, who appears and under-
4 takes to maintain or object to the proceedings.

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 twelfth
5 section, within five years from the removal of such disability.

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; how executed.
- 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 courtesy.

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 defendant 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.

ARTICLE 1. *Estates in dower and by courtesy.*Of what lands a
woman is
dowable.

R. S., c. 95, § 1.

SECT. 1. Every woman shall be entitled to her dower at
2 the 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.

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 or
5 dwelling house, though the same has never been cleared. (a)

CHAP. 103.
Of what she is
not dowable.

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
5 by the heirs or devisees. (b)

When judge of
probate may
assign dower.

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 to assign the
5 same equally and impartially without favor and affection, as
6 conveniently as may be in one or more parcels for the best
7 interest of the parties.

Mode of pro-
ceeding in
assignment of
dower.

R. S., c. 95, § 4.
c. 108, § 14.

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.

Special assign-
ment in certain
cases.

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. (c)

Rights of widow,
before dower is
assigned.

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 in her husband's estate, which was not conveyed by
4 him or taken from him by execution, prior to the twenty-
5 third day of February, 1813.

Widow of nat-
uralized alien
entitled to
dower.

R. S., c. 95, § 7.

SECT. 8. A married woman may bar her right of dower
2 in an estate conveyed by her husband by joining with him
3 in the deed of conveyance or in a subsequent deed; and by
4 her sole deed, when her husband is under guardianship. (d)

A married
woman may bar
her right to
dower by deed,
&c.
Idem, § 9.
1853, c. 33.

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. (e)

A woman may
bar her right to
dower by
accepting a
jointure before
marriage.

R. S., c. 95, § 10.

(a) 14, Me. 290. 15, Me. 351, 371. 18, Me. 39. 19, Me. 141. 25, Me. 94, 101. 31, Me. 91, 243,
403. 32, Me. 412. 37, Me. 11. (b) 23, Me. 276. (c) 34, Me. 428. (d) 29, Me. 415.
30, Me. 191. 33, Me. 396. (e) 21, Me. 364.

CHAP. 103.

Also by a pecuniary provision made for the benefit of an intended wife in lieu of dower.
R. S., c. 95, § 11.

Widow may waive jointure in certain cases.

R. S., c. 95, § 12.

She may waive provision in her husband's will.

R. S., c. 95, § 13.

Remedy if she is evicted of her dower.

R. S., c. 95, § 14.

When dowlable of an equity of redemption.

R. S., c. 95, § 15.

Penalty if she commits waste.

R. S., c. 95, § 16.

SECT. 10. Any pecuniary provision made for the benefit of an intended wife in lieu of dower consented to by her, as provided in the preceding section, shall bar her right of dower in her husband's lands.

SECT. 11. If such jointure or pecuniary provision is made before marriage without the consent of the intended wife, or if made after marriage, it shall bar her dower, unless, within six months after the husband's death she makes her election to waive such provision, and files the same in writing in the probate court.

SECT. 12. When a specific provision is made in her husband's will for the widow, within six months after probate of the will she shall make her election, whether to accept it or claim her dower; but shall not be entitled to both, unless it appears by the will, that the testator plainly so intended. (a)

SECT. 13. If a woman is lawfully evicted of lands assigned to her as dower, or settled upon her as a jointure, or is deprived of the provision made for her by will otherwise in lieu of dower, she may be endowed anew as though no such assignment or provision had been made.

SECT. 14. If the wife has released her right of dower in any mortgage made by her husband, or if her husband is seized of land mortgaged by another person or by himself before their marriage, she shall be entitled to dower in the mortgaged premises as against every person except the mortgagee and those claiming under him; and if the mortgagor or other person claiming under the husband redeems the mortgage, the widow shall repay such proportion of the money so paid by him, as her interest in the mortgaged premises bears to the whole value; else she shall be entitled to dower only according to the value of the estate after deducting the money so paid for its redemption. (b)

SECT. 15. If any woman endowed of lands commits or suffers any waste thereon, she shall forfeit the place wasted and the amount of the damages done to the premises to be recovered in an action of waste by the person having the next immediate estate of inheritance therein: but taking fuel necessary for her own use and materials for the repair of buildings and for fences thereon from any woodlands, of which she is endowed, shall not be considered waste.

SECT. 16. A widow may remain in the house of her husband ninety days next after his death without being chargeable with rent therefor; and in the meantime she shall have her reasonable sustenance out of the estate.

CHAP. 103.
Rights of widow
to remain in her
husband's house.
R. S., c. 95, § 17.

SECT. 17. When a man and his wife are seized of lands in fee in her right acquired before March 22, 1844 which are under improvement, and issue is born alive of her body that may inherit the same, the husband shall hold such estate after his wife's decease, during his life as tenant by the courtesy.

Tenancy by
courtesy.
R. S., c. 95, § 18.

ARTICLE II.—*Action of dower.*

SECT. 18. When a woman is entitled to dower, and it is not lawfully set out to her by the heir or tenant of the freehold nor assigned to her by the judge of probate, she may recover it by a writ of dower as herein provided.

Rights of widow
to sue for dower.
R. S., c. 144, § 1.
R. S., c. 95, § 8.
Act of amend-
ment, 1841, § 25.

SECT. 19. She must demand her dower of the person who is at the time seized of the freehold, if he is in the state, otherwise of the tenant in possession, and shall not commence her action of dower before the expiration of one month, nor after the expiration of one year, from the time of demand; but she may make a new demand and commence an action thereon, if an action is not brought within one year after the first demand. (a)

Previous demand
and time of
bringing the
action.

R. S., c. 144, § 2.

SECT. 20. When a corporation is the tenant of the freehold, she must demand her dower in writing of any officer thereof, on whom by law a writ in a civil action against the same may be served; but in that case the time shall be sixty instead of thirty days between the demand and the suit; but a second demand may be made as provided in the preceding section.

Demand upon a
corporation, &c.

R. S., c. 144, § 3.

SECT. 21. In such actions, the defendant may plead in abatement but not in bar, that he is not tenant of the freehold. (b)

Defendant may
plead in abate-
ment, &c.
R. S., c. 144, § 4.

SECT. 22. If the defendant recovers judgment for her dower, she shall in the same action recover her damages for its detention.

Damages for
detaining dower.
R. S., c. 144, § 5.

SECT. 23. The action shall be brought against the person who is at the time tenant of the freehold; but if he is not the person of whom demand was made, he shall be liable for damages only for the time he held the possession; and if the defendant recovers her dower and damages, she may

Suit to be
against the
tenant of the
freehold, &c.

CHAP. 104.

R. S., c. 144,
§ 6, 7.

If defendant
dies pending an
action for dower,
&c.

1852, c. 259, § 1.

Writ of seizin
and proceedings
in setting off
dower.

R. S., c. 144, § 8.

Assignments of
rents and
profits in certain
cases.

R. S., c. 144, § 9.

6 afterwards 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.

SECT. 24. If the defendant dies during the pendency of
2 an action of dower, her executor or administrator may prose-
3 cute the action to final judgment and recover therein the
4 damages to which she would be entitled to the time of her
5 decease. He may in like manner prosecute any action com-
6 menced by her under the provisions of the twenty-third
7 section; or commence an action for the damages as provided
8 in said section if not done by her, and recover therein the
9 damages to which she would be entitled if any.

SECT. 25. When judgment for her dower is rendered in
2 favor of the defendant, 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. (a)

SECT. 26. When the estate, out of which the dower is to
2 be assigned, consists of a mill or other tenement, which
3 cannot be divided without damage to the whole, the dower
4 may be assigned of the rents and profits thereof to be re-
5 ceived by the defendant as tenant in common with the other
6 owners of the estate.

Chapter 104.

REAL ACTIONS.

- Sect. 1.* Recovery of estates by writ of entry; mode of service.
 2. Defendant to declare on his own seizin, within twenty years, and disseizin
by tenant.
 3. To set forth the estate he claims in the premises.
 4. Proof of seizin.
 5. Defendant must have right of entry; such right not defeated by descent or
discontinuance.
 6. Who may be considered a disseizor. Disclaimer.
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- Sect. 7.* If defendant has ousted demandant, he may be considered a disseizor, though he claims less than a freehold.
8. Proof to entitle the demandant to recover on trial.
 9. Joinder of demandants.
 10. Demandant may recover, on proof of title.
 11. Demandant may recover damages in the same action.
 - 12, 13, 14. Estimation of rents and profits.
 15. Recovery of damages against other persons.
 16. Real actions not to abate by death or intermarriage of a party.
 17. Appointment of guardians, for minors. Amendments.
 18. Writs of possession to conform to the case; judgment conclusive against all persons interested, who were notified.
 19. Allowance of costs, and stay of execution, in such cases.
 20. Betterments allowed after six years possession.
 21. The premises to be clearly defined and described, in such action.
 22. Tenant may consent that demandant may recover a specified part; effect thereof.
 23. Tenant may have betterments upon demurrer or default.
 24. Request of tenant for appraisal of improvements, and by demandant for appraisal of the land; the jury to allow for no improvements, except those made by tenant, or those under whom he claims, and that were judicious and proper.
 25. The difference between the appraised value of the land, when tenant entered, and the value of it with improvements, at the time of trial, to be taken for the value of betterments.
 26. Demandant may elect to abandon; and if so, must give bond to tenant, to refund, if ousted by better title.
 27. Tenant allowed to pay one third the value of the land, the first year, interest on the whole, and costs.
 28. At the end of two years, he may pay another third, with interest.
 29. And at the end of three years, he may pay the balance, or the demandant have his execution, and a lien on the premises.
 30. Tenant's remedy if he is evicted.
 31. If demandant does not abandon, he cannot have writ of possession, till he pays for the improvements.
 32. Restriction of the right to betterments.
 33. Tenant not to commit waste after judgment against him.
 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.
 48. Court may appoint and protect surveyors.

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 by attachment and summons or copy of the

Recovery of estates by writ of entry; mode of service.

CHAP. 104.

R. S., c. 145, § 3.
1842, c. 31, § 18.

5 writ on the defendant, but if the defendant is not in possession, the officer shall give the tenant in hand or leave at his last and usual place of abode an attested copy of the writ; and if the defendant is not an inhabitant of this state, the service on the tenant shall be sufficient notice to the defendant, or the court may order futher notice. (a)

Demandant to declare on his own seizin, &c.

R. S., c. 145, § 4.

To set forth the estate he claims in the premises.

R. S., c. 145, § 5.

Proof of seizin.

R. S., c. 145, § 6.

Demandant must have right of entry, &c.

R. S., c. 145, § 7, 8.

Who may be considered a disseizor. Disclaimer.

SECT. 2. The demandant shall declare on his own seizin within twenty years then last past without naming any particular day, and shall allege a disseizin by the tenant; but need not aver a taking of the profits.

SECT. 3. He shall set forth the estate he claims in the premises, whether in fee simple, fee tail, or for life, or for years; and if for life, then whether for his own life or the life of another; but shall not be required in any case to state in the writ the origin of his title or the deduction of it to himself; but on application of the tenant the court may direct the demandant to file in the case an informal statement of the title, on which he relies and its origin.

SECT. 4. The demandant shall not be required to prove an actual entry under his title, but proof that he is entitled to such an estate in the premises, as he claims and that he has a right of entry therein, shall be deemed sufficient proof of his seizin.

