

MAINE STATE LEGISLATURE

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REPORTS
OF
THE COMMISSIONER
AND
THE LEGISLATIVE COMMISSION
SUBMITTING THE FINAL DRAFT OF THE
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OF THE
PUBLIC LAWS
OF THE
STATE OF MAINE
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TITLE EIGHT.

Judicial Courts, County Commissioners, and officers connected with them.

- CHAP. 82. Supreme judicial court. Attorney-general. Reporter. Superior courts.
 83. County commissioners.
 84. Clerks of courts. County attorneys. Attorneys at law.
 85. Sheriffs and their deputies. Jails. Coroners. Constables.
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CHAPTER 82.

Supreme Judicial Court. Attorney-General. Reporter. Superior Courts.

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Supreme Judicial Court. Organization, Jurisdiction and Powers.

Sec. 1. Constitution of the court. R. S. c. 79, § 1. The supreme judicial court shall consist of a chief justice and seven associate justices, learned in the law and of sobriety of manners, who shall be conservators of the peace throughout the state, and may act in any case, although the county in which they reside or own property is interested therein.

73 Me. 224; 98 Me. 130.

Sec. 2. Jurisdiction. R. S. c. 79, § 2. The court has cognizance of all offenses and misdemeanors, and of civil actions between party and party and between the state and individuals, legally brought before it; may render judgment and award execution thereon; may exercise its jurisdiction according to the common law not inconsistent with the constitution or any statute; and may punish contempts against its authority by fine and imprisonment or either, and administer oaths in civil and criminal cases.

41 Me. 17, 55; 49 Me. 400; 58 Me. 375.

Sec. 3. Superintendence of inferior courts; control of records; may order part of record stricken out. R. S. c. 79, § 3. 1909, c. 153. It has general superintendence of all inferior courts for the prevention and correction of errors and abuses, where the law does not expressly provide a remedy; control of all records and documents in the custody of its clerks, including those of former courts whose jurisdiction it has, and the powers of its clerks are the same respecting all of them; whenever justice or the public good requires, it may order the expunging from the records and papers on file in any case which has gone to judgment, of any name or other part thereof unnecessary to the purpose and effect of said judgment. It may establish and cause to be recorded rules not repugnant to law, respecting the modes of trial and conduct of business in suits at law and in equity.

43 Me. 176; 53 Me. 88, 110; 57 Me. 23; 67 Me. 433; 77 Me. 238; 83 Me. 286;
111 Me. 34.

Sec. 4. Affidavit in abatement. R. S. c. 79, § 4. The affidavit required by rule VI, of said court, to pleas or motions in abatement, may be made at any time before entry of the action or before filing the same.

76 Me. 423.

Sec. 5. Writs, and how attested. R. S. c. 79, § 5. 1909, c. 168. It may issue writs of error, certiorari, mandamus, prohibition, quo warranto and all writs and processes necessary for the furtherance of justice, or the execution of the laws, in the name of the State of Maine, under the seal of said court, attested by any justice not a party or interested in the suit, and signed by the clerk; and the signature of any duly appointed and qualified deputy clerk of said court, or the courts mentioned in sections eighty-eight and eighty-nine of this chapter, followed by the designation "deputy clerk" shall be a sufficient signature to any writ, precept, instrument or process, in law or equity, issuing from said courts or either of them.

See c. 44, § 17; c. 49, § 39; 41 Me. 17, 55; 53 Me. 88; 67 Me. 433; 70 Me. 328;
77 Me. 239; 81 Me. 544; 108 Me. 476.

Equity Powers.

Sec. 6. Equity powers. R. S. c. 79, § 6. 1907, c. 133. 1913, c. 48, § 1. It has jurisdiction as a court of equity, in the following cases:

7 Me. 231; 8 Me. 322; 17 Me. 141, 294, 407; 18 Me. 210; 19 Me. 127, 366, 434;
20 Me. 271; 21 Me. 257, 276; 22 Me. 196, 209, 515; 23 Me. 48, 100, 178, 270, 451;
24 Me. 47; 25 Me. 282, 345, 381, 537; 29 Me. 276, 496; 31 Me. 96; 32 Me. 402,
483; 33 Me. 224, 534; 34 Me. 144, 372; 36 Me. 52, 124, 583; 37 Me. 269, 310;
40 Me. 246; 41 Me. 119; 50 Me. 239; 59 Me. 79; 72 Me. 281.

I. For the foreclosure of mortgages of real and personal property, and for redemption of estates mortgaged.

See c. 95, § 30; 59 Me. 35, 77; 75 Me. 268; 83 Me. 293; 86 Me. 59.

II. For relief from forfeiture of penalties to the state, from forfeitures in civil contracts and obligations, and in recognizances in criminal cases.

53 Me. 63; 103 Me. 453.

III. To compel the specific performance of written contracts, and to cancel and compel the discharge of written contracts, whether under seal or otherwise, when full performance or payment has been made to the contracting party.

See c. 81, § 50; c. 95, § 24; c. 114, §§ 13, 14, 17; 40 Me. 132; 42 Me. 40;
46 Me. 41; 47 Me. 315; 63 Me. 99; 84 Me. 198; 85 Me. 434; 95 Me. 224; 97
Me. 400; 98 Me. 511.

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IV. For relief in cases of fraud, trust, accident or mistake.

See c. 4, § 72; c. 68, § 68; c. 73, §§ 17-19; c. 79, § 14; c. 81, § 15; 43 Me. 211; 44 Me. 216; 45 Me. 131; 49 Me. 366; 57 Me. 510; 60 Me. 183; 61 Me. 514; 62 Me. 58, 522; 67 Me. 220; 69 Me. 497; 71 Me. 570; 73 Me. 33; 74 Me. 589; 96 Me. 41.

V. In cases of nuisance and waste.

See c. 23, §§ 1, 20; c. 100, § 7; 60 Me. 194; 102 Me. 285.

VI. In cases arising out of the law providing for the application of receipts and expenditures of railroads by trustees in possession under mortgage.

See c. 57, § 53; 76 Me. 274.

VII. In cases of partnership, and between partners or part owners of vessels and of other real and personal property to adjust all matters of the partnership and between such part owners, compel contribution, make final decrees, and enforce their decrees by proper process in cases where all interested persons, within the jurisdiction of the court, are made parties.

See c. 39, § 25; c. 43, § 5; c. 68, § 68; 52 Me. 57; 62 Me. 114; 64 Me. 465; 73 Me. 75; 78 Me. 150.

VIII. Of bills of interpleader notwithstanding the complainant is a common carrier and as such has a lien for carriage or storage upon the property which is described in the bill.

IX. To hear and determine property matters between wife and husband, or husband and wife as provided in section six of chapter sixty-six and to make all necessary orders and decrees relating to such matters, and to issue all necessary process to enforce such orders and decrees, and to cause all such orders and decrees to be enforced.

X. To determine the construction of wills and whether an executor, not expressly appointed a trustee, becomes such from the provisions of a will; and in cases of doubt, the mode of executing a trust, and the expediency of making changes and investments of property held in trust.

See c. 73, § 10; c. 76, § 11; 49 Me. 302; 57 Me. 143, 524; 59 Me. 330, 481; 62 Me. 541; 64 Me. 493; 66 Me. 101, 535; 68 Me. 35, 381; 69 Me. 289; 70 Me. 210; 80 Me. 594; 82 Me. 80; 84 Me. 555; 85 Me. 133; 86 Me. 134; 97 Me. 523; 99 Me. 499; 104 Me. 323; 111 Me. 248, 521.

XI. In suits for re-delivery of goods or chattels taken or detained from the owner, and secreted or withheld, so that the same cannot be replevied, and in bills in equity, by creditors, to reach and apply in payment of a debt, any property, right, title or interest, legal or equitable, of a debtor, or debtors, which cannot be come at to be attached on writ, or taken on execution in a suit at law, and any property or interest conveyed in fraud of creditors.

See c. 115, § 32; 71 Me. 70; 73 Me. 570; 76 Me. 447; 77 Me. 474; 78 Me. 249; 79 Me. 230; 84 Me. 326, 495; 90 Me. 380; 92 Me. 268; 96 Me. 43; 99 Me. 189; 104 Me. 493; 107 Me. 315; 110 Me. 437; 111 Me. 557; 112 Me. 150.

XII. In cases where the power is specially given by statute, and for discovery when a discovery may be lawfully required according to the course of chancery proceedings.

See c. 43, § 5; 43 Me. 574; 53 Me. 441.

XIII. When counties, cities, towns, school districts, village or other public corporations, for a purpose not authorized by law, vote to pledge their credit or to raise money by taxation or to exempt property therefrom, or to pay money from their treasury, or if any of their officers or agents attempt

to pay out such money for such purpose, the court shall have equity jurisdiction on petition or application of not less than ten taxable inhabitants thereof, briefly setting forth the cause of complaint.

See c. 4, § 44; 55 Me. 65; 56 Me. 37; 60 Me. 127; 80 Me. 134; 85 Me. 49; 87 Me. 89; 92 Me. 531; 93 Me. 501; 100 Me. 30; 108 Me. 474; 113 Me. 123.

XIV. And has full equity jurisdiction, according to the usage and practice of courts of equity, in all other cases where there is not a plain, adequate and complete remedy at law.

58 Me. 137; 69 Me. 303; 71 Me. 554, 570; 73 Me. 244; 74 Me. 234, 588; 75 Me. 268; 77 Me. 69, 95; 86 Me. 57.

Note. Jurisdiction in equity is also conferred upon the supreme judicial court in the following cases:

- To restrain violation of c. 4, §§ 42, 43.
- To fix rate of interest on trust funds used by cities or towns, c. 4, § 72.
- To determine rights of claimants to elective office, c. 7, § 87.
- To decree forfeiture of charter for non-payment of franchise tax, c. 9, § 22.
- To protect property dedicated to pious uses, c. 17, § 33.
- To restrain and abate nuisances, c. 23, §§ 1-22.
- To restrain unlawful acts of agent appointed to build road, c. 24, § 47.
- In cases of limited partnerships, c. 39, § 25.
- In certain cases of loss of or damage to property on shipboard, c. 43, § 5.
- To restrain unlawful use of trade-marks, and names, c. 44, § 15; c. 49, § 40.
- To appoint directors of corporations, c. 51, § 21.
- In cases of reduction of capital stock of corporations, c. 51, § 45.
- To value minority stock in corporations, c. 51, § 61.
- To decree dissolution of corporations, c. 51, §§ 82, 89.
- To enforce stockholders' liability, c. 51, §§ 98, 102.
- To restrain use of words restricted to banking business, c. 52, § 5.
- To appoint receivers of savings banks, c. 52, § 64.
- To reduce deposits of savings banks, c. 52, § 58.
- To restrain payment of deposit in savings banks, c. 52, § 59.
- To enforce accounts due loan and building associations, c. 52, § 113.
- To enforce law relating to foreign loan and building associations, c. 52, § 122.
- To order assessment on stockholders of trust and banking companies to restore impaired capital, c. 52, § 95.
- To confirm assessment in mutual fire insurance companies, c. 53, § 45.
- Of suit to enforce trust created by deposit of securities by insurance companies, c. 53, § 82.
- To appoint receivers of domestic insurance companies, c. 53, § 86.
- To appoint receivers of property of foreign insurance companies doing business in this state, c. 53, § 114.
- To appoint receivers of casualty insurance companies doing business upon the assessment plan, c. 53, §§ 162, 165.
- To appoint receivers of fraternal beneficiary associations, c. 54, §§ 7, 20.
- To restrain unlawful appropriation of proceeds of railroad stock, c. 56, § 20.
- To enforce construction by railroad companies of cattle-guards, passes and farm crossings, c. 56, § 33; payment of damages by railroad companies, c. 56, § 38; repairs of railroad bridges and crossings, c. 56, § 66.
- To enforce compliance with order of public utilities commission to make repairs, c. 56, § 53; to stop running trains, c. 56, § 54; as to transportation of passengers and freight, c. 56, § 55; as to erection and maintenance of stations, c. 56, § 61.
- To appoint receivers when railroad company fails to operate its road, c. 57, § 15.
- To compel payment by lessee of judgment against owner of leased road, c. 57, § 26.
- To affirm election of trustees under railroad mortgages, c. 57, § 30.
- In cases relating to foreclosure and redemption of railroad mortgages, c. 57, §§ 53, 55.
- To decree dissolution of railroad corporations, c. 57, § 59.
- To restrain unlawful use of name or emblem of benevolent society, c. 62, § 10.
- To determine disputes between coexecutors and coadministrators, c. 68, § 68; and in certain cases, claims against estates of deceased persons, c. 92, § 22.
- To fill vacancies in trustees, c. 73, §§ 17, 19.
- In insolvency cases, c. 75, § 11.
- To enforce agreement relative to disposal of wife's share of proceeds of husband's real estate sold by his guardian, c. 76, § 11.
- In cases of contribution under wills, c. 79, § 14.
- For correction of errors in levies by appraisement, c. 81, § 23; for redemption, c. 81, §§ 28, 53.
- To compel assignment of prior mortgage under foreclosure at suit of junior mortgagee, c. 95, § 24.
- To enforce liens on buildings and lands, c. 96, § 33.
- To restrain use of unsafe dams, c. 97, § 44.
- To ascertain betterments on lands recovered of the state, c. 98, § 17.
- To stay waste, c. 100, § 7.
- To quiet or establish title to land or remove a cloud from the title, c. 109, § 49.
- To restrain lotteries, c. 130, § 19.

See also provisions for change, by amendment of action at law into proceeding in equity, c. 87, § 15.

Sec. 7. Jurisdiction between partners and part owners; extent and effect on other parties. R. S. c. 79, § 7. The court has jurisdiction of cases mentioned in paragraph seven of the preceding section, notwithstanding persons interested not within the jurisdiction of the court, are not made parties; but, in such cases, no decree affects the right of any person not a party to the suit, unless he voluntarily becomes a party before final decree, except

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as hereinafter provided. In all such cases, the court has jurisdiction, if the case requires it, over all property of the partnership or cotenancy within the state, and the other partners or cotenants, out of the jurisdiction, may protect their interests by coming in at any time as parties to the bill; but, if there is no such property within the state, the jurisdiction of the court is limited to the adjustment of accounts and compelling contribution between the parties over whom the court has jurisdiction.