SECT. 5. No such action shall be maintained, unless at the time of commencing it the demandant had such right of entry; and no descent or discontinuance shall defeat any right of entry for the recovery of real estate.

SECT. 6. Every person alleged to be in possession of the premises demanded in such writ claiming any freehold therein may be considered a disseizor for the purpose of trying the right; but the defendant may plead in abatement but not in bar, that he is not tenant of the freehold, or by a brief statement under the general issue filed within the time allowed for pleas in abatement, unless by leave of court the time therefor is enlarged, and he may show that he was not in possession of the premises when the action was commenced and disclaim any right title or interest therein, and proof of such fact shall defeat the action; and if he claimed or was in possession of only a part of the premises, when the action was commenced, he shall describe such part in a statement signed by him or his attorney and filed in the case, and may disclaim the residue; and if the facts contained in

(a) 6, Me. 436. 17, Me. 219. 20, Me. 278. 24, Me. 520.

16 such statement are proved on trial, the defendant shall
17 recover judgment for no more than such part. (a)

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R. S., c. 145, § 9.

1846, c. 221, § 1.
If defendant has
ousted demand-
ant, &c.

SECT. 7. If the person in possession has actually ousted the defendant or withheld the possession, at the defendant's election he may be considered a disseizor for the purpose of trying the right, though he claims an estate therein less than 5 a freehold. (b)

R. S., c. 145,
§ 10.

SECT. 8. In the trial upon such writ on the general issue, if the defendant proves that he is entitled to such estate in the premises as he has alleged, and had a right of entry therein when he commenced his action, he shall recover the premises, unless the tenant proves a better title in himself. (c)

Proof to entitle
the defendant
to recover on
trial.R. S., c. 145,
§ 11.

SECT. 9. Persons claiming as tenants in common, joint tenants, or coparceners, may all join, or any two or more may join, in a suit for recovery of lands; or any one may sue alone for his share.

Joiner of
defendants.
R. S., c. 145,
§ 12.

SECT. 10. The defendant in all cases may recover any specific part of the premises or any undivided portion thereof, to which he proves a title though it is less than is demanded.

Demandant may
recover on proof
of title.
R. S., c. 145,
§ 13.

SECT. 11. When a defendant recovers judgment in a writ of entry, he shall be entitled to recover in the same action damages for the rents and profits of the premises from the time his title accrued subject to the limitation herein contained; and for any destruction or waste of the buildings or other property, for which the tenant is by law answerable.

Demandant may
recover damages
in the same
action.R. S., c. 145,
§ 14.

SECT. 12. The rents and profits, for which the tenant shall be liable, shall be the clear annual value of the premises for the time he was in possession after deducting all lawful taxes, which the tenant has paid, and all the necessary and ordinary expenses of repairs and cultivating the land or collecting the rents and profits.

Estimation of
rents and profits.R. S., c. 145,
§ 15.

SECT. 13. In estimating the rents and profits the value of the use by the tenant of any improvements made by himself, or those under whom he claims, shall not be allowed to the defendant.

Same subject.

R. S., c. 145,
§ 16.

SECT. 14. The tenant shall not be liable for the rents and profits for any longer time than six years, nor for any waste or other damage committed before that time, unless the rents and profits are allowed by way of set-off to his claim for improvements.

Tenant not
liable for rents
and profits, &c.R. S., c. 145,
§ 17.

(a) 22, Me. 312. 24, Me. 308. (b) 34, Me. 79. (c) 5, Me. 224. 12, Me. 346. 19, Me. 383.
23, Me. 234. 27, Me. 357. 31, Me. 143, 306, 583. 33, Me. 355, 541. 38, Me. 78.

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Recovery of
damages against
other persons.

R. S., c. 145,
§ 18.

Real actions not
to abate by
death or
inter-marriage
of a party.

R. S., c. 145,
§ 19.

Appointment of
guardians, &c.

R. S., c. 145,
§ 20.

Writs of pos-
session to con-
form to the case,
&c.

R. S., c. 145,
§ 21.

Allowance of
costs, &c.

R. S., c. 145,
§ 22.

Betterments
allowed after
six years
possession.

R. S., c. 145,
§ 23.

The premises to
be clearly
defined and
described in such
action.

SECT. 15. Nothing herein contained shall prevent the defendant from maintaining an action for mesne profits or for damage to the premises against any person except the tenant in a writ of entry, who has had possession of the premises or is otherwise liable to such action.

SECT. 16. No action, wherein the possession of land is demanded, after its entry in court shall be abated by the death or intermarriage of either party; but the court shall proceed to try and determine such action, after such notice as the court may order has been duly served upon all interested in his estate either personally or by publication in some newspaper. (a)

SECT. 17. In such case, if any heir is a minor, the court shall order notice to the guardian, and may appoint a guardian ad litem if necessary, and direct all necessary amendments in the forms of proceeding.

SECT. 18. If the defendant recovers judgment in any such case, the court may order one or more writs of possession to issue, as may be necessary; and a writ of possession may issue against all such as have been so notified, whether they appeared and defended or not; and the judgment shall be conclusive against all who were so notified, whether they appeared or not.

SECT. 19. The prevailing party shall recover full costs in all such cases, and the court may order one or more executions to be issued therefor against the goods and estate of a deceased party in the hands of his executor or administrator, or otherwise according to the legal rights and liabilities of the parties, and may stay any such execution, if the situation of the estate requires it.

SECT. 20. When the demanded premises have been in the actual possession of the tenant or those under whom he claims for six successive years or more before commencement of the action, such tenant shall be allowed a compensation for the value of any buildings and improvements on the premises made by him or those under whom he claims to be ascertained and adjusted in the manner hereinafter provided.

SECT. 21. In such action the demanded premises shall be clearly defined and described in the declaration, otherwise the court may direct a nonsuit. And if the tenant or person 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 CHAP. 104.
 6 commencement of the action, and only a part thereof is de-
 7 manded, and the tenant alleges that the defendant has as
 8 good a title to the whole as to the part demanded, he may
 9 request the jury to inquire 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 defendant may recover a specified part of
 3 the demanded premises, by consent of the defendant judg-
 4 ment may be rendered in his favor for such part, and for the
 5 tenant for the residue; but if the defendant does not con-
 6 sent and recovers only such part, he shall recover no costs,
 7 and the tenant shall recover his costs from the time of such
 8 notice.

R. S., c. 145,
§ 25.

SECT. 23. The tenant shall have the benefit of the provi-
 2 sions in the following sections as to the increased value of
 3 premises, when the cause is determined in favor of the de-
 4 fendant upon demurrer, default, or by verdict, including all
 5 real actions brought by a reversioner or remainder man or
 6 his assigns after the termination of a tenancy in dower or
 7 any other life estate against the assignee or grantee of the
 8 tenant of the life estate, or against the heirs or legal repre-
 9 sentatives of such tenant.

Tenant may
have betterments
upon demurrer
or default.

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 defendant
 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 improve-
 8 ments made or waste committed; both these estimates they
 9 shall make and state in their verdict; and the jury shall al-
 10 low for no buildings or improvements, except those that they
 11 find were made by the tenant his grantor or assignor and
 12 were judicious and proper under the circumstances of the
 13 case.

Request of
tenant for
appraisal of
improvements,
&c.

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 premi-
 3 ses in actual possession for more than twenty years prior to
 4 the commencement of the action, the jury may find that fact;
 5 and in estimating the value of the premises, if no buildings

The difference
between the
appraised value
of the land,
when tenant
entered, &c.

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6 had been erected or improvements made thereon, they shall
 7 find and state in their verdict, what was the value of the
 8 premises, when the tenant or those under whom he claims
 9 first entered thereon. The sum so found shall be deemed
 10 the estimated value of the premises; and in estimating the
 11 increased value by reason of the buildings and improvements
 12 the jury shall find and state in their verdict the value of the
 13 premises at the time of the trial, above their value when the
 14 tenant or those under whom he claims first entered thereon;
 15 and the sum so found and stated shall be taken for the build-
 16 ings and improvements.

1848, c. 76, § 1.
1853, c. 34, § 1.

Defendant may elect to abandon, &c.

SECT. 26. If the defendant 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 files 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 assigns,
 9 if they shall be evicted from the land within twenty years by
 10 a title better than that of the defendant, then judgment
 11 shall be rendered against the tenant for the sum so estimated
 12 by the jury and costs.

R. S., c. 145,
§ 28.
1853, c. 34, § 2.

Tenant allowed to pay one-third the value of the land, &c.

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 defendant's use, one year's interest of
 5 said sum and one third part of said principal sum and all the
 6 costs if taxed and filed, in which case no execution shall
 7 issue at the time.

R. S., c. 145,
§ 29.

At the end of two years, he may pay another third, with interest.

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 judgment,
 4 then execution shall be further stayed; otherwise, it may
 5 issue for two third parts of the original amount of the judg-
 6 ment and interest thereon.

R. S., c. 145,
§ 30.

And at the end of three years, he may pay the balance, &c.

SECT. 29. If the tenant within three years after the ren-
 2 dition of judgment pays into the clerk's office the remaining
 3 third part and interest thereon having made the payments
 4 aforesaid execution shall never issue; otherwise it may for
 5 the third part aforesaid and one year's interest thereon; and
 6 the premises shall be held as security for the amount of the
 7 judgment liable to be taken in execution for the amount and
 8 interest until sixty days after an execution might have issued

9 as aforesaid notwithstanding any intermediate conveyance CHAP. 104.
 10 attachment or seizure upon execution; and such execution
 11 may be extended on said land or any part of it; or it may
 12 be sold on execution like an equity of redemption, and in
 13 either case subject to the right of redemption as in those R. S., c. 145,
§ 31, 32.
 14 cases.

SECT. 30. If the tenant or his heirs are evicted from the Tenant's remedy
if he is evicted.
 2 land so abandoned to him by a better title, and he notified
 3 the defendant or his heirs to aid him in his defense against
 4 such title, the tenant his executors or administrators may
 5 recover back the money so paid with lawful interest of said
 6 defendant or his representatives; but if no notice was given
 7 the tenant in an action against the original defendant to
 8 recover the price paid for the premises may show, that he
 9 was evicted by a title better than that of the defendant. R. S., c. 145,
§ 33.

SECT. 31. When the defendant does not elect so to abandon If defendant
does not
abandon, &c.
 2 the premises, no writ of possession shall issue on his
 3 judgment, nor a new action be sustained for the land, unless
 4 the defendant within one year from the rendition thereof
 5 pays into the clerk's office of the same court or to such
 6 person as the court may appoint for the use of the tenant
 7 the sum assessed for the buildings and improvements with R. S., c. 145,
§ 34.
 8 interest thereon.

SECT. 32. Nothing contained in this chapter concerning Restriction of
the right to
betterments.
 2 rents and profits or the estimate and allowance of the value
 3 of the buildings and improvements shall extend to any action
 4 between a mortgager and mortgagee their heirs and assigns;
 5 or to any case where the tenant or the person under whom
 6 he claims entered into possession of the premises and occupied R. S., c. 145,
§ 35.
 7 under a contract with the owner, which was known to
 8 the tenant when he entered.

SECT. 33. No tenant, after judgment is entered against Tenant not to
commit waste
after judgment
against him.
R. S., c. 145,
§ 36.
 2 him for the appraised value of the premises, shall unnecessarily cut wood or take away any timber or make any strip
 3 or waste on the land, till the amount of such judgment is
 4 satisfied.