Sec. 8. Property of debtor out of state, or of uncertain value, may be applied. R. S. c. 79, § 8. The court has jurisdiction of cases mentioned in paragraph eleven of section six, notwithstanding the fact that the property sought to be reached and applied is in the hands, possession or control of the debtor independently of any other person, or that it is not within the state, or that it is of uncertain value, provided, the value can be ascertained by a sale or appraisal, or by any means within the ordinary procedure of the court, or that it cannot be reached and applied until a future time.

Sec. 9. Interest of a copartner may be applied in payment of plaintiff's debt. R. S. c. 79, § 9. In such suit the interest of a copartner in the partnership property may be reached and applied to the payment of the plaintiff's debt; provided, however, that unless the plaintiff's debt is in judgment, the business of the partnership shall not be interfered with by injunction or otherwise, farther than to restrain the withdrawal of any portion of the debtor's share or interest therein, until the plaintiff's debt is established; and provided further, that if either copartner shall give to the plaintiff a sufficient bond with sureties approved by the clerk, conditioned to pay to the plaintiff the amount of his debt and costs, within thirty days after the same is established, the court shall proceed no further therein save to establish the debt; and any injunction previously issued shall be dissolved upon the filing of such bond. But no provision of paragraph eleven of section six, or of this section, or of section eight shall be so construed as to reach and apply in payment of a debt, any property exempted by sections eleven and twelve of chapter eight, sections five, six, seven and nineteen of chapter twenty-one, and by chapter eighty-six.

See c. 86, § 64, ¶ xi.

Sec. 10. Masters in chancery, appointment; tenure; duties; payment of fees. R. S. c. 79, § 10. 1911, c. 28. The court by majority, shall appoint masters in chancery, not more than five in a county, and make all needful rules relating to proceedings before them. Such masters shall be sworn, and hold their offices for five years, unless sooner removed by the court; perform the duties pertaining to their offices according to equity practice, and be entitled to the fees therefor allowed by the court. Unless the parties agree upon another person, all cases shall be committed to them. The fees and necessary expenses of masters so appointed, and of masters who shall act in any cause by agreement of parties, shall be fixed and allowed by the court upon the coming in of the report, and, if the court in its discretion shall so order, shall be paid by the county on presentation of the proper certificate of the clerk of courts for that county.

40 Me. 53; 53 Me. 216, 352.

Sec. 11. Court always open for equity proceedings. R. S. c. 79, § 11. Said court shall always be open in each county for equity proceedings, ex-

cept upon days on which, by law, no court is held, and in the first instance, except as hereinafter provided, all hearings shall be had, all orders and decrees made, and all process issued by a single justice, except on appeal or exceptions as hereinafter provided, and said court shall establish rule-days for the return of subpoenas and the transaction of business relating to equity cases.

75 Me. 417; 82 Me. 250; 96 Me. 44; 101 Me. 156; 107 Me. 70.

Sec. 12. Causes in equity, how begun, return of subpoena, and service. R. S. c. 79, § 12. Causes in equity shall be begun by bill of complaint filed in the clerk's office, upon which subpoena shall issue as matter of course returnable on the first day of a term of court for the county where it is filed, or upon a rule-day, which in either case shall be held within sixty days after the filing of such bill, and such subpoena shall be served at least fourteen days before the return day thereof; or, by order of court, such subpoena may be made returnable on any day in or out of term, and be served as directed in such order; or such bill may be inserted in a writ of attachment, upon which property may be attached and which shall be made returnable as writs at common law. In all cases, service shall be made by copy of the subpoena and bill or writ of attachment. The bill of complaint shall state the material facts and circumstances relied on by the plaintiff, with brevity, omitting immaterial and irrelevant matters, and may be amended or reformed at the discretion of the court, with or without terms, at any time before final decree is entered in said cause.

See c. 86, § 61; 56 Me. 76; 71 Me. 169; 77 Me. 140, 499; 82 Me. 202, 250; 101 Me. 156; 111 Me. 559.

Sec. 13. Certificate to be recorded in registry of deeds. R. S. c. 79, § 13. No action commenced by bill in equity not inserted in a writ of attachment, in which the title to real estate is involved, is effectual against any person not a party thereto or having actual notice thereof, until a certificate, setting forth the names of the parties, the date of the bill and the filing thereof, and a description of the real estate in litigation as described in said bill, duly certified by the clerk of courts in and for the county where said bill is pending, is recorded in the registry of deeds in the county or district in which such real estate is situated.

See § 30; c. 12, § 18; c. 86, § 61; c. 118, §§ 4, 18; 94 Me. 322.

Sec. 14. Verification of bill. R. S. c. 79, § 14. Verification by the oath of a party for whose benefit the bill sets forth that it is prosecuted, is equivalent to such verification by the plaintiff.

Sec. 15. Bill of discovery, and answers thereto. R. S. c. 79, § 15. If discovery is sought, it may be by bill, with or without interrogatories annexed thereto, for the purpose of such discovery. Answers thereto shall be made within thirty days after the return day of such bill, or within such time as the court orders, and questions arising thereon shall be determined by the rules established by said court as herein provided, and in the absence thereof, by the rules applicable to bills of discovery in equity procedure.

Sec. 16. Appearance by defendant; proceedings in case of default; court may fix time for filing pleadings and hearing. R. S. c. 79, § 16. 1911, c. 25. When process is made returnable at any regular term, the defendant shall

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appear within the first three days thereof; otherwise on the return day of such process; and in default thereof, on motion of the plaintiff in writing, the bill shall be taken pro confesso, as matter of course, at the expiration of ten days after the filing of such motion, but such decree for good cause shown, on motion of the defendant, may be opened within ten days after it is made, and in such case the court shall fix the time for making a defense. In all causes the court, by special order, may fix such time, or times, for filing answer, plea or demurrer, or replication, or for hearing of the cause, as justice may require.

96 Me. 305; 111 Me. 132.

Sec. 17. Defense, how and when to be made; proceedings on default; form of answer. R. S. c. 79, § 17. Defense shall be made by answer, plea or demurrer, within thirty days after the time for appearance has elapsed, or within the time ordered by the court, as provided in the preceding section; but for good cause shown the court may in either case enlarge the time therefor. In default of such defense the bill shall be taken, pro confesso, as matter of course on motion of plaintiff in writing, filed on any day after such default, and served on the defendant. But such decree may be opened, on motion of defendant within ten days thereafter, as provided in said section. All answers shall be signed by the defendant and sworn to by him, if the plaintiff in his bill asks for an answer upon oath, otherwise it may be signed by the defendant, his agent or attorney, but in such case it has no effect as evidence, except to cast the burden of proof upon the plaintiff.

78 Me. 88; 95 Me. 305; 108 Me. 101.

Sec. 18. Replication. R. S. c. 79, § 18. The plaintiff shall file a replication within fifteen days after notice has been served on him or his counsel that answer or plea has been filed, but such time may be enlarged on such terms as the court orders, or the bill may be dismissed for want of prosecution, on motion filed by defendant at any time after said fifteen days, or at the expiration of the time ordered by the court for filing such replication.

Sec. 19. Time for hearing upon bill and demurrer. R. S. c. 79, § 19. 1909, c. 170, § 1. When a demurrer is filed, the court upon motion of either party, may set the cause for hearing upon bill and demurrer at any time. When a plea or answer is filed, the court, upon the motion of the plaintiff, may set the cause for hearing upon bill and plea, or answer at any time. When a replication is filed, the court, upon the motion of either party, may set the cause for hearing upon bill, answer or plea and evidence, but such hearing shall not be had until after thirty days from the filing of the replication, unless by consent. When a jury trial is ordered it shall be had at the next jury term after such thirty days. Any time fixed for hearing or trial may be extended for good cause shown.

90 Me. 399.

Sec. 20. Testimony at hearing. R. S. c. 79, § 20. At any hearing or trial in equity, the evidence may be presented wholly or partly by oral testimony, or by depositions. When oral testimony is used, it shall be reduced to writing by the stenographer, certified by him, and filed with the depositions, for use in case of appeal.

See c. 87, § 168; 108 Me. 337.

Sec. 21. Justice shall decide cause, subject to appeal. R. S. c. 79, § 21. The justice before whom such hearings are had, has full power to decide any motion or cause so heard, and shall make and enter such order and decree, as seems just and proper to him, and in accordance with the established principles of equity jurisprudence, subject to appeal and exceptions as hereinafter provided.

75 Me. 417; 79 Me. 41; 88 Me. 359; 108 Me. 338.

Sec. 22. Appeal, how to be claimed; proceedings in law court. R. S. c. 79, § 22. From all final decrees of such justice, an appeal lies to the next term of the law court. Said appeal shall be claimed by an entry on the docket of the court from which the appeal is taken, within ten days after such decree is signed, entered and filed, and notice thereof has been given by such clerk to the parties or their counsel. The appellant shall enter such appeal, and furnish written or printed copies of the case on the first day of said law term, and for good cause shown, the law court may enlarge the time for furnishing such copies. Such appeals shall be heard at the term to which they are taken, unless otherwise agreed, or the law court shall for good cause, order a further time for the hearing thereof, and shall on such appeal, affirm, reverse or modify the decree of the court below, or remand the cause for further proceedings, as it deems proper. All cases in which appeals or exceptions are taken from a final decree, shall remain on the docket of the court below, marked "law," and decree shall be entered therein by a single justice, in accordance with the certificate and opinion of the law court.

78 Me. 337; 81 Me. 141; 82 Me. 203; 83 Me. 193; 88 Me. 359; 99 Me. 223;
106 Me. 546; 107 Me. 150; 109 Me. 457.

Sec. 23. Justice may make orders for protection of rights of parties, while an appeal is pending. R. S. c. 79, § 23. When an appeal is taken from a final decree, any justice may also make such order for the appointment of receivers, for injunction and prohibition, or for continuing the same in force, and such other orders as are needful for protection of the rights of the parties, or as are usual in equity proceedings in such cases, until the appeal is determined by the law court. Such orders may be modified or annulled by such justice, or by such law court, while the appeal is pending before it.

Sec. 24. Appeal from interlocutory decree. R. S. c. 79, § 24. An appeal may be claimed and taken in like manner from any interlocutory decree or order, but such appeal shall not suspend any proceedings under such decree or order, or in the cause, and shall not be taken to the law court until after final decree. Upon an appeal from a final decree, all previous decrees and orders are open for revision, reversal or approval.

See § 56; 80 Me. 100; 90 Me. 467; 95 Me. 253; 96 Me. 44.

Sec. 25. Justice may report cause. R. S. c. 79, § 25. Upon a hearing in any cause in equity, the justice hearing the same may report the cause to the next term of the law court, if he is of the opinion that any question of law is involved, of sufficient importance or doubt to justify the same, and the parties agree thereto. The cause shall be entered and copies furnished by the plaintiff and shall be heard and decided by said law court in like manner and with like results as is herein provided in case of appeals.

75 Me. 417; 78 Me. 337; 82 Me. 250; 83 Me. 190.

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Sec. 26. Justice may grant further time for appeal. R. S. c. 79, § 26. If any party intending to appeal, by accident or mistake, fails to do so, within the time limited therefor, he may within thirty days after the entry of the decree apply to any justice for leave to take such appeal, which may be granted on such terms as appear just and equitable.

Sec. 27. Exceptions; justice shall give separate findings of law and fact; other proceedings not suspended. R. S. c. 79, § 27. Either party aggrieved may take exceptions to any ruling of law made by a single justice, the same to be accompanied only by such parts of the case as are necessary to a clear understanding of the questions raised thereby. Such exceptions shall be claimed on the docket within the time allowed for appeal, and shall be made up, allowed and filed in the time provided therefor, unless further time is granted by the court, or by agreement of parties. In all other respects, such exceptions shall be taken, entered in the law court, and there heard and decided like appeals, with the same power in the single justice to make orders for injunction and prohibition, and the protection of the rights of the parties; and in the law court, to make orders and decrees pending the same and upon decision thereof; provided, that no question of fact is open to the law court on such exceptions. And upon request of either party, the justice hearing the cause shall give separate findings of law and fact. The allowance and hearing of exceptions shall not suspend the other proceedings in the cause.

See § 56; 78 Me. 337; 80 Me. 100; 88 Me. 359; 89 Me. 21; 90 Me. 468; 95 Me. 253; 107 Me. 150.

Sec. 28. Date of order and decree. R. S. c. 79, § 28. Every order and decree shall bear date upon the day on which it is filed and entered, and the day of such filing and entering shall be entered by the clerk upon the docket and on the decree.

82 Me. 204; 107 Me. 70.

Sec. 29. Issuance of process to enforce final decree. R. S. c. 79, § 29. No process for enforcement of a final decree save for the appointment of receivers, for injunction or prohibition, or for continuing the same, shall issue within ten days from the entry of such decree, unless all parties waive an appeal by entry on the clerk's docket, or by writing filed in the cause, or consent in like manner to the issue thereof.

Sec. 30. Judgment, divesting person of real estate, recorded in registry of deeds. R. S. c. 79, § 30. No judgment or decree divesting any person of title to real estate shall be effectual against any person not a party to the action in which such judgment or decree is rendered, and persons not having actual notice thereof, unless a copy of such judgment or decree or so much thereof as relates to the title to such real estate, duly certified by the clerk of courts in and for the county where said judgment or decree is rendered, is, within thirty days after the rendering of such judgment or decree, duly recorded in the registry of deeds in the county or district in which such real estate is situated.

See c. 12, § 18; c. 118, §§ 4, 18; 94 Me. 322; 108 Me. 320.

Sec. 31. Hearings. R. S. c. 79, § 31. 1909, c. 170, § 2. Hearings and trials in equity cases may be had, and orders and decrees may be passed, at such place in any county as the justice applied to may appoint; and the clerk

in the county in which the case is pending shall transmit the papers in the case to the justice to hear the same; and such justice shall return them after hearing with his orders and decrees therein to be filed and entered in such county.

Sec. 32. Evidence in court below, reported; no witnesses heard orally in law court. R. S. c. 79, § 32. All evidence before the court below, or an abstract thereof, approved by the justice hearing the case, shall on appeal be reported. No witnesses shall be heard orally before the law court as a part of the case on appeal, but the court may, in such manner and on such terms as it deems proper, authorize additional evidence to be taken when the same has been omitted by accident or mistake, or discovered after the hearing.