SECT. 34. When the parties agree, that the value of the Parties may
agree as to value
of improvements.
 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 R. S., c. 145,
§ 37.
 5 them and recorded shall be deemed equal in its effect to the
 6 verdict of a jury.

SECT. 35. When the tenant in any stage of such action, Tenant may
propose a sum
&c.
 2 files a statement in open court consenting to a sum, at which

CHAP. 104.

3 the buildings and improvements and the value of the de-
 4 manded premises may be estimated, if the defendant con-
 5 sents thereto judgment shall be rendered accordingly, as if
 6 such sums had been found by verdict; but if the defendant
 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.

*Set off of costs,
&c.*

SECT. 36. In all cases where the defendant 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 de-
 5 mandant to be set off against the appraised value of the
 6 buildings and improvements on the land; a record of this
 7 order shall be made, and the court shall thereupon enter
 8 judgment according as the balance may be in favor of one
 9 party or the other.

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.

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 the
 6 tenant.

SECT. 39. A possession and improvement of land by a ten-
 2 ant shall be within the provisions of this chapter though not
 3 wholly surrounded by a fence or rendered inaccessible by
 4 other obstructions, if such possession and improvement has
 5 been open notorious and exclusive and comporting with the
 6 usual management and improvement of a farm by its owner,
 7 and though a portion of it may be woodland and unculti-
 8 vated. (a)

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

R. S., c. 145,
§ 41.

*What constitutes
a possession and
improvement.*

R. S., c. 145,
§ 42.

*Proceedings, if
either party
dies before the
cause is disposed
of.*

4 according to the foregoing provisions, any money payable by
 5 the tenant may be paid by him his executors or administrato-
 6 rs, or by any person who is entitled to the estate under
 7 him, to the defendant or his executors or administrators,
 8 with the like effect as if both parties were living.

CHAP. 104.
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 shall
 4 enure to the use and benefit of the demandant, or whoever
 5 is then entitled to the premises under him, as if it had been
 6 executed in the lifetime of the parties.

How writ of
possession shall
issue in such
case.

SECT. 42. Either party may have a view by the jury of the
 2 place in question, if in the opinion of the court such view is
 3 necessary to a just decision; the party moving for the same
 4 shall advance to the jury such sum, as the court orders, to
 5 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,
§ 44.

Either party may
have a view by
the jury.

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
 7 the premises, as if they had been mortgaged for its payment,
 8 and he may keep possession till it is paid; and if the parties
 9 cannot agree on the existing value, it may be settled as in
 10 case of the redemption of mortgaged real estate.

R. S., c. 145,
§ 45.

Proceedings if
a life estate is
demanded.

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 years
 4 or more before such entry and withdraws from such tenant
 5 the possession thereof, he shall have a right to recover of
 6 him so entering or of his executors or administrators in an
 7 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
 13 favor 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,
§ 46.

If tenant is
ousted after six
years
possession, &c.

R. S., c. 145,
§ 47.
1843, c. 6, § 2.

CHAP. 105.

The value of improvements in such case to be estimated, &c.
R. S., c. 145, § 48.

Cases in which defendant may impeach the plaintiff's title deeds.

R. S., c. 145,
§ 50.

If tenant and those under whom he claims have been in possession 40 years, &c.

1854, c. 90, § 1.
1852, c. 240, § 2.

Court may appoint and protect surveyors.

R. S., c. 115,
§ 112.

SECT. 45. Such right and value shall be ascertained by the same principles, as regulate such right and value under the provisions of this chapter.

SECT. 46. In all actions respecting lands or any interest therein, any title deed offered in evidence, may be impeached by the defendant as obtained by fraud, where the grantor if a party could impeach it, if the defendant has been in the open peaceable and adverse possession of the premises for twenty years.

SECT. 47. In all real and mixed actions, in which the tenant proves that he and those under whom he claims have been in the open notorious adverse and exclusive possession of the demanded premises claiming in fee simple for forty years next before the commencement of the action, the jury shall inquire into the fact of possession, and in case they find that the tenant and those under whom he claims have so occupied, the defendant shall recover no costs.

SECT. 48. The court may appoint a surveyor to run lines and make plans of lands demanded in a real or mixed action on motion of either party. If such surveyor is prevented by force menaces or fear from performing the duties assigned him, the court may issue a warrant to the sheriff commanding him with suitable aid to cause such opposition to the surveyor to be prevented; and in the execution of such warrant he may exercise all the power appertaining to his office as sheriff; and all persons refusing their aid, when called for by him, shall be liable to the same penalties as in other like cases.

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.

- Sect. 13.* Right of way, or other easement, acquired by adverse user; the owner, by notice, may prevent such acquisition. CHAP. 105.
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 action for the recovery of lands or make an entry thereon, unless within twenty years after the right to make such entry or bring such action first accrued; or within twenty years after he or those under whom he claims were seized or possessed of the premises; except as hereinafter provided. (a)

Rights of entry
and action bar-
red in 20 years.

SECT. 2. If such right or title first accrued to an ancestor predecessor or other person, under whom the defendant claims, the said twenty years shall be computed from the time when the right or title so first accrued to such ancestor predecessor or other person.

R. S., c. 147, § 1.

From what
time.

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.

R. S., c. 147, § 2.

When such
right shall be
deemed to
accrue.

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 courtesy 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 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.

Preceding clause
shall not prevent
any person from
entering, &c.

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

In all cases not
specially pro-
vided for, the
right of entry
shall accrue, &c.

(a) 13, Me. 387. 20, Me. 205. 21, Me. 201, 372. 25, Me. 468.

CHAP. 105.

R. S., c. 147, § 5.

When an action
may be brought
by a minister,
&c.

R. S., c. 147, § 6.

Saving in favor
of infants, &c.

R. S., c. 147, § 7.

Further saving,
if the person
first entitled dies
during such
disability.

R. S., c. 147, § 8.

Consequence, if
tenant in tail or
remainder man
dies before the
expiration of the
limitation.

R. S., c. 147, § 9.

What shall
constitute such
a disseizin as to
bar the right of
recovery.

R. S., c. 147,
§ 11.

4. the premises under the title, upon which the entry or action
5 is founded.

SECT. 6. If any minister or other sole corporation is dis-
2 seized, any of his successors may enter upon the premises
3 or bring an action for the recovery of them at any time
4 within five years after the death resignation or removal of
5 the person disseized, notwithstanding the twenty years after
6 the disseizin have expired.

SECT. 7. When such right of entry or action first accrues,
2 if the person thereto entitled is a minor, married woman,
3 insane, imprisoned, or absent from the United States, he or
4 any one claiming under him may make the entry or bring
5 the action at any time within ten years after such disability
6 is removed, notwithstanding the twenty years have expired.

SECT. 8. If the person first entitled to make the entry or
2 bring the action dies during the continuance of the disability,
3 and no determination or judgment has been had on his title
4 or right of action, the entry may be made or action brought
5 by his heirs or any other person claiming under him at any
6 time within ten years after his death, notwithstanding the
7 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.

SECT. 9. When a tenant in tail or a remainder man in
2 tail dies before the expiration of the period herein before
3 limited 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.

SECT. 10. To constitute a disseizin or such exclusive and
2 adverse possession of lands as to bar or limit the right of
3 the true owner thereof to recover the same, it shall not be
4 necessary 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.

SECT. 11. No real or mixed action for the recovery of any lands shall be commenced in behalf of the state, unless within twenty years from and after the time the title accrues to the state.

CHAP. 105.
Limitation of actions by the state.
R. S., c. 147,
§ 12.

SECT. 12. When any writ in a real or mixed action fails of sufficient service or return by unavoidable cause, or by the default or negligence of any officer to whom it was delivered for service, or the writ is abated, or the action defeated for any matter of form, or by the death or other disability of either party, or if the defendant's judgment is reversed on writ of error, the defendant may commence a new action at any time within six months after the abatement or determination of the first suit, or the reversal of the judgment.

Limitation not to take effect in certain cases, &c.

R. S., c. 147,
§ 13.

SECT. 13. No person shall acquire any right or privilege of way or any other easement from in upon or over the land of another by the adverse use and enjoyment thereof; unless such use is continued uninterrupted for twenty years; and the owner of such land to prevent such right may give notice in writing to the person claiming the same of his intention to contest such right privilege or easement; and such notice being served and recorded, as hereinafter stated, shall be deemed an interruption of such use, and prevent the acquisition of a right thereto.

Right of way, or other easement, &c.

R. S., c. 147,
§ 14, 15.

SECT. 14. Such notice may be given by an officer by giving to the claimant his agent or guardian, if in the state an attested copy thereof or by leaving it at his dwelling house, or if not resident in the state a copy may be left with the tenant or occupant if any of the estate; if not, such copy shall be affixed to the house or a conspicuous part of the premises; and the officer shall make his return on the original notice, and the whole shall be recorded in the registry of deeds in the registry district where the land lies within three months from the time of such service; the notice may be given by the agent or guardian of the owner of the land.

How such notice is to be given.

R. S., c. 147,
§ 16.

SECT. 15. No real or mixed action for the recovery of any lands shall be commenced or maintained against any person in possession thereof, when such person or those under whom he claims have been in actual possession for more than forty years claiming to hold the same by adverse open peaceable notorious and exclusive possession in their own right.

No real or mixed action, for the recovery of land, &c.

1848, c. 87, § 1.
1852, c. 240, § 1.

Chapter 106.

THE SELECTION AND SERVICE OF JURORS.

- Board for preparing lists of jurors, &c.*
- R. S., c. 135, § 1.*
- How the lists are to be prepared.*
- R. S., c. 135, § 2.*
- Persons exempted from serving.*
- R. S., c. 135, § 3.*
- Tickets of names to be kept in jury box, &c.*
- 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 venires.
 8. Grand jurors to serve one year; venires 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 venires, and notice of meetings to draw jurors.
 11, 12, 13. Mode of drawing jurors; date of draft to be indorsed on the ticket.
 14. Constables to notify jurors, and return venires.
 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 shall constitute a board for preparing lists of jurors to be laid before the town for their approval; and the town in legal town meeting by a majority of the legal voters assembled may strike out such names as they think proper from such lists, but shall not insert any other names.

SECT. 2. Such board, at least once in every three years, shall prepare a list of such persons of good moral character, and qualified, as the constitution directs to vote for representatives, under the age of seventy years in such town, as they shall judge best qualified to serve as jurors.

SECT. 3. The following persons shall be exempted from serving as jurors, and their names shall not be placed on the lists: the governor, council, judges and clerks of the common law courts, secretary and treasurer of the state, all officers of the United States, judges and registers of probate, registrars of deeds, settled ministers of the gospel, officers of any colleges, preceptors of incorporated academies, physicians and surgeons, cashiers of incorporated banks, sheriffs and their deputies, coroners, counselors and attorneys at law, county commissioners, constables, and constant ferrymen.

SECT. 4. After the list of jurors is approved by the town, the said board shall write their names upon tickets and place them in the jury box, which shall be kept by the town clerk;

4 and the persons whose names are in the box shall be liable
 5 to be drawn and to serve on any jury, at any court for which
 6 they are drawn, once in every three years and not oftener,
 7 except as herein provided.

CHAP. 106.

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 re-
 3 quired, 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 numer-
 5 ically designated; and they shall place as many adjoining
 6 towns in each district, as shall make the number of inhabi-
 7 tants in each according to the last census as nearly equal as
 8 may be without dividing a town; and shall deliver a copy of
 9 such division immediately to the clerk of the courts in their
 10 county.

Commissioners
to divide the
county into jury
districts, &c.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
 4 county as equally as may be, and as far as is practicable
 5 from every town in rotation having regard to the number of
 6 its inhabitants taking not more than two grand jurors and
 7 two traverse jurors from the same town at the same time,
 8 unless from necessity, or some extraordinary cause, or to
 9 equalize the service; and the clerk of the courts shall issue
 10 vénires to the constables accordingly.

Rule by which
the clerk shall
issue vénires.R. S., c. 135,
§ 10, 11.

SECT. 8. Vénires 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.

Grand jurors to
serve one year,
&c.
R. S., c. 135,
§ 12, 13.
1859, 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 the
 5 the day on which the jurors shall attend.

Grand and trav-
erse jurors to
attend on the
first day of the
term, &c.
1844, c. 95, § 1.

SECT. 10. The sheriff on receiving vénires for jurors shall
 2 immediately send them to the constables of the towns, where
 3 directed; and each constable on receipt thereof shall notify

Distribution of
vénires, &c.

CHAP. 106.

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.

Mode of drawing
jurors, &c.

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 there be unlocked and the tickets mixed by a major-
 4 ity of the selectmen present; and one of the selectmen shall
 5 draw out as many tickets as there are jurors required, and
 6 the persons whose names are drawn shall be returned as
 7 jurors, unless they have served on the jury within three
 8 years, or from sickness, absence beyond sea, without the
 9 limits, or in distant parts of the state, they are considered
 10 by the town unable to attend.

R. S., c. 135,
§ 15.

Same subject.

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
 7 the box have served within three years, or are not liable to
 8 serve, the selectmen shall draw out the required number of
 9 those who have not served for eighteen months; and the
 10 clerk shall certify on the venire, that all persons whose
 11 names are in the box have served within three years, or are
 12 not liable to serve.

R. S., c. 135,
§ 16.

Date of draft to
be endorsed on
the ticket.

R. S., c. 135,
§ 17.

Constables to
notify jurors,
and return
venires.

R. S., c. 135,
§ 18, 19.

Indorsement to
be transferred,
&c.

SECT. 13. When a juror is drawn and not excused by the
 2 town, the selectmen who drew his ticket shall indorse
 3 thereon the date of the draft and return it into the box.

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 seasonable return of the venire with his doings thereon. (a)

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.

CHAP. 107.

R. S., c. 135,
§ 20.

SECT. 16. If the selectmen or town clerk neglect to perform their duties, as herein required, so that the jurors called for from their town are not returned, they shall be fined not less than ten nor more than fifty dollars each.

Penalty for
neglect of
selectmen or
clerk.R. S., c. 135,
§ 21.

SECT. 17. Any constable neglecting to perform his duties herein required shall be fined not exceeding twenty dollars; and any town for a like neglect of its duties shall be fined not exceeding one hundred dollars.

Penalty for
neglect of con-
stable or town.R. S., c. 135,
§ 22, 23.

SECT. 18. If the clerk of the court or sheriff neglects to perform his duties so as to prevent a compliance with any of the provisions of this chapter, he shall be fined not exceeding fifty dollars.

Penalty for
neglect of clerk
of court or
sheriff.R. S., c. 135,
§ 24.

SECT. 19. Any juror, who after being notified and returned, unnecessarily fails in his attendance shall be fined, as for contempt, not exceeding twenty dollars, unless he resides in Portland, and then not exceeding forty dollars.

Penalty for
neglect of juror
to attend.R. S., c. 135,
§ 25, 26.

SECT. 20. Any town clerk or selectman, who commits a fraud in any manner on the box previous to the draft in drawing a juror or in returning a name into the box, which had been fairly drawn and drawing another in its stead, or in any other mode, shall be fined not exceeding two hundred dollars to be recovered by indictment one half to the use of the state and the other half to the prosecutor.

Penalty for
fraud by town
clerk or
selectmen.R. S., c. 135,
§ 27, 29.

SECT. 21. All fines imposed by the sixteenth, seventeenth, eighteenth, and nineteenth, sections shall be recovered by indictment information or action by the county treasurer to the use of the county, where the offense was committed.

Recovery and
appropriation of
fines.

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 be taken and used.

5. On application of the party, a justice or notary may issue summons to defendant, 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.

CHAP. 107.

- See t. 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. If deception is used in giving notice, deposition may be rejected.
 15. Form of caption.
 16. Depositions to be delivered in court, or sealed up.
 17. Not to be used if the reason for taking no longer exists.
 18. Objections to competency of witness or questions must be seasonably made.
 19. When depositions may be used in a second suit.
 20. The court may admit or reject depositions taken out of the state.
 21. The court may issue commissions to take depositions out of the state.

DEPOSITIONS IN PERPETUAM.

22. Application for taking a deposition in perpetuam, and notice to persons interested.
23. How such depositions are to be taken and certified.
24. To be recorded.
25. When it may be used in evidence. Never against the deponent or his interest.
26. Such depositions may be taken out of the state, upon a commission issued from the supreme judicial court.
27. The court to order notice, and on hearing may issue a commission to take such depositions.
28. Such deposition to be taken upon interrogations; application may be filed in vacation, and notice given.
29. Proceedings to compel a deponent to appear to give his deposition.
30. Punishment if he refuses to depose.

Depositions in general.

In what cases
depositions may
be used.

R. S., c. 133,
§ 1, 24.

Before whom
they may be
taken.

R. S., c. 133, § 2.

When a cause is
deemed pending,
&c.

R. S., c. 133,
§ 3.

SECT. 1. Depositions taken for any of the causes and in the manner hereinafter mentioned may be used in all civil suits or causes, petitions for partition of land, libels for divorce, prosecutions for the maintenance of bastard children, petitions for review, and in trials before arbitrators, referees and county commissioners; and in cases of the contested election of a person returned as a member of the house of representatives.

SECT. 2. Any justice of the peace or notary public may take depositions to be used in any pending cause, in which he is not interested nor then nor previously counsel or attorney. (a)

SECT. 3. No suit, petition, libel or prosecution, for the purposes of this chapter, shall be considered pending, till the process therein has been duly served on the respondent, or such notice as is required by law, or ordered by the court, has been duly given; and no such deposition shall be used in the trial of any cause except by consent of parties, unless the notice hereinafter mentioned is duly given to the adverse party.

- SECT. 4. Depositions may be taken for either of the following causes.
- 1 *First*—When the deponent is so aged infirm or sick as not to be able to attend at the place of trial.
- 2 *Second*—When the deponent resides out of or is absent from the state.
- 3 *Third*—When the deponent, before the session of the court where the deposition is to be used, is bound to sea on a voyage, is about to go out of the state, or more than sixty miles from the place of trial, and not expected to return in season to attend the trial.
- 4 *Fourth*—When the deponent is judge of the supreme judicial court, or court of probate, and is prevented by his official duty from attending the trial.
- 5 *Fifth*—When the deponent resides in a town other than that in which the trial is to be had.
- 6 *Sixth*—When the deponent is confined in prison, and such imprisonment is continued until after the trial.
- 7 SECT. 5. On application of either party to a justice of the peace or notary public he may issue a summons to the deponent to appear at a designated time and place to give his deposition, and a notice to the adverse party to be present at such time and place; and the deposition may then and there be taken by him or any other justice or notary.
- 8 SECT. 6. The notice to the adverse party shall be served on him or his attorney by reading it in his presence and hearing, or by giving to him or leaving at his last and usual place of abode an attested copy thereof; and the service may be made by a sworn officer or by any other person and proved by his affidavit.
- 9 SECT. 7. No person for the purposes of this chapter shall be considered such attorney, unless his name is indorsed upon the writ or the summons left with the defendant, or he has appeared for his principal in the cause, or given notice in writing that he is attorney of such adverse party. (a)
- 10 SECT. 8. Where there are several plaintiffs or defendants, the notice shall be sufficient if given by the justice or notary to one or more of them; the adverse party shall be allowed not less than at the rate of one day, Sundays excepted, for every twenty miles travel from his usual place of abode to the place of caption between the service of notice and time appointed for taking the deposition: verbal notice to the

CHAP. 107.

Reasons for
which they may
be taken and
used.
R. S., c. 133, § 4.

1842, c. 31, § 16.

1842, c. 1, § 1.

1844, c. 103, § 1.

1849, c. 123, § 1.

R. S., c. 133, § 4.

On application
of the party, &c.R. S., c. 133, § 5.
1849, c. 119, § 1.Service of such
notice, how
made.

R. S., c. 133, § 6.

Who is to be
considered
attorney of the
adverse party.

R. S., c. 133, § 7.

Notice to one of
the adverse party
sufficient, &c.

(a) 29, Me. 69. 33, Me. 420. 36, Me. 278, 350.

CHAP. 107.

R. S., c. 133,
§ 8, 9, 10, 14.
1842, c. 31, § 17.

Form of notice
to adverse party.

8 adverse party by any justice or notary shall be sufficient, and
9 when a deposition is taken, not under a commission and out
10 of the state, the adverse party or his attorney shall have due
11 notice thereof.

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 _____ at
9 _____ of the clock in _____ noon are the place and time
10 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. (a)

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
13 there and then to appear and testify, what you know relat-
14 ing to said action. Dated this _____ of _____, in the
15 year _____.

16 _____, Justice of the Peace.

17 The summons may be served and the service thereof proved,
18 as in section six.

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,
§ 12.

Witness may be
compelled to
give his
deposition.

R. S., c. 133,
§ 13.

SECT. 12. The deponent shall be first sworn to testify the truth, the whole truth, and nothing but the truth, relating to the cause or matter for which the deposition is to be taken; and he shall then be examined, first by the party producing him on verbal or written interrogatories and then by the adverse party, and by the justice or the parties afterwards, if they see cause. (a)

Dependent to be sworn before examination.

R. S., c. 133,
§ 15.

SECT. 13. The deposition shall be written by the justice or notary, or by the deponent or some disinterested person in the presence and under the direction of such justice or notary; and after it has been carefully read to or by the deponent, it shall be subscribed by him.

Who may write the deposition.

R. S., c. 133,
§ 16.

SECT. 14. *If the adverse party is notified to take depositions in the same case at two places at the same time, or any deceptive means are used to prevent his attendance at the taking of any depositions, the court for such reason may reject them.*

If deception is used in giving notice, &c.

R. 1. New.

SECT. 15. The justice or notary shall make out a certificate and annex it to the deposition therein stating the following facts: (b)

Form of caption.
R. S., c. 133,
§ 17.

First—That the deponent was first sworn according to law, and when.

R. S., c. 133,
§ 17.

Second—By whom the deposition was written; if by the deponent or some disinterested person, he must name him and that it was written in his presence and under his direction.

Third—Whether the adverse party was notified to attend, and did or did not attend;

Fourth—The cause in which the deposition is to be used and the names of the parties thereto;

Fifth—The court or tribunal in which it is to be tried, and the time and place of trial;

Sixth—The cause of taking the deposition.

R. S., c. 133,
§ 17.

SECT. 16. The deposition shall be delivered by the justice to the court or referees before whom the cause is to be tried, or inclosed and sealed up by him and directed to such court or referees and kept sealed till opened by their order.