100 Me. 273.

Sec. 33. Issues of fact may be tried by jury; power of justice to confirm or set aside verdicts. R. S. c. 79, § 33. The court may, in its discretion and upon application of either party, frame issues of fact in equity causes, to be tried by a jury in the county where such cause is pending. A single justice may confirm any verdicts rendered upon such issues, and enter appropriate decrees thereon, or he may set aside such verdicts, and render such decrees as equity requires, as if such issues had not been framed. In all causes where such issues are framed and tried, an appeal may be taken, and exceptions had to rulings of law, as hereinbefore provided, and upon such appeal or exception, the law court may confirm or set aside the verdicts rendered in the cause, or order a new trial of such issues, and make such disposal of the case as equity demands. All such appeals and exceptions shall be taken, heard and determined as provided by this chapter.

65 Me. 447; 75 Me. 417; 80 Me. 175.

Sec. 34. Writs of seizin or execution, etc., may issue. R. S. c. 79, § 34. Writs of seizin or execution, and all other processes appropriate to causes in equity, may be issued by the court, to enforce its decrees.

Sec. 35. Preliminary injunctions may be granted plaintiff. R. S. c. 79, § 35. Preliminary injunctions may be granted by a single justice in term time or in vacation, upon the plaintiff filing a bond with sufficient sureties conditioned to pay all damages and costs caused thereby, if he is finally found not entitled to such injunction, unless a single justice, on motion to dissolve the same and hearing on the merits thereof, refuses to dissolve it. Such damages and costs shall be awarded by the court on motion, but if not so awarded before final decree, they may be determined in a suit on such bond. Such injunction may also be granted to either party on hearing, without bond, upon oral evidence, depositions or affidavits, and upon such notice and with such time for pleading, evidence and hearing as the court directs. No preliminary injunction shall be granted to either party unless his pleadings contain an application therefor; but an injunction may be granted pending the suit, in proper cases, upon motion and hearing. Perpetual injunctions may be granted by the court or any justice thereof making final decree.

42 Me. 127; 49 Me. 322, 398; 54 Me. 404; 55 Me. 551; 60 Me. 194, 336;
81 Me. 305; 87 Me. 187.

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Sec. 36. Summary process, when decree is disobeyed; proceedings, and punishment for contempt. R. S. c. 79, § 36. Whenever a party complains in writing, and under oath, that the process, decree or order of court, which is not for the payment of money only, has been disregarded or disobeyed by any person, summary process shall issue by order of any justice, requiring such person to appear on a day certain and show cause why he should not be adjudged guilty of contempt, and such process shall fix a time for answer to the complaint, and may fix a time for hearing on oral testimony, depositions or affidavits, or may fix successive times for proof, counter proof and proof in rebuttal, or the time for hearing and manner of proof may be subsequently ordered upon the return day or thereafter. The court may, for good cause, enlarge the time for such hearing. If the person so summoned does not appear as directed, or does not attend the hearing at the time appointed therefor, as enlarged, or if, upon hearing, he is found guilty of such disregard or disobedience, he shall be adjudged in contempt, and the court may issue a *capias* to bring him before it to receive sentence, and may punish him by such reasonable fine or imprisonment as the case requires. The court may allow such offender to give bail to appear at a time certain, when such punishment may be imposed, if he continues in contempt. But when a second time found guilty of contempt in disregarding or disobeying the same order or decree, no bail shall be allowed. When such person purges himself of his contempt, the justice may remit such fine or imprisonment or any portion thereof. No appeal lies from any order or decree for such punishment, nor shall exceptions thereto be allowed, save upon questions of jurisdiction, nor in any case shall such exceptions suspend the enforcement of any such order or decree, unless the court so directs.

49 Me. 399; 60 Me. 334.

Sec. 37. Exceptions certified as frivolous; proceedings. R. S. c. 79, § 37. When a justice deems any exceptions allowed by him, or any appeal in a proceeding in equity, frivolous and intended for delay, he may so certify on the motion of the party not excepting, and such exceptions and appeal and the record connected therewith shall be transmitted to the chief justice, and be argued in writing on both sides within thirty days thereafter, unless the justice transmitting the same, for good cause, enlarges the time, and they shall be considered and decided by the justices of said court as soon as may be, and the decision certified to the clerk of courts of the county where the cause is pending; and if the decision is adverse to the party taking such appeal or exceptions, treble costs may be allowed the prevailing party.

83 Me. 406; 101 Me. 334.

Sec. 38. Absent defendant not served with process shall have review within one year; proceedings. R. S. c. 79, § 38. In case of any decree, an absent defendant whose property has been attached and who does not appear by the record to have been served with process within the state and has made no appearance before final process, shall have a review within one year after final decree as of right, with stay or supersedeas of such process. The defendant may in such case apply to any justice by petition setting forth the grounds for such review, whereupon, if such justice orders reasonable notice to the other party to appear at a time and place named therein, to show cause why such review should not be granted, when such review

is granted, the justice may prescribe the time in which the defendant's defense shall be made. Reviews may also be granted on petition, whenever, by fraud, accident or mistake, and without fault of the party against whom the decree was ordered, justice has not been done; provided, that the petition therefor is filed within six years after final decree; and notice may be ordered and served with like rights of stay or supersedeas as herein provided. Upon granting the review, the court may fix a time within which the next proceeding shall be had.

107 Me. 73.

Sec. 39. Revisory power of court, save on appeal, not abridged. R. S. c. 79, § 39. Nothing herein contained abridges the power of the court to hold all interlocutory orders and decrees subject to revision, at any time before final decree, except when they have been decided on appeal.

107 Me. 73.

Sec. 40. Rules of practice in equity cases. R. S. c. 79, § 40. The court shall make all proper rules for the regulation of equity practice necessary to simplify proceedings, discourage delays and lessen the expense of litigation, and it has full power for that purpose; but no rule of court now existing is repealed hereby, except so far as it is inconsistent herewith.

Law Court.

Sec. 41. Constitution of law court; concurrence of majority sitting required. R. S. c. 79, § 41. When sitting as a court of law to determine questions of law, arising in suits at law and in equity, and in criminal trials and proceedings, the court shall be composed of five or more of the justices, who shall hear and determine such questions by the concurrence of five members; but when any of them cannot act in a case by reason of interest or other disqualification, a majority of the others is sufficient; and in any civil action in which there is a subsisting verdict, if a majority of the justices qualified to act in the case, after mature consideration and consultation, do not concur in granting a new trial, the court shall order judgment on the verdict.

41 Me. 17; 45 Me. 153; 57 Me. 510, 540.

Sec. 42. Justice shall not sit in review of own rulings. R. S. c. 79, § 42. No justice shall sit in the law court upon the hearing of any cause tried before him, in which any of his rulings and findings are the subject of review, nor take any part in the decision thereof.

Sec. 43. Sessions of law court. R. S. c. 79, § 43. 1907, c. 114. For the purposes of the law court the state shall constitute one district. The sessions of the court as a law court shall be holden at Augusta on the second Tuesday of December, at Bangor on the first Tuesday of June and at Portland on the fourth Tuesday of June in each year. Meetings of the justices shall also be held at such times and places as the chief justice shall appoint for the consideration and determination of all cases and questions before submitted and undetermined. Such meetings shall be held at least twice in each year.

Sec. 44. All pending cases marked "law" shall be certified to clerk; how entered and determined. R. S. c. 79, § 44. At least ten days before the sitting of each term of the law court, the clerks of courts in the several

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counties of the state, shall certify to the clerk of such term, all cases, pending in the supreme judicial and superior courts in their respective counties, marked "law" and all other matters of which the law court has jurisdiction, except cases in which exceptions or appeals in proceedings in equity have been adjudged frivolous and intended for delay; and they shall be entered on the docket of the law court and shall, together with all other matters therein pending, be in order for argument, determination or continuance in the alphabetical order of counties. Provided, that causes marked "law" and all other matters of which the law court has jurisdiction in the counties of Androscoggin, Cumberland, Franklin, Knox, Lincoln, Oxford, Sagadahoc and York shall not be entered or be in order for hearing at the term holden at Bangor, except by consent of both parties; but such causes shall be entered and be in order for hearing at the Portland and Augusta terms.

101 Me. 333; 112 Me. 317.

Sec. 45. Clerks of the terms of the law court; duties; compensation; expenses of county. R. S. c. 79, § 45. 1905, c. 98. The clerks of courts in the counties of Kennebec, Penobscot and Cumberland shall be the clerks of the terms of the law court held in their respective counties and each shall, upon the adjournment of a term thereof holden in his county, transmit to the clerk of the next term all dockets together with all exhibits and documents in his custody relating to pending causes. The dockets of the law court shall be made from time to time and kept as the court may direct.

The chief justice or in his absence the senior justice present may allow the several clerks for attendance, not exceeding two and one-half dollars a day, and a reasonable compensation for making dockets, and for certifying decisions, which shall be paid by the state, but no entry fee shall be charged; and the chief justice or in his absence the senior justice present shall allow to the county in which any such term may be held, such expenses as may be incurred on account of such law term, which shall be paid by the state.

Sec. 46. Jurisdiction of the law court; disposition of cases. R. S. c. 79, § 46. The following cases only come before the court as a court of law: Cases in which there are motions for new trials upon evidence reported by the justice; questions of law arising on reports of cases; bills of exceptions; agreed statements of facts; cases, civil or criminal, presenting a question of law; all questions arising in equity cases; motions to dissolve injunctions issued after notice and hearing or continued after a hearing; questions arising on writs of habeas corpus, mandamus and certiorari, when the facts are agreed on, or are ascertained and reported by a justice. They shall be marked "law" on the docket of the county where they are pending, and there continued until their determination is certified by the clerk of the law court to the clerk of courts of the county, and the court shall immediately after the decision of the question submitted to it, make such order, direction, judgment or decree, as is fit and proper for the disposal of the case, and cause a rescript in all civil suits, briefly stating the points therein decided, to be filed therein, which rescript shall be certified by the clerk of the law court to the clerk of courts of the county where the action is pending, and to the reporter of decisions; and if no further opinion is written out, the reporter shall publish in the next volume of reports there-

after issued, the case, together with such rescript, if the reporter deems the same of sufficient importance for publication.

41 Me. 18; 45 Me. 153, 418; 46 Me. 331; 50 Me. 272; 56 Me. 233; 57 Me. 23, 510; 59 Me. 580; 62 Me. 320; 67 Me. 133; 68 Me. 203, 343; 70 Me. 333; 72 Me. 104; 73 Me. 139, 224; 74 Me. 109; 77 Me. 243; 100 Me. 275; 102 Me. 152; 104 Me. 82, 421; 107 Me. 244, 304; 113 Me. 281, 526.

Sec. 47. Arguments in writing. R. S. c. 79, § 47. When parties enter an agreement on the docket of a county under cases named in the preceding section, and transmit arguments in writing to the court before or at its next law term, such cases need not be entered on the docket of the law court; and the court may pronounce judgment in any county, and cause it to be certified and entered in the county where it is pending, as of the preceding term.

57 Me. 510; 85 Me. 129; 88 Me. 132.

Sec. 48. Complaint for not entering cases on law docket. R. S. c. 79, § 48. When cases mentioned in section forty-six are not entered on the docket of the law court within the first two days of the next law term, the opposite party may, at that term, enter a complaint, briefly setting forth the facts, and the court, if satisfied of the truth thereof, may render judgment in his favor, as in other cases decided by it; and if the case is on exceptions, treble costs shall be awarded from the time when they were filed.

36 Me. 35.

Sec. 49. Entry of judgment; attachments and rights to disclose, preserved; proceedings on death of party. R. S. c. 79, § 49. The clerk of courts of a county, by virtue of a certificate, provided for in this chapter, received in vacation, shall enter judgment as of the preceding term, and execution may issue as of that term; but attachments then in force continue for thirty days after the next term in that county; and if the defendant was arrested on mesne process and gave bond to disclose after judgment, he may do so after said next term without breach of his bond. Provided, that where a party to a suit dies while the action is pending before the law court, and no suggestion of such death has been made upon the docket of the county where the action is pending, at the time when the certificate of decision is received by the clerk of courts in such county, any justice of the supreme judicial court may, in term time or vacation, order such action to be brought or carried forward on such county docket to a subsequent term of the court in such county, in order that such death may be suggested upon the docket, and the proper parties entitled to defend or prosecute such suit may enter their appearance therein, and that the judgment in said action may be entered up at such subsequent term, in accordance with such certificate from the law court.

See c. 87, § 55; c. 92, §§ 7, 12; 68 Me. 203; 72 Me. 451; 76 Me. 97; 79 Me. 358; 104 Me. 422; 106 Me. 116, 180; 107 Me. 188.

Sec. 50. Attachments continue in certain cases, on death of plaintiff; if defendant has been arrested, proceedings. R. S. c. 79, § 50. When a plaintiff dies before the expiration of thirty days from the rendition of judgment in his favor, or before the expiration of thirty days after the next term of court in the county where the action was pending, in cases where a certificate of decision, provided for in this chapter, is received by the clerk of courts of said county, in vacation, and no suggestion of such death has

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been made upon the docket of said courts, execution may issue as is now provided, and all attachments then in force continue for ninety days after the next term of the court in that county; and if the defendant was arrested on mesne process, and gave bond to disclose after judgment, he may do so after said next term without breach of his bond.

Trial Courts.

Sec. 51. Trial terms. R. S. c. 79, § 51. 1907, c. 34; c. 47. 1913, c. 95. For the trial of civil actions and of persons accused of offenses, and for the transaction of all other business, except cases named in section forty-six, the court shall be held annually by one justice, at the following places and times; and the justices shall so hold said terms, under the direction of the chief justice, that their services shall be divided to each county as equally as may be.