Depositions to be delivered in court, &c.
R. S., c. 133,
§ 18.

SECT. 17. When a deposition is so taken, it shall not be used on trial, if the adverse party shows that the cause for taking it no longer exists. (c)

Not to be used,
&c.
R. S., c. 133,
§ 19.

(a) 24, Me. 171. 34, Me. 69. 35, Me. 132, 368, 511. 38, Me. 137.

(b) 5, Me. 9. 31, Me. 583. 28, Me. 22. 34, Me. 208. 33, Me. 376. 36, Me. 71, 466.

(c) 20, Me. 257. 28, Mo. 583.

CHAP. 107.

Objections to competency of witness, &c.

R. S., c. 133,
§ 20.

When depositions may be used in a second suit.

R. S., c. 133,
§ 21.

The court may admit or reject depositions, &c.
R. S., c. 133,
§ 22.

The court may issue commissions to take depositions out of the state.
R. S., c. 133,
§ 23.

Application for taking a deposition in perpetuam, &c.

R. S., c. 133,
§ 25, 26.

How such depositions are to be taken and certified.

SECT. 18. Objections to the competency of a deponent or to the questions or answers may be made when the deposition is produced in the same manner as if the witness testified on the trial; but if a deposition is taken on written interrogatories, all objections to an interrogatory shall be made before it is answered; and if it is not withdrawn the objection shall be noted thereon, otherwise the objection shall not afterwards be allowed. (a)

SECT. 19. 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.

SECT. 20. 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. (b)

SECT. 21. 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.

Depositions in perpetuam.

SECT. 22. 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 depositions to all persons so named in the statement, which may be given and proved as in case of other depositions.

SECT. 23. The deponent shall be sworn and examined and the deposition written read and subscribed as other depositions; and the person taking it shall annex to it a like cer-

4 tificate, as near as the case will admit, and also state therein
 5 that it was taken in perpetual remembrance of the thing, and
 6 the name of the person at whose request it was taken, and
 7 of all who were notified, and all who attended.

CHAP. 107.

R. S., c. 134,
§ 27.

SECT. 24. The statement deposition and certificate within ^{To be recorded.}
 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 ^{R. S., c. 133,}
 5 where the parties or some of them reside. ^{§ 28.}

SECT. 25. All such depositions recorded as aforesaid, or a <sup>When it may be
used in
evidence, &c.</sup>
 2 copy thereof attested by the register of deeds, may be used
 3 in the trial of any cause pending, when the deposition was
 4 taken, or commenced afterwards between the person at whose
 5 request it was taken, and either of the persons named in the
 6 statement and duly notified, or those claiming under either
 7 concerning the title claim or interest set forth in the state-
 8 ment, 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. 26. Depositions to perpetuate the testimony of wit-
 2 nesses living out of the state may be taken in any other state
 3 or foreign country upon a commission issued by the supreme
 4 judicial court; and the persons desirous to procure such dep-
 5 ositions may apply to said court and file a statement as afore-
 6 said; and if it relates to real estates in this state, the state-
 7 ment shall be filed in the county where it lies; if not in the
 8 county where some of the parties reside.

R. S., c. 133,
§ 30, 31.

SECT. 27. The court shall order notice to be served on each <sup>The court to
order notice, &c.</sup>
 2 of the persons named in the statement living in the state four-
 3 teen days before the time appointed for hearing the parties,
 4 and on hearing the parties, or the applicant if no adverse
 5 party appears, may issue a commission for taking such depo-
 6 sition as in a cause pending.

R. S., c. 133,
§ 32, 33.

SECT. 28. The deposition shall be taken upon interrogato-
 2 ries filed by the applicant and cross interrogatories by any
 3 party adversely interested, substantially as when taken to be
 4 used in pending causes. Or the person wishing to take the
 5 deposition may file his statement in the clerk's office in
 6 vacation, and cause notice to be given to the persons named <sup>Such deposition
to be taken upon
interrogations,
&c.</sup>
 7 therein as interested fourteen days at least before the next
 8 term of the court, at which time the parties may be heard.

R. S., c. 133,
§ 34, 35.

SECT. 29. When any magistrate duly authorized has sum-
 2 moned any person to appear before him to give his deposi- <sup>Proceedings to
compel a depo-
nent to appear,
&c.</sup>

CHAP. 108.

tion to be used in any cause pending in any court in this or
 4 any other state or to perpetuate the testimony of any wit-
 ness, and the summons has been served and returned by a
 6 proper officer or other person, and proof of such service is
 7 entered on the summons, and legal fees have been tendered
 8 such witness a reasonable time before the day appointed for
 9 taking the deposition, and such witness refuses to attend,
 10 he may adjourn the time of taking his deposition and issue
 11 a writ directed to a proper officer to apprehend and bring
 12 such witness before him at the time and place of the adjourn-
 13 ment.

R. S., c. 133,
§ 36.

Punishment if
he refuses to
depose.

R. S., c. 133,
§ 37.

SECT. 30. If such witness on being brought before the per-
 son, who is to take his deposition, refuses to depose and
 3 answer such questions as are propounded to him by either
 4 of the parties or persons interested under his direction, he
 5 may commit him to the prison of the county for contempt,
 6 as the supreme judicial court may commit a witness for refus-
 7 ing to testify.

Chapter 108.**REFERENCE OF DISPUTES BY CONSENT OF PARTIES.**

Seet. 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.

What contro-
versies may be
submitted, &c.

SECT. 1. All controversies, which may be the subject of a personal action, may be submitted to one or more referees; and the parties personally or by attorney may sign and acknowledge an agreement before any justice of the peace, in substance as follows:
 6 Know all men by these presents, that —— of ——,
 7 in the county of ——, and —— of —— in the county of ——, have agreed to submit the demand made by said ——, against said ——, which is hereunto annexed, 10 (and all other demands between the parties, as the case may be,) to the determination of ——; the report of whom, (or

12 the major part of whom) being made within one year from CHAP. 108.
 13 this day to the supreme judicial court for the said county of
 14 —, the judgment thereon shall be final. And if either of
 15 the parties neglects to appear before the referees, after
 16 proper notice given to them of the time and place appointed
 17 by the referees for hearing the parties, the referees may
 18 proceed in his absence.

19 Dated this — day of —, in the year —.

20 Such agreement subscribed by the parties shall be acknowl-
 21 edged by them or their attorneys as their voluntary act
 22 before the same or any other justice, and shall not be
 23 revoked without the mutual consent of the parties. (a)

SECT. 2. If all demands between the parties are so submit-
 2 ted, no specific demand need be annexed to the agreement;
 3 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. (b)

SECT. 3. The parties may agree when the report shall be
 2 made, and in that respect vary from the form aforesaid with-
 3 out being confined to one year.

SECT. 4. One of the referees shall deliver the report to
 2 the court to which by the agreement it is to be returned, or
 3 it shall be sealed up and transmitted sealed to the court and
 4 opened by the clerk.

SECT. 5. Such referees shall have the same authority as
 2 those appointed by a rule of court.

SECT. 6. The court may accept, reject, or recommit it for
 2 further consideration; and the referees shall notify the par-
 3 ties of the time and place of a new hearing; and when the
 4 report is accepted, judgment shall be entered thereon as in
 5 cases of submission by rule of court. (c)

SECT. 7. All the referees must meet and hear the parties,
 2 but a majority may make the report, which shall be valid as
 3 if 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.

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,
 § 1, 2, 5.

Submission of
 all demands,
 and of a specific
 demand.

R. S., c. 138,
 § 3, 4.

Parties may
 agree upon time
 of reporting.
 R. S., c. 138, § 6.

Report, how
 returned into
 court.
 R. S., c. 138, § 7.

Power of
 referees, &c.
 R. S., c. 138, § 8.

Proceedings of
 court thereon ;
 recommitment.

R. S., c. 138, § 9.

All the referees
 must hear, but a
 majority may
 decide.
 R. S., c. 138,
 § 10.

Costs ;
 compensation
 of referees.
 R. S., c. 138,
 § 11.

(a) 18, Me. 251, 255. (b) 9, Me. 15. 22, Me. 240. 30, Me. 113. 35, Me. 357.

(c) 23, Me. 435. 29, Me. 70. 31, Me. 39, 112. 32, Me. 78.

CHAP. 109.

Report to be
made to S. J.
Court, &c.

R. S., c. 138,
§ 12, 13,
1845, c. 168.

A referee may
take acknowledg-
ment, &c.
R. S., c. 138,
§ 14.

SECT. 9. The report shall be made to the supreme judicial court within the time limited in the submission, unless varied by the parties; and either party may bring a writ of error to reverse any judgment, or file exceptions to any decision of the court accepting, rejecting or recommitting a report and carry the same to the law court.

SECT. 10. Any one of the referees, who is a justice of the peace, may take the acknowledgments of the parties to the submission, and any referee may swear witnesses.

Chapter 109.

TIMBER AND CORD WOOD; HOW IT MAY BE DISPOSED OF IN CERTAIN CASES.

On application
of the owners of
certain interests
in wood lands,
&c.

R. S., c. 139, § 1.

Commissioners
to be appointed
therefor, &c.

R. S., c. 139, § 2.

Proceeds, how
invested, &c.

R. S., c. 139, § 3.

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 tail, remainder or reversion in a lot or tract of wood land or timber land, on which the trees are of a growth and age fit to be cut, may apply to the supreme judicial court in any county for leave to dispose of such trees and invest the proceeds for the use of the persons interested therein; and the court after due notice to all persons interested and a hearing of the parties, if any appear, may appoint one or more persons to examine the land and report to the court, and the court may thereupon order the whole or a part of such trees to be felled and sold, and the proceeds brought into court subject to further orders.

SECT. 2. The court shall appoint one or more commissioners to superintend the felling and sale of such trees and account for the proceeds to the court, who shall be under bond to the clerk for the faithful performance of their trust.

SECT. 3. The court may cause the net proceeds of sale to be invested in other real estate in this state or in public stocks to the same uses and under the same limitations as the land; and the income thereof to be paid to the persons entitled to the income of the land or apportioned among the persons interested in the estate according to their interest.

SECT. 4. The court may appoint one or more trustees removable at their pleasure to hold such estates or stocks for said uses, who shall give bond with sufficient sureties to said clerk for the faithful discharge of their duty.

CHAP. 110.

Court to appoint trustees of such proceeds, &c.
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 commissioners in any other of the United States, and in any foreign country, to continue in office during the pleasure of the governor; and have authority to take the acknowledgement and proof of the execution of any deed or other conveyance or lease of any lands lying in this state; and of any contract letter of attorney or any other writing under seal or not to be used or recorded in this state.

Appointment ;
power to
authenticate
deeds.

R. S., c. 134, § 1.
1856, c. 222.

SECT. 2. Such acknowledgment or proof taken according to the laws of this state and certified by any such commissioner under his seal of office annexed to or indorsed on such instrument shall have the same force and effect, as if done by an officer authorized to perform such acts in this state.

Legal effects of
their official acts
and certificates.

R. S., c. 134, § 2.

SECT. 3. Every commissioner thus appointed may administer any oath lawfully required in this state to any person willing to take it; and take and duly certify all depositions to be used in any of the courts in this state in conformity to the laws thereof on interrogatories proposed under commission from a court of this state, by consent of parties, or on legal notice given to the opposite party; and all such acts shall be as valid as if done and certified according to law by a magistrate in this state.