In the County of Androscoggin, at Auburn, on the third Tuesdays of January, April and September:—

Aroostook, at Houlton, on the third Tuesdays of April and November, for civil and criminal business, and at Caribou on the first Tuesdays of February and September for civil business only:—

Cumberland, at Portland, on the second Tuesdays of January, April and October, for civil business:—

Franklin, at Farmington, on the first Tuesday of February, third Tuesday of May, and the second Tuesday of September; the May term shall be held without a grand jury and with but one traverse jury, unless a justice of said court shall otherwise specially order, in which case the clerk shall send venires for the requisite number of traverse jurors, and shall summon the grand jury of the preceding term, as the terms of said order may require. All recognizances from municipal courts and trial justices in which parties are held to await the action of the grand jury, made returnable to said May term, shall, when no grand jury is in attendance, be continued to and have day in the next term of the court held in said county:—

95 Me. 452.

Hancock, at Ellsworth, on the second Tuesdays of April and October:—

Kennebec, at Augusta, on the first Tuesday of March, and the second Tuesday of October, for civil business:—

Knox, at Rockland, on the second Tuesday of January, first Tuesday of April, and the second Tuesday of September:—

Lincoln, at Wiscasset, on the fourth Tuesdays of April and October:—

Oxford, at Paris, on the second Tuesdays of March and October, and at Rumford Falls, in the town of Rumford, on the second Tuesday of May. The May term shall be held without a grand jury unless specially ordered by any judge of said court. All recognizances and other criminal processes made returnable to and to have day in said May term, when no criminal business is transacted, shall be continued to and have day in the next term of said court held in said county:—

Penobscot, at Bangor, on the first Tuesdays of January, April and October, for civil business, and on the first Tuesdays of February and September, for criminal business:—

Piscataquis, at Dover, on the second Tuesdays of March and September:—

Sagadahoc, at Bath, on the fourth Tuesday of January, and the second Tuesdays of May and October:—

112 Me. 327.

Somerset, at Skowhegan, on the fourth Tuesday of January, first Tuesday of April, and the third Tuesday of September:—

60 Me. 363.

Waldo, at Belfast, on the first Tuesday of January, and the third Tuesday of April and the fourth Tuesday of September:—

Washington, at Machias, on the first Tuesday of January and the second Tuesday of October, and at Calais on the first Tuesday of May:—

York, at Saco, on the first Tuesday of January, and at Alfred on the first Tuesday of May and the third Tuesday of September:—

Note. Jurisdiction is specially conferred upon the supreme judicial court in the following cases:

- In condemnation proceedings by U. S., c. 2, § 14.
- To appoint commissioners to locate public lots, c. 8, §§ 16 and 23; c. 17, §§ 61-63.
- To enforce attendance upon board of state assessors, c. 9, § 3.
- Upon appeal from county commissioners assessing road tax, c. 10, § 58; from assessors on application for abatement of taxes, c. 10, § 80; from municipal officers ordering removal of dangerous building, c. 23, § 35; from municipal officers upon applications for license of stationary engines, c. 23, § 22.
- Of the application of county funds by county treasurers, c. 13, § 5.
- Justice may call for aid of militia, c. 15, § 77.
- To approve commitment of person suffering from use of drugs, c. 19, § 123.
- To approve transfer of funds held for religious or benevolent purposes, c. 17, § 34.
- In cases arising under the law governing appeals from decisions of the county commissioners, public utilities commission and municipal officers relating to ways, c. 24, §§ 8, 10, 11, 20, 22, 30, 53, 59; c. 97, § 41.
- Of proceedings to drain marsh lands, c. 28, § 21.
- Of complaints to charge kindred for support of paupers, c. 29, § 19.
- Of offenses under law relating to sale of poisons, c. 20, § 27.
- To enforce penalties for neglect to maintain fishways, c. 33, § 6.
- Of violations of law as to dairy products, c. 37, § 24.
- Of appeals from orders of insurance commissioner, c. 53, § 116, c. 54, § 23; from county commissioners relating to damages for lands taken by railroads, c. 56, § 36.
- Of actions on awards of municipal officers for damages caused by construction of electrical lines, c. 60, § 28; of appeals in such cases, § 29; and on locations in plantations, § 27, as to joint use of poles, § 34.
- To appoint commissioners to determine necessity of appropriation of property by water districts, c. 61, § 24.
- Of applications to restore to parents custody of children, c. 64, § 59; of application for support of wife and children, c. 66, § 9.
- Of probate appeals, c. 67, §§ 31-37; c. 71, §§ 12-18; to approve rules and blanks of courts of probate and insolvency, c. 67, § 48; to inspect records of register, c. 67, § 27.
- To appoint administrators under certain conditions, c. 68, § 21; of appeals from courts of insolvency, c. 76, § 10.
- To authorize sales of real estate of deceased persons, c. 76, §§ 2, 12, 18.
- To authorize sales of real estate subject to contingent remainders, c. 78, § 4; over cutting of wood and timber, c. 78, §§ 7-9; to order deed to be recorded, c. 78, § 37.
- To approve sale, when husband or wife refuses to join in deed, c. 80, § 19.
- Of appeals from trial justices, c. 88, §§ 18-21; c. 99, § 8; c. 101, § 6; c. 103, § 9.
- In cases relating to partition of real estate, c. 93.
- Of petition for review, c. 94.
- To settle title to real estate encumbered by undischarged mortgage, c. 95, § 35.
- To order sale of vessel attached for lien, c. 96, § 11.
- To enforce liens on buildings, lands, wharves and piers, c. 96, § 40.
- In proceedings to recover damage for fowage, c. 97; of complaints in bastardy, c. 102, § 3.
- In cases of forfeited goods, c. 103, § 5.
- To release an insane person under arrest or imprisoned, c. 104, § 38.
- Of applications for writs of replevin of the person, c. 106, § 1.
- Of summary proceedings to quiet title to land, c. 109, § 48.
- To release on habeas corpus, person wrongfully detained in insane hospital, c. 145, § 38.

Sec. 52. Legal holidays. R. S. c. 79, § 52. 1907, c. 48, § 3. 1909, c. 190, § 2. No court shall be held on Sunday, or any day designated for the annual thanksgiving, or for the choice of presidential electors, the nineteenth day of April, the thirtieth day of May, the fourth day of July, the first Monday of September, the day of the state election, or on Christmas day; and when the time fixed for a term of said court falls on either of said days, it shall stand adjourned until the next day, which shall be deemed the first day of the term for all purposes.

78 Me. 502, 582.

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Sec. 53. Cases heard by presiding justice. R. S. c. 79, § 53. The justice presiding at such terms shall decide any cause without the aid of a jury, when the parties enter upon the docket an agreement authorizing it.

5 Me. 140; 65 Me. 81; 92 Me. 79; 107 Me. 305.

Sec. 54. Justice not attending, court shall be adjourned; proceedings. R. S. c. 79, § 54. When no justice attends on the day for holding a court, the sheriff, or in his absence, the clerk, shall by oral proclamation in the court-house and by notice posted on the door thereof, adjourn the court from day to day until a justice attends, and, in case of necessity, without day; and when so adjourned, actions brought for that term shall be entered by the clerk, and they, with all actions on the docket, shall be continued to the next term.

56 Me. 425.

Sec. 55. Exceptions, in civil and criminal cases; proceedings, if they are deemed frivolous; motions for new trial. R. S. c. 79, § 55. 1915, c. 100. When the court is held by one justice, a party aggrieved by any of his opinions, directions or judgments, in any civil or criminal proceeding, may, during the term, present written exceptions in a summary manner, signed by himself or counsel, and when found true they shall be allowed and signed by such justice; provided, however, that in all cases, such exceptions shall be presented within thirty days after the verdict is rendered or the opinion, direction or judgment is announced, in the case in which such verdict, opinion, direction or judgment is made; but if he deems them frivolous and intended for delay, he may so certify on motion of the party not excepting; and such exceptions may then be transmitted at once by such justice to the chief justice, and shall be argued in writing on both sides within thirty days thereafter, unless the presiding justice, for good cause, enlarges the time, and they shall be considered and decided by the justices of said court as soon as may be, and the decision certified to the clerk of the county where the case is pending. This section applies to exceptions filed in any criminal proceedings in either of the superior courts, unless said superior courts shall otherwise provide by rule. If the justice disallows or fails to sign and return the exceptions, or alters any statement therein, and either party is aggrieved, the truth of the exceptions presented may be established before the supreme judicial court sitting as a court of law, upon petition setting forth the grievance, and thereupon, the truth thereof being established, the exceptions shall be heard, and the same proceedings had as if they had been duly signed and brought up to said court with the petition. The supreme judicial court shall make and promulgate rules for settling the truth of exceptions alleged and not allowed. All motions for new trials, as against law or evidence, shall be filed during the term at which verdict is rendered, but in no case later than thirty days after verdict rendered.

41 Me. 18; 45 Me. 154, 418; 49 Me. 401; 56 Me. 25, 249; 57 Me. 292; 58 Me. 233; 60 Me. 464; 62 Me. 321; 64 Me. 176, 210; 65 Me. 81; 67 Me. 231, 387, 444; 74 Me. 109, 212; 77 Me. 243; 86 Me. 295; 92 Me. 79; 98 Me. 201; 101 Me. 236, 332, 402; 106 Me. 114, 539; 109 Me. 386; 112 Me. 316; 113 Me. 140, 161.

Sec. 56. Proceedings in case of death or disability of presiding justice. 1913, c. 76. In case of physical or mental disability, death, resignation, or removal of the justice presiding at any civil or criminal proceeding

before the supreme judicial or superior court, or at a hearing in equity, in which a motion for new trial is made, exceptions presented or appeal taken, any justice of the supreme judicial court may, upon motion, and after notice and hearing, allow the exceptions, and upon request of the moving party, order the official stenographer to furnish a certified copy of the evidence required under the motion or appeal, and such portion thereof as may be made a part of the exceptions.

Sec. 57. Exceptions intended for delay, overruled. 1909, c. 137. When exceptions are certified and transmitted to the chief justice as frivolous and intended for delay, and are not argued by the excepting party within thirty days thereafter or within such further time as the presiding justice shall have allowed therefor, they may be at once overruled for want of prosecution.

Sec. 58. Trial to proceed when dilatory pleas are overruled. R. S. c. 79, § 56. When a dilatory plea is overruled and exceptions taken, the court shall proceed and close the trial, and the action shall then be continued and marked "law," subject to the provisions of section fifty-five.

53 Me. 541; 65 Me. 367; 67 Me. 38; 71 Me. 28; 80 Me. 100; 91 Me. 577;
93 Me. 556; 95 Me. 134; 101 Me. 540; 104 Me. 284; 112 Me. 316; 113 Me. 526.

Sec. 59. Copies, in law cases, may be printed or written. R. S. c. 79, § 57. In all cases taken to the law court for argument and decision, except appeals by attorneys at law from judgments of court rendered against them on information, all copies of the case, abstracts containing the substance of all the material facts, pleadings and documents on which the parties rely, may either be printed or fairly and legibly, written on good paper.

See c. 84, § 40.

Sec. 60. Counsel shall file three copies of brief in all cases argued before law court. R. S. c. 79, § 58. In each case argued before the law court counsel shall file with the clerk of the court where such case is heard, three copies of their respective briefs, if printed, and the clerk, at the expense of his county, shall cause the same to be bound in three equal volumes of convenient size, properly paged, indexed and labeled, and shall deposit one each of said volumes in the respective county law libraries at Augusta, Bangor and Portland.

Sec. 61. Interest on verdicts and awards. R. S. c. 79, § 59. Interest shall be allowed on verdicts and amounts reported by referees to be due, from the time of finding such verdicts or making such reports to the time of judgment.

36 Me. 22; 50 Me. 338; 53 Me. 515.

Attorney-General.

Sec. 62. Duties of the attorney-general. 1905, c. 162, § 1. The attorney-general shall appear for the state, the secretary of state, the treasurer of state, the bank commissioner, the insurance commissioner, the head of any other state department, and the state boards and commissions, in all suits and other civil proceedings in which the state is a party or interested, or in which the official acts and doings of said officers are called in question, in all the courts of the state; and in such suits and proceedings before any other tribunal when requested by the governor or by the legislature or either branch thereof. All such suits and proceedings shall be prosecuted

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or defended by him or under his direction. Writs, summonses or other processes served upon such officers shall forthwith be transmitted by them to him. All legal services required by such officers, boards and commissions in matters relating to their official duties shall be rendered by the attorney-general or under his direction. Said officers, boards and commissions shall not act at the expense of the state as counsel in any suit or proceedings in which the state is interested.

Sec. 63. Shall prosecute all claims for the state. 1905, c. 162, § 2. All civil actions to recover money for the state shall be brought by the attorney-general or by the county attorney in the name of the state; the attorney-general shall appear before the departments and tribunals of the United States and the committees of Congress to prosecute all claims of the state against the United States.

Sec. 64. May prosecute intruders. 1905, c. 162, § 4. He may, if in his judgment the public interest so requires, prosecute by indictment or complaint any person who intrudes on the land, rights or property of the state, or commits or erects a nuisance thereon.

Sec. 65. As to public charities. 1905, c. 162, § 5. He shall enforce due application of funds given or appropriated to public charities within the state, and prevent breaches of trust in the administration thereof.

Sec. 66. Shall give opinions on questions of law submitted. 1905, c. 162, § 6. He shall give his written opinion upon questions of law submitted to him by the governor and council, secretary of state, treasurer of state, bank commissioner, insurance commissioner, state auditor, or head of any other state department, or any of the state boards or commissions or by either branch of the legislature.

Sec. 67. Assistant attorney-general, appointment. 1913, c. 167. The attorney-general shall appoint a deputy who shall be designated as the assistant attorney-general, and who shall serve during the pleasure of the attorney-general or until a successor is duly appointed and qualified. His office shall be at the capitol and he may perform all the duties required of the attorney-general by chapter fifty-one and such other duties as the attorney-general may require of him.

Sec. 68. Attorney-general shall consult with and advise county attorneys. 1905, c. 162, § 3. 1913, c. 80. The attorney-general shall consult with and advise the county attorneys in matters relating to their duties; and if in his judgment the public interest so requires, he shall assist them by attending the grand jury in the examination of a case in which the accused is charged with treason or murder, and appear for the state in the trial of indictments for treason or murder. He may also institute and conduct prosecutions for all offenses against the provisions of chapters five, six and seven, and for that purpose attend and present evidence to grand juries and assist them in the examination of witnesses and drawing indictments.

Sec. 69. To attend law courts and instruct county attorneys. R. S. c. 79, § 60. The attorney-general, when practicable, shall attend all terms of the law court, and all trials of persons indicted for treason or murder, on notice from the clerk, and give all proper instructions to county attorneys when he is absent, and at other times.

See c. 84, § 18.

Sec. 70. Cause witnesses to recognize, and procure attendance of those out of state. R. S. c. 79, § 61. When a criminal prosecution, in which he appears, is continued, he shall cause the witnesses in behalf of the state to recognize to appear at the next term, unless otherwise directed by the court, and may procure the attendance of a witness living out of the state deemed by him material in procuring an indictment or conviction; and the court shall allow such witness a reasonable compensation beyond his legal fees.

Sec. 71. May employ detectives. R. S. c. 79, § 62. The attorney-general may, by himself or through the several county attorneys or other officers of the state, employ such detectives or other persons, offer rewards or use other means that he may deem advisable, for the detection, arrest and apprehension of persons who commit crime in this state.

See c. 140, § 8.

Sec. 72. Appropriation. R. S. c. 79, § 63. For said purpose the sum of fifteen hundred dollars shall be appropriated each year, and so much thereof as may be necessary, may be expended under the direction of the attorney-general. The governor and council may draw their warrants from time to time, for the expenditure of said sum, upon the presentation of bills properly avouched by the attorney-general.

Sec. 73. Annual report. R. S. c. 79, § 64. The attorney-general shall, annually, on the first day of December, make a report to the governor and council of the amount and kind of official business done by him, and by the several county attorneys during the year preceding, stating the number of persons prosecuted, their alleged offenses, the results and the punishments awarded, with any useful suggestions.

See c. 84, § 20.

Sec. 74. Shall not receive pay from prosecutor. R. S. c. 79, § 65. He shall not receive any fee or reward, from or in behalf of any prosecutor, for official services, or, during the pendency of a prosecution, be engaged as counsel or attorney for either party in a civil action depending essentially on the same facts.

Note. Attorney-General shall prosecute treasurer of state for misconduct in office, c. 2, § 61; assist in making inventory in case of vacancy in office of treasurer of state, § 78; prosecute actions to recover expense of disposal of slash, c. 8, § 55; prosecute registers of deeds for misconduct, c. 12, § 11; institute proceedings to protect property dedicated to pious uses, c. 17, § 33; for collection of taxes on lands in unorganized townships, c. 11, § 96; shall enforce tax laws, c. 9, § 10; as to collection of inheritance taxes, c. 69, § 6; as to enforcement of pure food law, c. 36, § 37. To attend hearings for abolishment of grade crossings, c. 24, § 34; attorney for state highway commission, c. 25, § 3.

As to corporations in general, shall enforce penalties for neglect of corporation or officers to make returns, c. 51, §§ 29, 30; shall discontinue action upon compliance with law and payment of costs, § 31; may excuse corporations from filing returns, § 33; shall prosecute for violations of law regulating savings banks, c. 52, § 61; shall be notified of proceedings for distribution of deposit of foreign loan and building associations, § 121, shall examine and approve certificate of organization, c. 51, § 9; shall approve form of notice of hours of labor, c. 49, § 18; also work and vacation permits, c. 49, § 23.

As to insurance companies, shall prosecute for violations of law relating to foreign surety companies, title and credit insurance companies, c. 53, § 155; shall institute proceedings against companies transacting the business of casualty insurance on the assessment plan, for violation of law, § 162.

As to railroads, shall take charge of proceedings to enforce compliance with order of the public utilities commission to make repairs, c. 56, § 53; shall prosecute corporations violating certain provisions for safety on railroads, c. 56, § 49; c. 57, § 62; c. 58, § 27; shall take charge of proceedings against company for failure to operate road, c. 57, § 15.

Shall prosecute sheriff for failure to file bond, c. 85, § 5; county treasurer for failure to report to him, c. 138, §§ 14, 15.

May file information against unworthy attorney, c. 84, § 36; for recovering seizin by the state in lands, c. 98, §§ 2, 5, 9, 11, 14, 17.

Entitled to notice of certain proceedings on habeas corpus, c. 104, § 15; of poor debtor's proceedings on judgment in favor of the state, c. 115, § 83.

Shall enforce penalty for failure to allege former conviction under "prohibitory law," c. 127, § 41; shall institute proceedings against lotteries, c. 130, § 19; shall prosecute county officials for non-enforcement of "prohibitory law," c. 127, § 50.

Reporter of Decisions.

Sec. 75. Reporter; appointment, and tenure of office. R. S. c. 79, § 66. The governor, with the advice and consent of the council, shall, in case of a vacancy, appoint a person learned in the law, to be reporter of the decisions of the law court, who shall hold his office during the pleasure of the executive.

72 Me. 543, 565.

Sec. 76. Duties. R. S. c. 79, § 67. 1907, c. 75, § 1. The reporter of decisions shall, by his personal attendance at law court when practicable, or by the best other means in his power, prepare correct reports of all legal questions argued and decided, reporting cases more or less at large according to his judgment of their importance. He shall publish at least one volume yearly, provided he has material enough to make a volume of the size required by this section, and furnish the usual number of current copies to the state and to the public at the price of one dollar and seventy-five cents a volume. Each volume shall be of the average size of volume eighty-three, Maine reports, and be equal thereto in paper, printing, binding, general finish and quantity of printed matter. The reporter may, from time to time, as he sees fit, make a written contract in his own name with any person, firm or corporation for the printing, publishing and binding of said reports and shall require such person, firm or corporation to give a good and sufficient bond with good and sufficient sureties, conditioned for the faithful performance of all the terms and conditions of such contract by the person, firm or corporation with whom the reporter makes such contract. In case of a breach of any or all the conditions of such bond, the reporter may maintain an action on such bond in his own name.

Sec. 77. Copyright of reports. R. S. c. 79, § 68. 1907, c. 75, § 2. Each volume of said reports shall be entered by the secretary of state with the librarian of congress, and copyrighted in the name of the State of Maine, and the manuscript and copyright thereof shall belong to the state. All profits arising from the publication and sale of said reports and advance sheets thereof received by said reporter, except as hereinafter provided, shall be accounted for and paid over by him to the treasurer of state on the first Monday in December in each year. But the reporter may retain out of said profits received by him the sum of four hundred dollars, each year, for clerk hire, stationery, postage, expressage and incidental expenses. At the expiration of his term of office, all the official duties of the reporter shall cease, and he shall turn over and deliver to his successor all unpublished cases in his hands, and shall also assign and transfer to his successor any contract and bond he then may have relating to a volume not then completed or commenced. And such successor's rights in and under such contract and bond shall be the same as though he had originally made the contract and taken the bond.

Sec. 78. He shall furnish advance sheets free to all judges. R. S. c. 79, § 69. The reporter shall furnish free of charge the judges of the supreme judicial court and superior courts with one copy each of advance sheets; he shall also be entitled to twenty-five copies, free of expense, for current exchanges with the reporters of other states, law school libraries, the attorney-general, and heads of departments.

The Superior Court for the County of Cumberland.

Sec. 79. Superior court for Cumberland county; qualification of justice. R. S. c. 79, § 70. The superior court established at Portland, within and for the county of Cumberland, shall consist of one justice, an inhabitant of said county, of sobriety of manners and learned in the law, who shall be appointed, commissioned and qualified according to the constitution, and shall reside during his continuance in office, in Portland.

Sec. 80. Jurisdiction. R. S. c. 79, § 71. 1911, c. 196. 1913, c. 174. 1915, c. 39. Within said county, said superior court has exclusive jurisdiction of civil appeals from municipal and police courts and trial justices; exclusive original jurisdiction of libels for divorce, including any petition for annulment of marriage or petition for modification of a decree of divorce, whether such decree was granted in the superior court or in the supreme judicial court for said county; actions of scire facias on judgments and recognizances not exceeding five hundred dollars; of bastardy trials, and of all other civil actions at law not exclusively cognizable by municipal and police courts and trial justices, where the damages demanded do not exceed five hundred dollars, except complaints for flowage, real actions and actions of trespass quare clausum; and concurrent original jurisdiction of actions of trespass quare clausum, and of proceedings in habeas corpus; and of all other civil actions at law where the damages exceed five hundred dollars, except complaints for flowage and real actions.

57 Me. 154; 60 Me. 463.

Sec. 81. Civil and criminal terms. R. S. c. 79, § 72. Said court shall be held for civil business on the first Tuesdays of every month, except June, July and August; but the criminal business of said county shall be transacted at the terms held on the first Tuesdays of January, May and September, together with civil business.

64 Me. 530.

Sec. 82. Writs, when returnable. R. S. c. 79, § 73. Actions shall be made returnable at one of the three terms next begun and held after the commencement thereof.

The Superior Court for the County of Kennebec.

Sec. 83. Superior court for Kennebec; qualification of justice. R. S. c. 79, § 74. The superior court established at Augusta, within and for the county of Kennebec, shall consist of one justice, an inhabitant of said county, of sobriety of manners and learned in the law, appointed, commissioned and qualified according to the constitution.

Sec. 84. Jurisdiction. R. S. c. 79, § 75. 1913, c. 220, § 1. Within said county, said superior court has exclusive jurisdiction of civil appeals from municipal and police courts, and trial justices; exclusive original jurisdiction of actions of scire facias on judgments and recognizances not exceeding five hundred dollars; of bastardy trials, and of all other civil actions at law not exclusively cognizable by municipal and police courts, and trial justices, where the damages demanded do not exceed five hundred dollars, except complaints for flowage, real actions and actions of trespass quare clausum; and concurrent original jurisdiction of actions of trespass quare clausum,

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libels for divorce and of proceedings in habeas corpus; and of all other civil actions at law where the damages exceed five hundred dollars, except complaints for flowage and real actions.

73 Me. 514; 91 Me. 141; 100 Me. 63.

Sec. 85. Terms. R. S. c. 79, § 76. Said court shall be held at Augusta on the second Tuesday of January, and the first Tuesdays of April and September, and at Waterville on the second Tuesdays of June and November; but the criminal business of said county shall be transacted at the terms held on the second Tuesday of January and the first Tuesdays of April and September, together with civil business. The judge of said court may continue any case pending in said court without costs, when in his judgment justice may require it, in order to give the parties in interest opportunity to try any such case in either Waterville or Augusta in said county.

85 Me. 122.

Sec. 86. City of Waterville may provide accommodations for court. R. S. c. 79, § 77. The city of Waterville may provide a building and furnish suitable accommodation, for holding the superior court in said city, and may raise by assessment or loan, and appropriate a sufficient sum of money for the purpose of providing said accommodation for the said court.

Sec. 87. Writs, when returnable. R. S. c. 79, § 78. Actions shall be made returnable at one of the next two terms begun and held after the commencement thereof.

77 Me. 110; 85 Me. 122.

General Provisions Applicable to Both of the Superior Courts.

Sec. 88. Seal; form of writs and processes, and how issued. R. S. c. 79, § 79. Each justice of a superior court shall establish a seal for his said court; all writs and processes issuing from any superior court shall be in the name of the state, of the usual forms, bearing the teste of the justice thereof under the seal of said court; they shall be signed by its clerk and obeyed and executed throughout the state, and may be made returnable in the superior court of any other county in which the action might be legally brought.

Sec. 89. Clerk; deputy clerk; vacancies. R. S. c. 79, § 80. The clerk for the time being of the supreme judicial court in each of said counties is also clerk of the superior court thereof. He shall appoint a deputy approved by the justice of such superior court, who shall act as clerk thereof whenever said court and the supreme judicial court are both in session in such county. And whenever said clerk of the supreme judicial court is absent, or the office is vacant, such justice may appoint a clerk for his court during such absence, or until an appointment is made by the governor and council, or by the supreme judicial court.

See c. 117, § 40.

Sec. 90. Sheriff or deputy to attend court. R. S. c. 79, § 81. The sheriff of each of said counties shall attend the superior court thereof unless the supreme judicial court is in session in such county in which case he shall specially designate a deputy, approved by the justice of such superior court, so to attend. And whenever it happens that such justice is prevented

from attending at the time and place at which such court by law or by adjournment ought to be held, said sheriff or such deputy shall, by oral proclamation, adjourn said court from day to day, until such justice attends.

Sec. 91. Venires for jurors. R. S. c. 79, § 82. 1915, c. 322, § 1. Venires for grand jurors to serve at said superior courts shall be issued at least forty days before the first day of September, annually, and such jurors shall serve at every term of said courts for the transaction of criminal business throughout the year. Traverse jurors shall be drawn and returned to serve at the several terms of said courts as in the supreme judicial court, except that the same jurors may be required by the justice presiding to serve for two successive terms.

Sec. 92. Proceedings, if jury trial is desired by plaintiff or defendant; all other cases, save appeals, to be tried by justice; order of trials. R. S. c. 79, § 83. If the plaintiff in either of said superior courts desires a jury trial, he must indorse the same upon his writ at the time of entry. The defendant shall, within fourteen days after entry, file his pleadings, and if the plaintiff has not demanded a jury, the defendant must indorse on his plea his demand for a jury, if he desires one. But whenever by accident or mistake the plaintiff fails to indorse on his writ at the time of entry a request for a jury trial, or if the defendant by accident or mistake fails to indorse upon his plea, when filed, a demand for a jury, the court may, on motion of either party, at its discretion order a trial by jury in the cause. Whenever a jury is so demanded by either party, or ordered by the court, the clerk shall enter the fact on the docket, and all other cases, except appeals, shall be tried by the justice without the intervention of a jury, subject to exceptions in matters of law, in term time, or if both parties desire, at chambers. When a defendant, legally served, does not appear by himself or attorney within the first three days of the term, he shall be defaulted as in the supreme judicial court. If the defendant does not file his pleadings as hereinbefore provided, he shall be defaulted on the first day of the next term after entry, unless the court for good cause grants leave to file a plea or otherwise lawfully disposes of the action. All actions duly answered to shall be in order for trial at the next term after entry, and shall be so tried, except for good cause. Appeals shall be entered by the appellant as in the supreme judicial court, and shall be in order for trial at the first term.

57 Me. 38; 60 Me. 43; 63 Me. 87, 152.

Sec. 93. Exceptions; cases certified upon agreed statements. R. S. c. 79, § 84. Exceptions may be alleged as in the supreme judicial court and shall together with all cases upon agreed statement of facts, upon report and motions for new trials, be certified as provided in section forty-four of this chapter. And all exceptions arising in cases within the exclusive jurisdiction of either of said superior courts may be certified at once by the justice thereof to the chief justice of the supreme judicial court, and shall, when so certified, be argued in writing on both sides within thirty days thereafter, unless the justice of such superior court for good cause, enlarges the time, and exceptions so certified shall be considered and determined by the justices of the supreme judicial court, as soon as may be. Decisions of the law court on all exceptions and questions from said su-

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perior courts shall be certified to the clerk of either of said superior courts with the same effect as in cases originating in the supreme judicial court in the county.