May administer
oaths, and take
depositions.

R. S., c. 134, § 3.

SECT. 4. Every such commissioner before performing any duty or exercising any power in virtue of his appointment shall take and subscribe an oath or affirmation before a judge or clerk of one of the superior courts of the state or

Qualification
and seal.

CHAP. 111.

country, in which he resides, well and faithfully to execute
and perform all his official duties under the laws of Maine;
which oath and a description of his seal of office shall be
filed in the office of the secretary of this state.
R. S. c. 134, § 4.

Chapter 111.PREVENTION OF FRAUDS AND PERJURIES 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 to be maintained on a contract made by a minor, unless ratified, after becoming of age.
 4. Representation of another's ability or character, to be in writing.
 5. What contracts for sale of goods must be in writing.
 6. When specific performance of a contract may be enforced by a bill in equity.
 7. What decree to be made; the conveyance to be good.
 - 8, 9. Enforcement of the decree; provision in case of the death of the obligor before conveyance.
 10. Administrator of the contractor may petition for authority to make conveyance.

*Cases in which
promises must
be in writing.*

SECT. 1. No action shall be maintained in any of the following cases:

- 3 *First*—To charge an executor or administrator upon any special promise to answer damages out of his own estate. (*a*)
- 5 *Second*—To charge any person upon any special promise to answer for the debt default or misdoings of another. (*b*)
- 7 *Third*—To charge any person, upon an agreement made in consideration of marriage.
- 9 *Fourth*—Upon any contract for the sale of lands, tenements, or hereditaments, or of any interest in or concerning them. (*c*)
- 12 *Fifth*—Upon any agreement that is not to be performed within one year from the making thereof. (*d*)
- 14 *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.
- 17 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. (*e*)

R. S. c. 136, § 1.

(*a*) 20, Me. 21. (*b*) 7, Me. 356. 21, Me. 410, 545. 22, Me. 395. 26, Me. 341. 31, Me. 555. 36, Me. 113. (*c*) 12, Me. 24, 506. 15, Me. 14, 61, 201. 16, Me. 212. 18, Me. 16. 22, Me. 360. 23, Me. 131. (*d*) 10, Me. 31. 15, Me. 201. 20, Me. 119. (*e*) 3, Me. 409. 4, Me. 1, 258.

SECT. 2. The consideration of any such promise contract
2 or agreement need not be expressed in said writing, but
3 may be proved by any other legal evidence.

CHAP. 111.

The considera-
tion need not be
expressed, &c.
R. S., c. 136, § 2.

SECT. 3. No action shall be maintained on any contract
2 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 of
5 which he has received the title and retains the benefit thereof.

1845, c. 166, § 1.

SECT. 4. 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.

No action to be
maintained on a
contract made
by a minor, &c.

R. S., c. 136, § 3.

SECT. 5. 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 something in earnest 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 or by his agent. (a)

What contracts
for sale of goods
must be in
writing.

R. S., c. 136, § 4.

SECT. 6. If a person, who has contracted in writing to
2 convey real estate dies before making the conveyance, the
3 other party may have a bill in equity, if filed within one
4 year after the grant of administration, in the supreme judi-
5 cial court to be heard and decided according to the proceed-
6 ings in chancery to enforce specific performance of the con-
7 tract by his heirs devisees executor or administrator.

When specific
performance of a
contract may be
enforced, &c.

R. S., c. 136,
§ 5, 6.

SECT. 7. 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, as the deceased ought
4 to have done; and if any of the heirs or devisees are in the
5 state and competent to act, the court may direct them, instead
6 of the executor or administrator, to convey the estate or
7 join with either in such conveyance; which shall pass the
8 estate as fully as if made by the contractor.

What decree to
be made, &c.

R. S., c. 136,
§ 7, 8.

SECT. 8. 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

Enforcement of
the decree, &c.

R. S., c. 136,
§ 9, 10.

CHAP. 112.

*Provision in case
of the death of
the obligor before
conveyance.*

R. S., c. 136,
§ 11.

*Administrator of
the contractor
may petition for
authority to
make
conveyance.*

R. S., c. 136,
§ 12.

8 enforce their decree by any other process according to
9 chancery proceedings.

SECT. 9. 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.

SECT. 10. 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
10 deceased, should have done; and such conveyance shall be
11 deemed a performance of the contract, on the part of the
12 deceased, so as to entitle his heirs executors or administra-
13 tors to demand a performance thereof on his part.

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 re-
new execuution 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.

*Who may enter
into recogni-
zance.*

R. S., c. 137, § 1.

*Form of
recognizance.*

SECT. 1. Any person legally capable may enter into recogni-
2 nance to pay a debt, as herein provided; and thereby
3 subject his goods and estate or his person to be taken in
4 execution.

SECT. 2. Such recognizance may be taken before any jus-
2 tice of the peace, and shall be in substance as follows:

3 I, A. B., of ——, in the county of ——, do owe unto C. D.,
4 of ——, in the county of ——, the sum of ——, to be paid to
5 the said C. D., on the —— day of ——; and if I fail to pay

6 said debt at the time aforesaid, I will and grant, that the CHAP. 112.
 7 said debt be levied of my goods and chattels lands and ten-
 8 cements and in want thereof upon my body.
 9 In testimony whereof, I have hereto set my hand and seal R. S., c. 137, § 2.
 10 this _____ day of _____, in the year _____

SECT. 3. After such recognizance is signed sealed and ac-
 2 knowledged before said justice and his certificate thereof is
 3 annexed, it shall be delivered to the creditor; and the jus-
 4 ice shall keep a record of all recognizances taken by him.

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 due,
 6 without any order of court he may issue an execution thereon
 7 including all interest due by the terms of the recognizance
 8 varying the form of the execution accordingly, to be renewed
 9 by the clerk served and executed by all proper officers as any
 10 other execution.

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.

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
 5 the 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.

SECT. 7. Where there are several debtors or creditors, and
 2 one or more of them dies before the debt is paid, the rights
 3 of the surviving creditors and the obligations of the surviv-
 4 ing debtors shall be the same as in case of a judgment.

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.

The justice after
recording it, to
deliver it to the
creditor.

May be filed and
recorded with
clerk of the
courts, &c.

R. S., c. 137,
§ 4, 5, 6, 7.

When not to run
against the lands
or body of the
debtor.

R. S., c. 137, § 8.

Administrator of
creditor may
take out
execution, &c.

R. S., c. 137,
§ 9, 10, 11.

Consequence, if
one of several
debtors or
creditors die.

R. S., c. 137,

§ 12.

Remedy, if
execution is
wrongfully
issued.

R. S., c. 137,

§ 13.

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 mode of release.
 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.

- Sect. 48. Manner of selecting the justices to take the disclosure ; if two do not agree, CHAP. 113. 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 willful trespass.
57. Service of 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 indorse 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. Justice 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 power 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 a suit on contract express or implied, or on any judgment founded on such contract, except as provided in the following section ; and the writ or process shall be so varied, as not to require the arrest of the defendant.

No arrest on
mesne process,
on contract, &c.

R. S., c. 148, § 1.

SECT. 2. Any person, a resident within this state or not, may be arrested and held to bail or committed to prison on mesne process on a contract express or implied, when the sum demanded amounts to ten dollars, or on a judgment founded on contract, when the debt originally recovered and remaining due is ten dollars or more exclusive of interest on such judgment, when he is about to depart and reside beyond the limits of this state with property or means of his own exceeding the amount required for his immediate support, if the creditor his agent or attorney makes oath before a justice of the peace to be certified by such justice on said process, that he has reason to believe and does believe, that such debtor is about so to depart and reside and to take

Debtor about to
leave the state
may be arrested
in certain cases.

CHAP. 113.

R. S., c. 148, § 2.

Disclosure on
such arrest.

R. S., c. 148, § 3.

Notice thereof to
be given to the
plaintiff.

R. S., c. 148, § 4.

Mode of making
disclosure.

R. S., c. 148, § 5.

Justices may
adjourn.

R. S., c. 148, § 6.

Adjudication of
justices; effect
of discharge.

R. S., c. 148, § 7.

Lien on property
disclosed, how
preserved.

14 with him property or means as aforesaid, and that the demand or principal part thereof amounting to at least ten dollars is due to him. (a)

SECT. 3. On the arrest or imprisonment of any debtor by virtue of the preceding section, on request to the officer or jailer who has him in custody, he may be taken before two disinterested justices of the peace and quorum to be selected as provided in the forty-eighth section to disclose the actual state of his affairs.

SECT. 4. Previous to the disclosure he shall give due notice to the creditor his agent or attorney of his intention and of the time and place for said disclosure, that the creditor agent or attorney may be present and select one of the justices and be heard thereon; such notice shall not be less than one day for every twenty miles travel exclusive of Sundays.

SECT. 5. If the debtor makes a full disclosure at the appointed time and place to the satisfaction of said justices of the actual state of his affairs and of all of his estate property rights and credits in possession expectation or reversion, and answers all proper interrogatories in regard to the same, and signs and offers to make oath to the truth of his said disclosure and answers before the justices, they shall administer to him such oath and may hear such further and proper evidence, as may be offered upon either side.

SECT. 6. The justices may adjourn from time to time if they see cause; and if either of the justices is not present at the adjournment, the other may adjourn to another time, but no such adjournment or adjournments shall exceed three days in the whole exclusive of Sundays.

SECT. 7. On such examination the justices may discharge the debtor from arrest and imprisonment, or remand him into the custody of the jailer or other officer, as the case requires; and in case of such discharge no execution issuing on the judgment in the suit or process shall run against the body of the debtor.

SECT. 8. All attachable property disclosed by the examination, or so much as the creditor designates to satisfy his demand, shall be held as attached from the time of the disclosure until thirty days after final judgment, as in other cases of attachment; and the officer shall make return thereof on the writ or process certifying the fact that the property 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 officers 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.

CHAP. 113.

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.

Arrests allowed
in actions not
founded on
contracts.

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, at
 4 any time before final judgment he may appear before the
 5 court or justice, before whom such writ or process is pend-
 6 ing, or before a disinterested commissioner or commis-
 7 sioners, appointed by said court or justice, and submit himself
 8 to 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 and with like effect.

Defendant may
in all cases
disclose on
return of writ.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 may
 3 determine, that the execution on the judgment recovered in
 4 the suit shall run against the property only of the defend-
 5 ant, or otherwise as justice may require on the facts so dis-
 6 closed or proved; and all attachable property so disclosed
 7 from the time of the disclosure shall be held attached as pro-
 8 vided in the eighth section, and subject to the provisions of
 9 the two following sections.

Effect thereof;
lien on property
disclosed.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 certif-
 3 icate thereof stating the names of the parties and the amount
 4 of the claim in the writ, which the plaintiff shall file with the
 5 register of deeds for the county or district where the estate
 6 is situated within five days after the date thereof; and the
 7 register shall enter and file the same as returns of officers
 8 making attachments on real estate, and be entitled to the
 9 same fees from the plaintiff.

Certificate of
real estate
disclosed to be
filed in registry
of deeds.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

How to preserve
lien on personal
estate.

CHAP. 113.

R. S., c. 148,
§ 13.

Disclosure on
mesne process
by consent of
parties.

R. S., c. 148,
§ 14.

Execution to
issue against the
body, &c.

R. S., c. 148,
§ 15.

Certain property,
which cannot be
come at to be
attached, &c.

R. S., c. 148,
§ 16.

Persons arrested
may give bond
to disclose in a
certain time
after judgment.

4 concealed, so that it cannot be taken on execution, the court
5 in term time, or any justice thereof in vacation, or the justice
6 of the peace before whom the suit is pending, may issue an
7 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.

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 de-
5 fendant shall make the disclosures and submit to the exami-
6 nation and proceedings required in the tenth section, and
7 the record thereof shall be returned to the court or justice
8 before which the suit is pending before final judgment; where
9 the proceedings shall be the same, as if the disclosure had
10 been before a commissioner appointed for the purpose.

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.

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.

SECT. 17. When any person is arrested or imprisoned on
2 mesne process in a civil action, he may be released, by giv-
3 ing 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

7 made; said justices to be selected in the manner prescribed
 8 in the forty-eighth section; and, if they disagree, the same
 9 proceedings shall be had as are there directed, and a majority
 10 shall decide on the sufficiency of the surety or sureties; the
 11 bond to be conditioned that within fifteen days after rendi-
 12 tion of judgment, or after the adjournment of the court in
 13 which the judgment it rendered, he will notify the creditor
 14 his agent or attorney to attend at a certain place in the
 15 county at a time not more than thirty nor less than fifteen
 16 days after such notice for the purpose of disclosure and ex-
 17 amination and that he will then and there submit himself to
 18 examination, and make true disclosure of his business affairs
 19 and property on oath, and abide the order of the justices
 20 thereon, and if the officer serving the writ takes such bond,
 21 he shall return it to the court or justice where the suit is
 22 pending.

R. S., c. 148,
 § 17.
 1848, c. 85, § 6.

ARTICLE II. *Arrests and imprisonment on execution, and disclosures 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 contraet, where the amount of the original debt
 6 remaining due is less than ten dollars exclusive of costs;
 7 and the form of the process shall be varied accordingly.

No arrest on
 execution if
 debt is less than
 \$10.

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 ar-
 4 rested and imprisoned thereon for the purpose of obtaining
 5 a discovery of his property wherewith to satisfy the same
 6 as hereinafter stated; and he may on request to the officer
 7 having him in custody be taken before two disinterested jus-
 8 tices of the peace and quorum to disclose the actual state of
 9 his affairs. The said justices shall be selected in the man-
 10 ner provided by law, and the proceedings before them in mak-
 11 ing such disclosure and determining the result thereof shall
 12 be subject to the provisions and regulations contained in
 13 the fourth, fifth, sixth, seventh and eighth sections and also
 14 to the provisions contained in the twenty-ninth and thirtieth
 15 sections. Such debtor shall not be required to give any
 16 bonds for his release from arrest, and if the creditor his
 17 agent or attorney lives in the same town or city in which he

R. S., c. 148,
 § 18.

Arrests in other
 cases, and mode
 of release.

CHAP. 113. 18 is arrested, it shall not be necessary to give more than
 R. S., c. 148,
 § 19.
 1856, c. 256.
 19 twenty-four hours personal notice of the time and place for
 20 attending to such disclosure.

Bond may be
 given on such
 arrest, &c.

SECT. 20. When a debtor arrested or imprisoned on execu-
 2 cution issued on a judgment on a civil suit gives bond to the
 3 creditor with sufficient surety or sureties approved in writ-
 4 ing by the creditor, or by two justices of the peace and quo-
 5 rum of the county where the arrest is made, selected in the
 6 manner prescribed in the forty-eighth section, and if they
 7 disagree, the same proceedings shall be had as there directed
 8 and a majority shall decide on the sufficiency of the surety
 9 or sureties, in double the sum for which he is so arrested or
 10 imprisoned, conditioned, that he will within six months
 11 thereafter cite the creditor before two justices of the peace
 12 and of the quorum and submit himself to examination and
 13 take the oath prescribed in the twenty-eighth section of this
 14 chapter, pay the debt interest costs and fees arising in said
 15 execution, or deliver himself into the custody of the keeper
 16 of the jail into which he is liable to be committed under the
 17 said execution, he shall be released from his said arrest or
 18 imprisonment. (a)

R. S., c. 148,
 § 20.
 1848, c. 85, § 6.

Application by a
 debtor under
 bond or
 imprisoned, &c.

SECT. 21. Any debtor, who has given bond pursuant to
 2 the provisions of the seventeenth and twentieth sections
 3 within the time limited by his bond, and any person in prison
 4 by force of an execution in a civil suit, may apply in writ-
 5 ing 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.

Justice to
 appoint the
 time and place
 and cite the
 creditor.

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. (b)

R. S., c. 148,
 § 22.

Citation, how
 served.

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 at-
 4 tested copy thereof in hand, fifteen days at least before the
 5 time appointed for the examination, if the creditor is alive

(a) 20, Me. 465. 21, Me. 385, 430. 24, Me. 451, 546, 551. 36, Me. 419.

(b) 10, Me. 334. 17, Me. 96, 398. 18, Me. 120. 32, Me. 27. 35, Me. 158.

6 and within the state; otherwise it shall be served in like CHAP. 113.
 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 disinterested justices of the peace and quorum for the county, who shall have power to adjourn as provided in section six.

Examination
before two
Justices of
the
quorum.
R. S., c. 148,
§ 24.

SECT. 25. The justices shall examine the citation and return, and if found correct shall examine the debtor on his oath concerning his estate and effects and the disposal thereof, and his ability to pay the debt for which he is committed; and hear any other legal and pertinent evidence adduced by the debtor or creditor. (a)

Mode of
examination.

R. S., c. 148,
§ 25.

SECT. 26. The creditor may propose to the debtor any interrogatories pertinent to the inquiry, and if the creditor requires it they shall be answered in writing and the answers signed and sworn to by the debtor; and the creditor may have a copy of the interrogatories and answers certified by the justices on paying therefor twelve cents a page.

Same subject.

R. S., c. 148,
§ 26.

SECT. 27. If upon such examination and the hearing of such evidence the justices are satisfied that the debtor's disclosure is true, and they do not discover any thing therein inconsistent with his taking the oath set forth in the next section, they may administer it to him.

When the
justices may
administer
the
oath.

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 not
 3 any estate real or personal, in possession, reversion or remain-
 4 der, except the goods and estate expressly exempted by stat-
 5 ute from attachment and execution and the property I have
 6 now disclosed; and that I have not since the commencement
 7 of this suit, or the time when the debt or cause of action or
 8 any part thereof on which this suit was brought was con-
 9 tracted by me, directly or indirectly sold, loaned, leased, or
 10 otherwise disposed of, or conveyed or entrusted to any per-
 11 son or persons whomsoever, all or any part of the estate real
 12 or personal, whereof I have been the lawful owner or pos-
 13 sessor, with any intent or design to secure the same, or to re-
 14 ceive or expect any profit advantage or benefit therefrom to
 15 myself or others, with an intent or design to defraud any of

Form of the
poor debtor's
oath.

CHAP. 113.

R. S., c. 148,
§ 28.

Certain property
disclosed, which
cannot be come
at to be
attached, may
be appraised off
to the creditor.

R. S., c. 148,
§ 29.
1848, c. 85, § 5.

Creditor may
accept it within
thirty days

R. S., c. 148,
§ 30.

Form of justice's
certificate of
administration
of oath.

16 my creditors. So help me God; (or this I do under the
17 pains and penalties of perjury, if the debtor affirms.) (a)

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 at-
6 tached, 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 se-
11 lect the property to be appraised. If the creditor accepts
12 thereof it may be assigned and delivered by the debtor to
13 the creditor and applied in satisfaction of his demand in
14 whole 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. (b)

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
8 assignment on demand within that time. If not so demanded,
9 they shall be returned to the debtor.

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:

5 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
10 [L. S.] the peace and quorum in and for said county of
11 _____, hereby certify, that _____ a poor debtor arrested on
12 a certain execution issued by (here insert the name and style

(a) 25, Me. 423. 26, Me. 200. 27, Me. 49. (b) 24, Me. 123. 28, Me. 310. 29, Me. 368.
32, Me. 458. 36, Me. 494, 589. 38, Me. 192, 215.

13 of the court, or of the justice of the peace, and the amount
 14 of the judgment, and date of the judgment and execution,)
 15 and committed to the jail at —— aforesaid (or enlarged on
 16 giving 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 thirteenth chapter of the revised statntes; that in our opin-
 20 ion he is clearly entitled to have the oath prescribed in the
 21 twenty-eighth section of said chapter administered by us,
 22 and that we have, after due caution to him administered said
 23 oath to him.

R. S., c. 148,
§ 31.

24 Witness our hands and seals, this —— day of ——, in
 25 the year ——.

26 — —, { Justices of the peace and
 27 — —, } of the quorum. (a)

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.

Effect pf such
certificate.

R. S., c. 148,
§ 32.

SECT. 33. When a debtor in execution discloses before
 2 two justices of the peace and quorum as herein provided
 3 any real estate liable to be seized on execution, the justices
 4 shall give the creditor a certificate thereof therein stating
 5 the names of the parties and the amount of the execution;
 6 and the creditor shall have a lien thereon for thirty days
 7 thereafter, if he files the certificate with the register of
 8 deeds of the county or district where the real estate lies
 9 within five days from the date of the disclosure; and the
 10 register shall enter and file the same as mentioned in section
 11 twelve.

Preservation of
creditor's lien
on real estate
disclosed.

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
 7 of any proper officer having an execution on the same judg-
 8 ment, the debtor shall receive no benefit from the certificate

Lien on personal
estate disclosed,
etc.

(a) 18, Me. 340. 19, Me. 265, 452. 26, Me. 444. 27, Me. 153, 174. 30, Me. 347. 31, Me. 50.
 33, Me. 500. 34, Me. 230.

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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 satisfac-
 16 tion of the original debt.

R. S., c. 148,
§ 34.

**Proceedings if
debtor has given
bond on mesne
process.**

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 jus-
 4 tice shall issue a citation to the creditor his agent or at-
 5 torney; and an examination and disclosure may be had
 6 before two justices of the peace and quorum within the time
 7 specified in the bond; and the same proceedings shall be
 8 had, and the same results follow, as in case of a debtor dis-
 9 closing after arrest or imprisonment on execution, except as
 10 mentioned in the following section.

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 dis-
 9 closed; and during that time the creditor may arrest the
 10 debtor on execution, or enforce his lien on the property, at
 11 his election.

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.

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 bond
 6 is returned. He may also receive from the prison keeper
 7 any such bond in his hands on the like terms.

R. S., c. 148,
§ 36.

**Effect of credit-
or's election to
arrest on execu-
tion or
otherwise.**

R. S., c. 148,
§ 37.

**Bond taken on
execution to be
returned
therewith, &c.c.**

R. S., c. 148,
§ 38.

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SECT. 39. If the debtor fails to fulfill the condition of any such bond, it shall be forfeited, and judgment in any suit thereon shall be rendered for the amount of the execution and costs and fees of service with interest on the same against all the obligors; and a special judgment also rendered against the said principal debtor for a further sum equal to the interest on the same at the rate of twenty per cent. by the year after the breach of the bond.

Amount recoverable thereon, if forfeited.