59 Me. 198; 67 Me. 77; 90 Me. 274; 112 Me. 316.

Sec. 94. Demurrer overruled, defendant may plead anew. R. S. c. 79, § 85. When a demurrer to a declaration is overruled, the defendant, notwithstanding he excepts, may plead anew within such time as the justice orders, but in all cases where exceptions are alleged by the defendant, the action shall, notwithstanding, remain upon the docket of the superior court and be proceeded with as if no exceptions had been taken, until the case is in such a condition that the overruling of said exceptions will finally dispose of it. And the action shall then be transferred to the law court, or certified to the chief justice thereof, as hereinbefore provided for the hearing and determination of all exceptions arising in any stage of the case.

93 Me. 557; 112 Me. 316.

Sec. 95. Jurisdiction of law court over questions of law. R. S. c. 79, § 86. The supreme judicial court, sitting as a court of law, has the same jurisdiction of all questions of law, motions for new trials, and questions arising on reports or agreed statements of facts originating in either superior court, as if they had originated in the supreme judicial court; and said law court has the same jurisdiction of all questions and motions certified thereto from either superior court as hereinbefore provided. And all provisions of law and rules of the supreme judicial court relative to the transfer of actions and other matters from the supreme judicial court for said county, or from its docket to the docket of said law court, and all provisions of law and rules regulating proceedings in such cases, and the effects of such proceedings, apply to the transfer of actions from either of the superior courts or the dockets thereof to said law court, and to the proceedings in such cases and the effect thereof, except so far as they are inconsistent with the foregoing provisions.

63 Me. 121.

Sec. 96. Authority of court. R. S. c. 79, § 87. Said superior courts may administer all necessary oaths, render judgment and issue execution, punish for contempt and compel attendance, as in the supreme judicial court; make all such rules and regulations, not repugnant to law, as may be necessary and proper for the administration of justice promptly and without delay; and the provisions of law relative to the jurisdiction of the supreme judicial court in each of said counties over parties, the arrest of persons, attachment of property, the time and mode of service of precepts, proceedings in court, the taxation of costs, the rendition of judgments, the issuing, service and return of executions, and all other subjects, apply to each of said superior courts in all respects, except so far as they are modified by this chapter; and each of said superior courts is clothed as fully as the supreme judicial court, with all the powers necessary for the performance of all its duties.

Sec. 97. Final judgments may be reexamined in supreme judicial court; proceedings. R. S. c. 79, § 88. Final judgments in said superior courts may be reexamined in the supreme judicial court on a writ of error, or on

petition for review, and when the judgment is reversed, the supreme judicial court shall render such judgment as the superior court should have rendered, and when a review is granted, it shall be tried in said supreme judicial court, which has the same power to grant writs of supersedeas of executions issued from said superior courts, as it has of executions issued from the supreme judicial court.

Sec. 98. In case of illness, etc., of judge of superior court, other judges may hold court; teste of writs in case of vacancy; disqualification of judge. R. S. c. 79, § 89. Whenever a judge of a superior court, by reason of illness, death or other cause, is prevented from holding his court, any other judge of a superior court or any justice of the supreme judicial court by order of the chief justice, shall hold the same. And during a vacancy in the office of justice of either of the superior courts, all writs issued from the office of the clerk thereof, shall bear teste of any one of the justices of the supreme judicial court. Whenever the justice of either of the superior courts is disqualified by interest, relationship or other lawful cause from trying any cause pending in his said court, said case shall thereupon be transferred to the docket of the supreme judicial court for the county, and be disposed of in said court according to law.

Sec. 99. Criminal jurisdiction. R. S. c. 79, § 90. 1913, c. 220, § 3. The original and appellate jurisdiction in all criminal matters in said counties of Cumberland and Kennebec, and all powers incident thereto, originally exercised by the supreme judicial court, but heretofore conferred upon and exercised by said superior courts, are continued.

56 Me. 491; 60 Me. 507; 112 Me. 252.

Sec. 100. Exceptions in criminal cases, when to be heard. R. S. c. 79, § 91. All exceptions or questions arising in any way during the trial of criminal cases in either of said superior courts, shall be transferred to the law docket of the supreme judicial court and have day therein, and if said exceptions are sustained, or a new trial is ordered, the cause shall be remanded to such superior court for trial. Motions for a new trial in criminal cases tried in either of the superior courts, shall be heard and finally determined by the justice thereof.

80 Me. 62; see § 55.

Sec. 101. Jurisdiction of supreme judicial court limited. R. S. c. 79, § 92. The jurisdiction of the supreme judicial court for the trial of civil and criminal cases in the counties of Cumberland and Kennebec, is limited in conformity to the foregoing provisions.

Naturalization and Citizenship.

Sec. 102. Jurisdiction of applications for naturalization. R. S. c. 79, § 93. The supreme judicial court and superior courts shall respectively have jurisdiction of applications for naturalization. No other court established by this state shall entertain any primary or final declaration or application made by or in behalf of an alien to become a citizen of the United States, or entertain jurisdiction of the naturalization of aliens.

88 Me. 200.

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Sec. 103. Jurisdiction of petitions for judicial declaration of citizenship; proceedings. 1915, c. 10, §§ 1, 2. The supreme judicial court and superior courts shall have jurisdiction, original and concurrent, to hear and determine petitions of persons alleging themselves to be citizens, resident and domiciled inhabitants of this state and praying a judicial declaration of such citizenship, residence and domicile. Such petitions shall set forth the grounds upon which the application is based, shall be supported by such evidence as the court shall deem necessary, and shall be filed, heard and determined in the county in which the petitioner claims residence. If such petitioner desires a jury trial upon his petition, he may indorse a request therefor upon the petition at the time of entry and shall thereupon be entitled to the same.

Sec. 104. Notice to attorney-general. 1915, c. 10, § 3. Notice of said petition shall be given to the attorney-general by causing an attested copy of the same to be served upon him by an officer qualified to serve civil process, at least fourteen days prior to the first day of the term of court at which said petition is entered and the attorney-general may appear and be heard thereon.

Sec. 105. Change of residence. 1915, c. 10, § 4. In the event of a subsequent change of residence on the part of any person so declared to be a citizen of this state, said courts shall also have jurisdiction and authority upon petition therefor and like proceedings had to make a judicial declaration of such change of residence, and decree that the former judgment entered in such case shall thereafter be of no force and effect.

Note. Jurisdiction of violation of law relating to dairy products, c. 37, § 24.
To approve commitment of persons suffering from use of drugs, c. 19, § 123.

CHAPTER 83.

County Commissioners.

- Sections 1- 4 Election and Tenure of Office.
Sections 5- 6 Regular Sessions and Clerk.
Sections 7-27 Powers and Duties.

Election and Tenure of Office.

Sec. 1. Constitution of board; chairman. R. S. c. 80, § 1. There shall be a board of commissioners for each county, consisting of a chairman and two other citizens resident in the county, elected, or, in case of a vacancy, appointed by the governor, with the advice and consent of the council. The chairman shall be designated by them at their first meeting on or after the first day of January annually, to act for one year.

Sec. 2. Vacancies at expiration of term. R. S. c. 80, § 2. Vacancies to occur by expiration of the term of office at the end of any year in which a biennial election is held, shall be filled by election on the second Monday of September, in such year. If but one is elected, he shall hold the office for six years; if two, the one having the highest number of votes shall hold for six years, and the next highest for four years; if three, two shall hold as last provided, and the other for two years. If two have an equal number of votes, the governor, with the advice and consent of the council, shall designate who shall hold for the longer and who for the shorter term.

Sec. 3. Vacancies happening otherwise. R. S. c. 80, § 3. When no choice is effected, or a vacancy happens by death, resignation or removal from the county, or at the expiration of any present term of office at the end of any year in which no biennial election is held, the governor, with the advice and consent of the council, shall appoint a person to fill the vacancy, who shall hold office until the first day of January after another has been chosen to fill the place.

50 Me. 609; 61 Me. 603.

Sec. 4. Mode of election. R. S. c. 80, § 4. County commissioners shall be elected on the second Monday of September, in the year eighteen hundred and eighty and every two years thence following, by the written votes of electors qualified to vote for representatives. The votes shall be received, sorted, counted and declared, as votes for representatives are; the names of the persons voted for, the number of votes for each, and the whole number of ballots received, shall be recorded by the clerk in the town records, and true copies thereof, sealed and attested as returns of votes for senators, shall be transmitted to the secretary of state within thirty days.

See c. 7, §§ 41, 44, 53; 64 Me. 592, 594.

Regular Sessions and Clerk.

Sec. 5. Regular sessions, times and places. R. S. c. 80, § 5. 1907, c. 33. 1911, c. 11. 1915, c. 15. They shall hold annual sessions in the shire town of each county at the times following:

In the county of Androscoggin, on the first Tuesdays of April and October:—

Aroostook, on the first Tuesdays of January, March, May, July, September and November:—

Cumberland, terms of record on the first Tuesdays of January and June, and regular sessions on the first Tuesday of each month:—

78 Me. 102.

Franklin, on the last Tuesdays of April and December:—

Hancock, on the second Tuesdays of January, April and October:—

Kennebec, on the third Tuesdays of April, August and December:—

Knox, on the first Tuesdays of April and December, and the third Tuesday of August:—

Lincoln, on the second Tuesday of May, the first Tuesday of September, and the last Monday of December:—

Oxford, on the third Tuesdays of May, September, and December, at Paris:—

Penobscot, on the first Tuesdays of January, April, July and October:—

Piscataquis, on the first Tuesdays of April, August and December:—

Sagadahoc, on the first Tuesdays of March, July and November:—

Somerset, on the first Tuesdays of March and August, and the second Tuesday of December:—

Waldo, on the second Tuesday of April, and the third Tuesdays of August and December:—

Washington, at Machias, on the second Tuesdays of January and October, and at Calais, on the fourth Tuesday of April:—

York, terms of record on the first Tuesdays of April and October, at Alfred, and regular sessions on the first Tuesday of each month, where the probate court for the county of York, for the same month, shall be held.

Sec. 6. Clerk of courts to be clerk of the commissioners. R. S. c. 80, § 6. 1909, c. 155. The clerk of the judicial courts in each county is clerk of the commissioners; and when the supreme judicial court and the commissioners are in session at the same time, he may appoint a clerk pro tempore to the commissioners, for whose doings he is responsible. Such clerk shall be sworn, and make a daily record of their doings, and they shall examine it, and when correct certify it, and it shall be copied into their records by the stated clerk. The clerk of the county commissioners shall be known as the county clerk.

67 Me. 436; 107 Me. 514.

Powers and Duties.

Sec. 7. Quorum. R. S. c. 80, § 7. Two commissioners constitute a quorum; when only one attends, he may adjourn to a convenient time and place; when neither attends, the clerk may adjourn as provided in section fifty-four of chapter eighty-two.

83 Me. 117.

Sec. 8. Incompatible offices. R. S. c. 80, § 8. No person holding the office of county commissioner shall at the same time hold either the office of mayor or assessor of a city, or of selectman or assessor of a town.

Sec. 9. Officers to execute precepts. R. S. c. 80, § 9. Sheriffs and their deputies, coroners and constables, shall execute all legal processes directed to them by the commissioners.

Sec. 10. Duties of county commissioners. R. S. c. 80, § 10. The county commissioners shall make the county estimates and cause the taxes to be assessed; examine, allow and settle accounts of the receipts and expenditures of the moneys of the county; represent it; have the care of its property and management of its business; by an order recorded, appoint an agent to convey its real estate; lay out, alter or discontinue ways, and perform all other duties required by law.

See c. 24; c. 114, §§ 10, 11; 53 Me. 218; 60 Me. 363; 69 Me. 364, 375; 90 Me. 88.

Sec. 11. Duties as to court-houses, jails and rooms for records and papers of county officers. R. S. c. 80, § 11. 1907, c. 164. They shall, in the shire town of their county, provide and keep in repair, court-houses, with a suitable room in each for the county law library; jails, with apartments for debtors separate from criminals; and fire-proof buildings of brick or stone for the safe-keeping of records and papers belonging to the offices of registers of deeds, and of probate and insolvency, and of the clerk of courts, with separate fire-proof rooms, and suitable alcoves, cases or boxes for each office, and also any other necessary buildings. If in the judgment of the county commissioners, public convenience so requires, they may, at the expense of the county, cause the files and records of the probate and other county courts to be rearranged, indexed and docketed; the dockets which are worn or defaced to be renewed and the indexes to be consolidated, under the direction of their respective registers and clerks of said courts.

Sec. 12. May provide workshops, etc., for prisoners. R. S. c. 80, § 12. They may make such additions in workshops, fences and other suitable accommodations, in, adjoining or appurtenant to the jails in the several counties as may be found necessary for the safe-keeping, governing and employing of offenders committed thereto by authority of the state or of the United States. They may raise by loan to their several counties, or otherwise, a sum not exceeding five thousand dollars, to make such alterations and improvements, and may expend so much thereof as is necessary.

Note. Plans for new jails to be submitted to state board of charities and corrections, c. 147, § 7.

Sec. 13. Shall provide for employment of prisoners. R. S. c. 80, § 13. They shall, at the expense of their several counties, unless county workshops are therein established, provide some suitable place, materials and implements for the breaking of stone into suitable condition for the building and repair of highways, and shall cause all persons sentenced under the provisions of section twenty-four of chapter one hundred and thirty, to labor at breaking stone. And they may, at the expense of their several counties, provide suitable materials and implements sufficient to keep at work all persons committed to either of such jails, and may from time to time establish needful rules for employing, reforming and governing the

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persons so committed, for preserving such materials and implements, and for keeping and settling all accounts of the cost of procuring the same, and of all labor performed by each of the persons so committed, and may make all necessary contracts in behalf of their several counties.

See c. 142, § 45.

Sec. 14. Able-bodied male prisoners put to work on highways. 1913, c. 20, §§ 1, 2. County commissioners may authorize the keepers of jails to put able-bodied male prisoners to work on the building or repairing of highways within their county. They shall make rules and regulations and appoint overseers and keepers needful for the direction and safe-keeping of prisoners so employed, and such overseers and keepers shall have all authority conferred by law on masters of houses of correction and shall be responsible for the safe-keeping and return to jail of all prisoners in their custody, and shall be subject to the provisions of section forty-eight of chapter eighty-five. No prisoner shall be so employed who has been exempted therefrom by the magistrate imposing sentence, or if in the judgment of a physician expressed by a certificate he is unfit for such labor. The county commissioners shall supply all prisoners with all necessary and suitable clothing of such description as will not materially distinguish them from other workmen; they shall also furnish said prisoners with the required tools and implements and may employ such other labor and purchase such other material and equipment as may be necessary to properly carry out the objects of this act, and shall keep account of all expenses incident to such employment. Section nineteen does not apply to this section and the three following sections.

Sec. 15. Application for services of prisoners. 1913, c. 20, § 3. The state highway commission and municipal officers of towns may make application for the services of prisoners as aforesaid and may enter into an agreement as to the cost and compensation to be paid to the county for such services, and the sum agreed on may be paid out of moneys appropriated for highway purposes. All such labor shall be under the general direction of the board or persons charged with the work.

Sec. 16. Voters may request employment of prisoners. 1913, c. 20, § 4. When a written petition signed by at least three per cent of the voters in any county, as determined by the number of votes cast therein for governor at the last preceding election, is presented to the county commissioners of said county requesting the employment of prisoners as above provided, said commissioners shall act thereon and shall designate the prisoners available for work under the conditions provided in section fourteen.

Sec. 17. Contracts subject to cancelation or suspension. 1913, c. 20, § 5. Any contract for the employment of prisoners, not provided for in the three preceding sections, which may be made by the county commissioners of any county, with any person, firm or corporation, shall be made subject to the right of the said county commissioners to withdraw, cancel or suspend said contract in whole or in part.

Sec. 18. Removal of site of county buildings; towns shall vote thereon. R. S. c. 80, § 14. The county commissioners shall not remove a county building in the shire town, or erect a new one instead of it more than half

a mile from the former location, without first giving notice of their intentions and of the place where they propose to locate it, to the municipal officers of each town in the county; who shall present the same to the town at its next annual meeting for choice of state or town officers, and receive, sort and count the votes, for and against the proposal; and they and the clerks shall certify and return such votes to the clerk of said commissioners, who shall examine them and act according to the decision of a majority.

87 Me. 88.

Sec. 19. Shall examine jails and may authorize employment of prisoners for benefit of their families. R. S. c. 80, § 15. 1907, c. 161. At the commencement of each session required by law, they shall examine the prison, take necessary precaution for the security of prisoners, for the prevention of infection and sickness and for their accommodation; they may authorize the employment for the benefit of the county, or of dependent families, of prisoners committed for crime, in some suitable manner not inconsistent with their security and the discipline of the prison, and may pay the proceeds of such labor, less a reasonable sum to be deducted therefrom for the cost of maintenance of said prisoners, to the families of such person or persons as may be dependent upon them for support.

See § 14; c. 120, § 40; c. 142, § 12.

Sec. 20. Power to obtain loans, restricted. R. S. c. 80, § 16. They may obtain loans of money for the use of their county, and cause notes or obligations, with coupons for lawful interest, to be issued for payment thereof at such times as they deem expedient; but such loans shall not exceed ten thousand dollars, without first obtaining the consent of the county, substantially as provided in section eighteen.

87 Me. 88.

Sec. 21. County commissioners of Cumberland and Kennebec may provide for temporary loan. R. S. c. 80, § 17. 1907, c. 64. 1915, c. 326. The county commissioners of Cumberland and Kennebec counties may, without obtaining the consent of their respective counties, raise, by temporary loan to be paid within one year from the time when the same is contracted, sums not exceeding seventy-five thousand dollars and fifty thousand dollars respectively, in any year for use of their respective counties, and cause notes or obligations of their respective counties with coupons for lawful interest to be issued for payment thereof, as aforesaid.

Sec. 22. County commissioners of Penobscot county may provide for temporary loan. 1915, c. 264. The county commissioners of Penobscot county may, without obtaining the consent of the county, raise by temporary loan, to be paid within one year from the time when the same is contracted, a sum not exceeding twenty-five thousand dollars in any year for use of said county, and cause the notes or obligations of said county, with coupons for lawful interest, to be issued for payment thereof, as aforesaid.

Sec. 23. Warrants of distress, when and how to be issued on judgments of the board. R. S. c. 80, § 18. Warrants of distress, on judgments legally rendered by the county commissioners, may be originally issued within two years after judgment, and made returnable to the clerk's office within ninety days from their date. New warrants may be issued, within two

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years from the return day of the last preceding warrant, for sums remaining unsatisfied. No warrant shall be originally issued against a town until twenty days after a certificate of rendition of the judgment is transmitted by their clerk to the assessors of such town. Interest on the damages shall be included and collected by such warrants as in executions.

64 Me. 331; 83 Me. 115; 93 Me. 131.

Sec. 24. Action of debt thereon. R. S. c. 80, § 19. A party, for whose benefit a judgment is rendered by them, may recover the amount in an action of debt founded on such judgment.

37 Me. 36; 53 Me. 218.

Sec. 25. Not to be agent to expend money. R. S. c. 80, § 20. No commissioner shall be appointed to expend money assessed or raised for any purpose by the board of which he is a member.

Sec. 26. Services in condemnation cases. 1905, c. 117, § 2. 1913, c. 194, § 2. For services performed by county commissioners in the assessment of damages for land or easements sought to be taken or acquired by private corporations, they shall charge three dollars a day and actual traveling expenses, and certify the same in a bill of items to the county attorney, who shall collect the sums so charged of the party seeking to exercise the right of eminent domain, and forthwith pay the same to the county treasurer. The county treasurer shall pay to said commissioners actual traveling expenses aforesaid when collected by the county attorney.

Sec. 27. Annual financial report shall be published. R. S. c. 80, § 21. At the end of each year, the commissioners of each county shall make a statement of its financial condition, showing in detail, all moneys received into and paid out of its treasury, and such other facts and statistics, as may be necessary to exhibit the true state of its finances; and publish in pamphlet form, a reasonable number of copies for distribution among the citizens thereof.

Note. County commissioners of Cumberland county authorized to appoint chaplain for jail, P. & S. L., 1907, c. 411; authorized to maintain county farm, P. & S. L., 1911, c. 181; 1913, c. 185.

County commissioners of Penobscot county authorized to maintain county farm, P. & S. L., 1913, c. 191.

County commissioners required to itemize and verify under oath, expense accounts, c. 114, § 11.

CHAPTER 84.

Clerks of Courts. County Attorneys and Attorneys at Law.

- Sections 1-15 Clerks of the Judicial Courts.
- Sections 16-23 County Attorneys.
- Sections 24-30 Attorneys at Law.
- Sections 31-35 Summary Proceedings for Payment of Collections.
- Sections 36-44 Removal of Unworthy Attorneys.

Clerks of the Judicial Courts.

Sec. 1. Election; tenure. R. S. c. 81, § 1. Clerks of the judicial courts shall be elected and notified, their elections determined and vacancies filled in the same manner, and they shall enter upon the discharge of their duties at the same time as is provided respecting county commissioners, but they shall hold their offices for four years.

See c. 7, § 53; c. 83, §§ 1-4; 107 Me. 514.

Sec. 2. Bond. R. S. c. 81, § 2. Before entering upon the discharge of official duty, each clerk shall give a bond to the state, to be lodged in the office of its treasurer, approved by the governor and council, in the sum of eight thousand dollars, with two or more sureties, conditioned that he will faithfully perform all the duties of his office, pay over all moneys, and safely keep and immediately deliver all records, files, papers, muni-ments in said office and property of the county, as required by law.

See Const. Me. Art. ix. § 1; 60 Me. 429.

Sec. 3. To account for moneys received to county treasurer. R. S. c. 81, § 3. He shall keep a true and exact account of all moneys which he receives, or is entitled to receive, for services by virtue of his office, and shall pay the same to the county treasurer for use of the county in the manner required by law; all other moneys belonging to the county shall be paid in thirty days after they are received by him; and if, in either case he neglects to do so, he shall pay twenty-five per cent interest thereon until paid; and the county treasurer shall notify the treasurer of state of any such known delinquency, and the clerk's bond shall then be sued.

See c. 117, § 40.

Sec. 4. Receive and discharge fines and costs voluntarily paid. R. S. c. 81, § 4. He shall receive all fines, forfeitures and bills of costs, imposed or accruing to the use of the state, when paid or tendered to him before a precept is issued to enforce collection; give discharges therefor and enter them of record.

Sec. 5. Copies of law cases in which state is a party, to be furnished. R. S. c. 81, § 5. He shall furnish to the attorney-general full copies of all cases described in section forty-six of chapter eighty-two, in which the state is a party, thirty days before the session of the law court for that district. When the papers in such cases are not filed more than thirty

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days before such session, they shall be furnished immediately after they are filed.

Sec. 6. To complete records of deceased clerk. R. S. c. 81, § 6. Under direction of the supreme judicial court, he shall complete unfinished records of a former clerk deceased, when from entries on the dockets and papers on file it sufficiently appears what judgment was rendered. Such record, when approved by the court, is valid.

60 Me. 429.

Sec. 7. Duties as to lists of justices, discharges of soldiers and seamen, and files of state paper. R. S. c. 81, § 7. He shall record the list of magistrates furnished by the secretary of state, in a suitable book; and such record, and also copies thereof duly attested by him, are legal, but not conclusive evidence of the due appointment and qualification of all such officers. He shall also record in a book kept for that purpose, properly indexed, certificates of discharge of soldiers and seamen from the army and navy of the United States; certified copies from such record, when the originals are lost, shall be evidence in court, and in the absence of other proof, have the same effect as the originals. He shall preserve and file, for public inspection, all copies of the state paper forwarded to him by the publisher thereof, as required by law.

Resolves of 1911, c. 149; see c. 86, § 71; c. 118, § 4; 60 Me. 429.

Sec. 8. Penalty for taking illegal fees. R. S. c. 81, § 8. A clerk, who exacts or receives more than his lawful fees, forfeits fifty dollars, to be recovered by indictment.

See c. 111, § 19; c. 133, § 14.

Sec. 9. Deputy clerk. R. S. c. 81, § 9. 1905, c. 25. Any clerk may appoint a deputy of either sex to be paid out of the clerk's salary, for all whose official acts the clerk is responsible. Before entering upon his official duties, such deputy shall be sworn and give bond to the clerk, approved by the county commissioners and lodged in the office of the county treasurer, in the sum of eight thousand dollars, with two or more sureties, conditioned that he will faithfully perform all the duties required of clerks of courts. Whenever the clerk is unable to perform the duties of his office, said deputy shall have all the powers and perform all the duties of clerk, and be subject to the same penalties for any neglect thereof.

Sec. 10. Court may appoint a clerk pro tem. in absence of clerk; oath and bond. R. S. c. 81, § 10. When a clerk is absent or the office is vacant, and an existing or immediate session of the court renders it necessary, the court may appoint a clerk to supply the vacancy, until an appointment is made by the governor and council, or during such absence; who shall be sworn, and give such bond as the court orders.

Sec. 11. Record of civil cases. 1909, c. 221. After the rendition of final judgment or decree in any civil case at law or in equity, the clerk shall as soon as may be make such a record thereof as the court by general rule or special order may direct. If either party, however, files a request and tenders the fees therefor, a full, extended record shall be made. The supreme judicial court may establish the form of such full extended record.

Sec. 12. Record of criminal cases. R. S. c. 81, § 12. In indictments for felonies, clerks shall make extended records of the process, proceed-

ings, judgment and sentence. In other indictments, it is sufficient to record the title of the case, the nature of the indictment, the term when it was found, the proceedings in brief thereon, and the judgment and sentence of the court. In criminal prosecutions brought up by appeal from inferior courts, it is sufficient to record the title of the case, the nature and date of the complaint, the name and official character of the magistrate before whom the case was tried, and the sentence appealed from and its date; to be followed by correct minutes of the proceedings and judgment in the appellate court.

Sec. 13. Examination and correction of records. R. S. c. 81, § 13. The supreme judicial court shall cause the records of each clerk to be examined at least as often as there is a change of clerk, and when found deficient, direct them to be immediately made or corrected, and when such order is not obeyed, the fact of such deficiency shall be certified to the treasurer of state, who shall cause the clerk's bond to be sued.

60 Me. 429; 70 Me. 432.

Sec. 14. Disposal of money collected by suit on clerk's bond. R. S. c. 81, § 14. The money recovered in such suit shall be applied, under direction of the court, to complete the deficient records. If more than sufficient, the balance inures to the state. If not sufficient, the balance may be recovered by the treasurer of state in an action on the case founded on the bond and facts.

Sec. 15. No recording officer shall be attorney or sue in his own court, nor draft or aid in drafting any paper which he is required to record. R. S. c. 81, § 15. No clerk, register or recording officer of any court of the state, shall be attorney or counselor in any suit or matter pending in such court; neither shall he commence actions to be entered therein; or draft or aid in drafting any document or paper which he is by law required to record, in full or in part, under a penalty not exceeding one hundred dollars, to be recovered by indictment for the benefit of the county.

Note. Duplicates of plans filed with clerks of courts to be filed in registry of deeds, c. 12, § 22. Clerks of courts to make returns of fines collected under inland fish and game laws, c. 33, § 91; of libels for divorce to state registrar of vital statistics, c. 64, § 34; to make abstract on record, of pardon or commutation of sentence, c. 140, § 6.

County Attorneys.

Sec. 16. Election of county attorneys; vacancies. R. S. c. 81, § 16. County attorneys shall be elected and notified, their elections determined and vacancies filled in the same manner, and they shall enter upon the discharge of their duties at the same time as is provided respecting county commissioners, but they shall hold office for two years. None but a permanent resident of the county shall hold such office, and removal therefrom vacates the office.

See c. 7, § 53; c. 83, §§ 1-4; 71 Me. 384.

Sec. 17. Duties in civil proceedings where county is interested; compensation. 1905, c. 177. The county attorney in each county shall appear for the county, under the direction of the county commissioners, in all suits and other civil proceedings in which the county is a party or interested, or in which the official acts and doings of said county commissioners are called in question, in all the courts of the state, and in such suits and pro-

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ceedings before any other tribunal when requested by said commissioners. All such suits and proceedings shall be prosecuted by him or under his direction. Writs, summonses, or other processes served upon the county or said commissioners shall forthwith be transmitted by them to him. The county commissioners may employ other counsel if in their judgment the public interest so requires. For the services herein mentioned the county attorney shall receive no compensation other than the salary from the state, except actual expenses when performing said services, the same to be audited by the county commissioners and paid from the county treasury. This section, however, shall in no way relate to or give the county attorney control of litigation in which the county is not financially interested although the official acts and doings of the county commissioners may be called in question.