R. S., c. 148,
§ 39.

SECT. 40. In all actions commenced, or which shall hereafter be commenced in any court upon any bond given by a debtor to obtain his release from arrest on mesne process or on execution or warrant of distress for taxes, if it shall appear that prior to the breach of any of the conditions of such bond, the principal therein if arrested on mesne process or execution had legally notified the creditor, and if arrested on warrant of distress for taxes had legally notified the assessors of the town plantation or parish by whom such warrant was issued, and had been allowed by two justices of the peace and of the quorum of the county where the arrest was made, having jurisdiction and legally competent to act in the matter, to take and had taken in the case or upon the precept upon which he was arrested before such justices the oath prescribed in the twenty-eighth section, the damages shall be assessed by the jury, if such be the request of either party; but if no such request be made, then by the court. The amount assessed shall be the real and actual damage, and any legal evidence upon that point may be introduced by either party. In any such action the court before which the same may be tried may receive evidence to show that no service of the citation provided for by law was made upon the creditor or assessors, notwithstanding such evidence may contradict the record and certificate of the magistrate before whom such oath was taken. (a)

In all actions upon a debtor's bond, &c.

1848, c. 85,
§ 2, 4.

1856, c. 263.

SECT. 41. If in any such action the whole amount due upon the execution or warrant of distress is recovered, the new judgment shall operate as a discharge of said execution or warrant of distress; if only a part is recovered, it shall operate as a discharge of such part. If the amount of damage is not more than twenty dollars, the plaintiff's costs shall not exceed a quarter part of the damage, notwithstanding the penal sum of the bond is more than twenty dollars. If the

The new judgment on any such bond to operate as discharge of the old judgment as far as it goes.

(a) 27, Me. 97. 30, Me. 457. 33, Me. 368. 36, Me. 240.

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1848, c. 85, § 3.

Persons incompetent as
witnesses may
take the poor
debtor's oath.

R. S., c. 148,
§ 40.

Costs for creditor
if debtor is not
discharged.

R. S., c. 148,
§ 41.

Discharge of
debtor's body,
no discharge of
debt.

R. S., c. 148,
§ 42.

Bond to be valid,
though not taken
for the exact
amount.

R. S., c. 148,
§ 43.

Right to bail not
impaired.
R. S., c. 148, § 44.

Limitation of
suits on bond.

R. S., c. 148,
§ 45.

Manner of
selecting the
justices to take
the disclosure,
&c.

R. S., c. 148,
§ 46.
1844, c. 88, § 1.
1848, c. 65, § 1.
1856, c. 213, § 1.

9 verdict or judgment is, that the creditor has sustained no
10 damage, no cost shall be allowed to either party.

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 dis-
4 qualified to testify as a witness in judicial proceedings; and
5 nothing herein contained, except as provided in the thirty-
6 fourth, fiftieth and fifty-first sections, shall prevent any
7 debtor, who fails to obtain his discharge, from obtaining a
8 certificate for that reason at a future examination for the
9 same debt.

SECT. 43. If any debtor fails in his application for a dis-
2 charge from arrest or imprisonment, the creditor shall re-
3 cover his costs to be taxed as in actions before justices of
4 the peace; and the justices shall issue execution therefor.

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 re-
4 main in full force against the property of the debtor as if
5 such release had not been given.

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 it 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.

SECT. 46. Nothing herein contained shall impair the right
2 of any person to bail on mesne process.

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 one hundred and two and one hundred and three of
5 chapter eighty-one shall be applicable to such suits.

SECT. 48. One of the justices to hear a disclosure may be
2 selected by the debtor, and the other by the creditor his
3 agent or attorney, and if at the time appointed he neglects
4 or refuses or does not procure his attendance, the other may
5 be selected by an officer having the debtor in charge, if not
6 in charge, by an officer who might serve the precept on which
7 he was arrested. If the justices do not agree, they may

8 select a third, and if they cannot agree on a third, he may CHAP. 113.
 9 be selected by an officer as aforesaid; and a majority may
 10 decide. (a)

SECT. 49. When the creditor neglects or unreasonably delays to select a justice, the justice selected by the debtor may adjourn once, if he deems it necessary, not exceeding twenty-four hours, Sundays excluded, to enable the debtor to procure the attendance of another justice.

When the creditor delays to select a justice, &c.

1846, c. 215, § 1.

SECT. 50. When a debtor herein authorized or required to disclose on oath willfully discloses falsely, withholds or suppresses the truth, the creditor may bring a special action on the case against him, whether he is criminally prosecuted or not, particularly alleging the false oath and fraudulent concealment of his estate or property, and on oath before some justice of the peace may declare his belief of the truth of the allegations in the writ and declaration, and the justice administering the oath shall certify the same on the writ; and thereupon the debtor shall be held to bail, or in default thereof committed to jail to abide the judgment in the suit.

Liability of a debtor if he discloses falsely.

R. S., c. 148, § 47.

Same subject.

SECT. 51. If the creditor prevails in the suit, judgment shall be rendered against the debtor for double the amount of the debt and charges on the former judgment; and the debtor may be arrested and committed to prison on any execution issued on the judgment last recovered without any privilege of release or discharge, except by payment or the consent of the creditor.

R. S., c. 148, § 48.

SECT. 52. Any person, who knowingly aids or assists a debtor or prisoner in a fraudulent concealment or transfer of his property to secure it from creditors and prevent its seizure by attachment or levy on execution, shall be liable in a special action on the case, to any creditor who sues therefor, in double the amount of property so fraudulently concealed or transferred, but not to exceed double the amount of such creditor's demand.

Liability of persons aiding in fraudulent concealment or transfer of property.

R. S., c. 148, § 49.

SECT. 53. Any person arrested or imprisoned by virtue of a warrant for the collection of a public tax shall be entitled to the privileges and subject to the obligations under the provisions of this chapter in all respects, as if arrested or committed on execution for debt, and for all the purposes of notice and other proceedings relating to the discharge from arrest or imprisonment of the person taxed, the assessors

Persons arrested for taxes, entitled to the privileges of this chapter.

R. S., c. 148, § 50.

(a) 19, Me. 454. 23, Me. 144, 489. 24, Me. 166, 196, 451. 27, Me. 458. 28, Me. 458. 30, Me. 155. 30, Me. 155. 32, Me. 335. 33, Me. 382. 36, Me. 110. 27, Me. 551.

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Variation in the
form of the oath
and certificate in
such case.

R. S., c. 148,
§ 51, 52.

Privileges
extended to
collectors and
other officers,
&c.

R. S., c. 148,
§ 53.

Disability
of persons
committed for
willful trespass.

R. S., c. 148,
§ 54.

Service of a
citation on a
corporation
creditor.

R. S., c. 148,
§ 55.

Prison keeper
may require the
creditor to
support the
debtor, &c.

8 by whom such warrant was issued shall be regarded as the
9 creditors.

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 cer-
9 tificate of discharge shall be varied, by substituting the words,
10 "a warrant for taxes," for "execution," and "assessors" for
11 "creditors."

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 dis-
8 charge.

SECT. 56. When in the trial of an action of trespass upon
2 property the court jury or magistrate determines that such
3 trespass was committed willfully, and record is made of the
4 fact, and the same is noted on the margin of the execution on
5 such judgment, if the debtor is thereon arrested and com-
6 mitted 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.

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.

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 shall make a written complaint by him signed and
6 sworn to stating, that he is unable to support himself in
7 prison and has not sufficient property to enable him to fur-

8 nish security for his support, the keeper of the prison may
 9 require of the creditor his agent or attorney security for his
 10 support, in case he claims relief as a pauper; and unless the
 11 security is furnished within eight days after the request sat-
 12 isfactory to the keeper, or money paid in advance from time
 13 to time as needed for the debtor's support, the keeper may
 14 release him; but when any debtor is committed on more than
 15 one execution at the same time, the keeper shall be entitled
 16 to pay for board only on the first execution, and such board
 17 shall be paid for equally by all the creditors, on whose exe-
 18 cutions the debtor is committed; and the creditor first com-
 19 mitting shall have a right of action against the other com-
 20 mitting creditors for their proportion of such board; and if
 21 the debtor committed on several executions is discharged on
 22 the first, the jailer shall give a new notice to the creditor, on
 23 whose execution the debtor was next committed, of his lia-
 24 bility to pay for the support of such debtor as on the first
 25 execution. (a)

R. S., c. 148,
 § 56.
 1842, c. 23, § 1, 2.

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 and
 5 sixteen.

*Adjustment of
price of articles
furnished to
prisoner.*

R. S., c. 148,
 § 57.

SECT. 60. When notice is given by any jailer under the
 2 fifty-eighth 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.

*Citation to one
of several joint
creditors
sufficient.*

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 im-
 8 prisonment on such execution or any process founded on the
 9 same judgment.

*Effect of
voluntary
release by
creditor, from
arrest on
execution.*

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 on

*Officer may
indorse such
release on the
execution, &c.*

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R. S., c. 148,
§ 60.

How judgment
may be kept in
force, after such
release.

R. S., c. 148,
§ 61.

Judges of munic-
ipal and police
courts may act
as justices of the
quorum.
R. S., c. 148,
§ 62.

5 the execution a certificate of the fact and cause of such re-
6 lease; and if it is before the return day of the execution, not-
7 withstanding 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
10 against the debtor's body.

SECT. 63. Whether such indorsement is made on the ex-
2 ecutions 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.

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.

ARTICLE IV. Special provisions relating to debtors to the state.

Such debtor may
apply to a justice
of the supreme
court.

R. S., c. 148,
§ 63.

Notice to be
given to county
attorney, &c.

R. S., c. 148,
§ 64.

Proceedings and
power to release
the debtor.

R. S., c. 148,
§ 65.

Judge may
discharge him or
the debt, &c.

R. S., c. 148,
§ 66.

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.

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.

SECT. 67. The justice shall consider all proper evidence
2 offered on either side, and may require the oath of the peti-
3 tioner to all or any of the facts by him stated; and if satis-
4 fied that the prisoner is unable to pay any part of the amount
5 due on the process, on which he is committed, may order his
6 discharge from imprisonment having first administered to
7 him, if he thinks proper, an oath substantially in the form of
8 the oath prescribed by the twenty-eighth section.

SECT. 68. If on examination it appears to the justice, that
2 the prisoner is able to pay only a part of the amount due,
3 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, to be CHAP. 113.
8 deposited with such public officer, as he directs.

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.

Jailer to comply
with decision of
judge.
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
3 shall cause his adjudication and discharge to be entered of
4 record as of the last preceding term of the court in the
5 county.

Adjudication to
be entered on
the record.

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.

Same powers
vested in the
county
commissioners.
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 application to
4 the jailer having him in custody, and the jailer shall apply in
5 writing, in his behalf to a justice of the peace, and the said
6 justice shall thereupon issue a citation as prescribed in the
7 twenty-second section directed to the county attorney of the
8 county for which the commitment is made; and the said cita-
9 tion shall be served and returned, and proceedings thereupon
10 may be had in the same manner and with the like effect, as
11 in cases where notice is served on individual creditors or
12 their attorneys; and the county attorney on such notice
13 shall attend by himself or some competent substitute at the
14 time and place as attorney for the state.

Application by
such debtor to
take the poor
debtor's oath,
&c.

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.

Oaths and
certificates in
such cases.

R. S., c. 148,
§ 72.