Sec. 18. Duties in criminal proceedings. R. S. c. 81, § 17. The county attorney shall attend all criminal terms held in his county, and act for the state in all cases in which the state or county is a party or interested, and in the absence of the attorney-general from a term in the county, shall perform his duties in state cases under directions from him, in the county, and he shall appear and act for the state with the attorney-general, in the law court, in all state cases coming into said court from his county; but no additional compensation shall accrue to the county attorney by the discharge of such duties.

67 Me. 129.

Sec. 19. To enforce collection of fines and costs; as to examination of officers' bonds; penalty for neglect. R. S. c. 81, § 18. He shall enforce the collection and payment to the county treasurer, of all fines, forfeitures and costs, accruing to the state, and the faithful performance of their duties by sheriffs, coroners and constables, and give information to the court of their defaults in this respect; and shall annually move the county commissioners, at their meeting next following the third Tuesday of June, to examine and consider the sufficiency of the sheriffs' and coroners' bonds. If he neglects either of said duties, he forfeits to the state not more than one hundred dollars, to be recovered in an action of debt, in the name of the treasurer of state.

See c. 85, § 3.

Sec. 20. Annual report to attorney-general; penalty for neglect. R. S. c. 81, § 19. He shall, annually, by the twentieth day of November, make such a report to the attorney-general of the business done in his office during the year ending on the first day of said November as is required by section seventy-three of chapter eighty-two and failing to do so, he forfeits one-half of his salary for the current quarter, to be deducted by the governor and council in drawing his salary warrant, unless they are satisfied that there was reasonable cause therefor.

Sec. 21. Appointment of temporary substitute. R. S. c. 81, § 20. When he does not attend a criminal session, or the office is vacant, the court may appoint an attorney to perform his duties during the session, and allow him a reasonable compensation, to be paid from the county treasury, and the justice shall notify the treasurer of state, who shall deduct the same

from the salary of such county attorney and forward the same to such county treasurer.

67 Me. 129.

Sec. 22. Restrictions and obligations. R. S. c. 81, § 21. He is under the same restrictions as to fees, and the same obligations as to witnesses as are imposed on the attorney-general by sections seventy and seventy-four of chapter eighty-two.

Sec. 23. Assistant county attorney for Cumberland county; duties. R. S. c. 81, § 22. The county attorney of the county of Cumberland may appoint an assistant, to be approved by the justice of the superior court for said county. Said assistant shall take the oath prescribed for county attorneys; and assist the county attorney in the ordinary duties of his office, in the drawing of indictments, in the hearing of complaints before the grand jury, and in the preparation and trial of criminal causes. He shall, when directed by the county attorney, act as counsel for the state in the trial of complaints, before judges of municipal and police courts and trial justices.

Note. Duties of county attorneys as to enforcing tax laws, c. 9, § 10; shall represent interests of state at hearing for abolishment of grade crossings, c. 24, § 34; shall assist commissioner of agriculture in enforcing pure food law, c. 36, § 37; to enforce laws relating to dairy products, c. 37, § 23.

County attorneys shall collect compensation of county commissioners for assessment of damages in condemnation proceedings, c. 83, § 26.

County attorneys to enforce compliance with order of public utilities commission to make repairs, c. 56, § 53.

Duties as to delinquent fines, forfeitures and costs in criminal cases, c. 138, §§ 16, 17.

Attorneys at Law.

Sec. 24. Attorneys, residents of other states or foreign countries, may be admitted to practice in courts of this state. R. S. c. 81, § 23. Practicing attorneys, residents of other states and territories, or from foreign countries, may be admitted on motion to try cases in any of the courts of this state by such courts, but shall not be admitted to the general practice of law in this state without complying with the provisions of the following section; provided, that where any applicant, residing within or without the state, who has been a member of the bar of another state, in good standing and in active practice, for at least three years, shall furnish the supreme judicial court a certificate of admission to practice in the court of last resort of such state, or a certificate of admission to any district court of the United States, together with the recommendation of one of the judges of the court of last resort of such state, said supreme judicial court may in its discretion, if satisfied as to his qualifications, admit such person to practice on motion made by some member of the bar of said court.

Sec. 25. Qualifications necessary to be admitted to practice law. R. S. c. 81, § 24. Every other person who shall be of full age, a resident and a citizen of the United States and of a good moral character, may be admitted to practice as an attorney and counselor at law, and solicitor and counselor in chancery, in all the courts of record of this state on motion made in open court, but the applicant shall first produce the certificate hereinafter provided for from the board of examiners, that he possesses sufficient learning in the law, and moral character and ability to enable him to properly practice as an attorney and counselor at law and solicitor and counselor in chancery in the courts of this state. No person shall be entitled to practice as an attorney and counselor at law and solicitor and

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counselor in chancery in this state until he shall be licensed so to do by said courts. No person shall be denied admission or license to practice as an attorney at law on account of sex.

Sec. 26. Appointment of commissioners for examination of applicants; tenure; meetings. R. S. c. 81, § 25. The board of examiners, for the examination of applicants for admission to the bar, shall be composed of five competent lawyers of the state; one member of said board shall be appointed annually by the governor on the recommendation of the chief justice of the supreme judicial court and shall hold office for the term of five years beginning on the first day of September of each year. Vacancies occurring from death, resignation, removal or inability to act, shall be filled in like manner for the unexpired term. Such board shall hold at least two sessions annually at such times and places in the state as the supreme judicial court shall direct, for the purpose of examining all applicants for admission to the bar, as to their legal learning and general qualifications to practice in the several courts of the state as attorneys and counselors at law and solicitors and counselors in chancery and, upon such examination being had, the board shall issue to such applicants as shall pass the required examination a certificate of qualification stating the standing of the applicants and recommending their admission to the bar. Such board shall elect from their number a secretary and shall make such rules and regulations relative to said examination as to them may seem proper. The president of said board shall be the member whose term of office soonest expires. Three members of said board shall constitute a quorum for the transaction of business.

See c. 117, §§ 54, 55.

Sec. 27. Qualifications of applicants; mode of examination; grade of standing. R. S. c. 81, § 26. The residences and names of the applicants shall be made to appear to said board and satisfactory evidence shall also be produced by said applicants of their good moral character and of their having pursued the study of law in the office of some attorney or in some recognized law school or university for at least three years prior to such examination; and a fee to be fixed by said board of not more than twenty dollars shall accompany the application. The applicant shall be required to submit to a written examination which shall be prepared by said board, also to an oral examination by the board, if deemed necessary, and shall be required to answer correctly a minimum of seventy per cent of the questions given him to entitle him to the certificate of the board. The board shall, however, have power to establish such higher grades of standing as to them may seem proper.

Sec. 28. Examination papers shall be kept on file; second examination. R. S. c. 81, § 27. The examination papers shall be kept on file in the office of the secretary of the board, and a record kept of each application, the name of the applicant, and his qualifications and general standing as ascertained by such examination, and the secretary of the board shall furnish each applicant with a card, showing the proficiency he has attained in each branch or subject upon which he has been examined, whether a certificate is issued or not. Any applicant failing to pass the examination may again

apply after six months, by showing to the board that he has diligently pursued the study of the law six months prior to the examination; if such second application is within one year after his first examination, he shall not be required to pay an extra fee for the second examination.

Sec. 29. Attorney's oath. R. S. c. 81, § 30. Upon admission to the bar, every applicant shall, in open court, take and subscribe an oath to support the constitution of the United States, and also take the following oath:

"You solemnly swear, that you will do no falsehood, nor consent to the doing of any in court, and that if you know of an intention to commit any, you will give knowledge thereof to the justices of the court or some of them, that it may be prevented; you will not wittingly or willingly, promote or sue any false, groundless or unlawful suit, nor give aid or consent to the same; that you will delay no man for lucre or malice, but will conduct yourself in the office of an attorney within the courts, according to the best of your knowledge and discretion, and with all good fidelity, as well to the courts, as to your clients. So help you God."

See c. 124, § 12; 64 Me. 145, 150.

Sec. 30. Person not admitted, cannot recover pay for services. R. S. c. 81, § 31. No person commencing practice as an attorney or counselor at law in any other state or place, or in any court in this state, without the qualifications and oaths aforesaid, is entitled to demand or recover any remuneration for his professional services rendered in this state.

63 Me. 183.

Summary Proceedings for Payment of Money Collected.

Sec. 31. Summary proceedings against attorney failing to pay money collected. R. S. c. 81, § 32. If an attorney at law receives money or any valuable thing on a claim left with him for collection or settlement, and fails to account for and pay over the same to the claimant for ten days after demand, he is guilty of a breach of duty as an attorney; and such claimant may file in the office of the clerk of the supreme judicial court in the county where such attorney resides, a motion in writing, under oath, setting forth the facts; and thereupon any justice of the supreme judicial court in term time or in vacation shall issue a rule, requiring the attorney to appear on a day fixed and show cause why he should not so account and pay, and to abide the order of such justice in the premises; which shall be served by copy in hand at least five days before the return day.

113 Me. 457.

Sec. 32. Procedure. R. S. c. 81, § 33. If he then appears, he shall file an answer to such motion, under oath, and such justice may examine the parties and other evidence pertinent thereto. If he does not appear and answer, the facts set forth in the motion shall be taken as confessed; and in either case such justice shall render such decree as equity requires.

Sec. 33. Exceptions. R. S. c. 81, § 34. Either party may allege exceptions to any ruling or decree of such justice; and they shall be allowed unless deemed frivolous.

Sec. 34. Not performing decree, committed for contempt. R. S. c. 81, § 35. If the attorney does not perform the decree of such justice, he shall

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be committed for contempt until he does, or is otherwise lawfully discharged; and his name shall be struck from the roll of attorneys.

Sec. 35. Claimant may sue at common law; debtor shall not cite to disclose until in jail ninety days. R. S. c. 81, § 36. The claimant may have his suit at common law against such attorney before filing such motion, or after an adverse decision thereon; and if judgment is recovered against the attorney in either mode, the fact shall be noted on the margin of the execution issued thereon; and when the debtor is arrested thereon, he shall be committed to jail, and no citation to disclose shall be issued until he has been there for ninety days.

Removal of Unworthy Attorneys.

Sec. 36. Information may be filed by attorney-general or committee of bar against attorney. R. S. c. 81, § 37. 1909, c. 53. Whenever an information is filed in the clerk's office of the supreme judicial court in any county, by the attorney-general, or by a committee of the bar or bar association of such county, charging that an attorney at law has become and is disqualified for the office of attorney and counselor at law, for reasons specified in the information, any justice of said court, in term time or in vacation, may, in the name of the state, issue a rule requiring the attorney informed against, to appear on a day fixed, to show cause why his name should not be struck from the roll of attorneys, which rule, with an attested copy of the information, shall be served upon such attorney in such manner as the justice directs, at least fourteen days before the return day, and shall be made returnable, either in the county where such attorney resides or where it is charged that the misconduct was committed.

64 Me. 146.

Sec. 37. Upon denial, information shall stand for hearing. R. S. c. 81, § 38. If the attorney on whom such service has been made, on or before said return day, files in the clerk's office of said court in said county of return, a denial of the charges specified in the information, the information shall thereupon stand upon the docket of said court, for hearing at the next term thereof in said county, by the justice presiding, upon such lawful evidence as may be produced either by the state or by the respondent.

Sec. 38. Proceedings in case of default, or upon hearing. R. S. c. 81, § 39. If such attorney fails to file his denial as aforesaid, the facts set forth in the information shall be taken as confessed, and if the justice presiding finds that the facts so confessed are sufficient to disqualify the respondent from holding the office of attorney and counselor at law, or if, in case of denial, the justice upon hearing finds that any of the charges specified are true and that the acts proved are sufficient to disqualify the respondent as aforesaid, he shall give judgment accordingly, and shall enter a decree that the respondent be removed from the office of attorney and counselor at law in all the courts of the state and that his name be struck from the roll of attorneys.

64 Me. 145.

Sec. 39. Judgment is final unless appealed from. R. S. c. 81, § 40. The judgment of such justice shall be final unless the respondent within one

week, and before the adjournment of said term, files his appeal therefrom to the law court by entering his claim therefor upon the docket.

Sec. 40. Appeal. R. S. c. 81, § 41. Such appeal shall be heard upon printed copies of the case furnished by the respondent at the next law term. If the case is not argued, it shall be decided upon the record, and if the respondent fails to enter his appeal with the printed copies of the case during the first three days of said law term, the counsel for the prosecution shall enter the appeal with an attested copy of the judgment and decree, whereupon the same shall be affirmed by the law court.

See c. 82, § 59.

Sec. 41. Conduct of prosecution. R. S. c. 81, § 42. The prosecution shall be conducted by the county attorney for the county where the rule is returnable, unless the justice issuing the rule appoints some other suitable counsel to perform said duty. Compulsory process shall issue to compel the attendance of witnesses, and in case of decree of removal, judgment shall be rendered in behalf of the state against the respondent for full costs to be taxed by the court.

Sec. 42. Construction of foregoing. R. S. c. 81, § 43. The six preceding sections do not annul or restrict any authority hitherto possessed or exercised by the courts over attorneys.

Sec. 43. Penalty for falsely advertising or representing himself to be an attorney or counselor. R. S. c. 81, § 44. If any person who has not been admitted to practice law in this state, or whose name has been struck from the roll of attorneys, advertises as, or represents himself to be an attorney or counselor at law, he shall be fined not exceeding five hundred dollars, or imprisoned not more than three months.

Sec. 44. Management of causes by parties or counsel. R. S. c. 81, § 45. Parties may plead and manage their own causes in court or do so by the aid of such counsel, not exceeding two on a side, as they see fit to employ; or by any citizen of good moral character who produces in court a letter of attorney for that purpose; but no person whose name has been struck from the roll of attorneys for misconduct shall plead or manage causes in court under a power of attorney for any other party, or be eligible for appointment as a trial justice, or justice of the peace.

33 Me. 358; 36 Me. 339; 72 Me. 411.

CHAPTER 85.

Sheriffs and Their Deputies. Jails. Coroners and Constables.

- Sections 1-26 Sheriffs and their Deputies.
Sections 27-51 Jails and Jailers.
Sections 52-54 Coroners.
Sections 55-58 Constables and Police Officers.
Sections 59-66 Provisions relating to Sheriffs, Coroners and Constables.

Sheriffs and Their Deputies.

Sec. 1. Election or appointment; bond. R. S. c. 82, § 1. Sheriffs shall be elected or appointed and shall hold their offices, according to the constitution, and their election shall be effected and determined as is provided respecting county commissioners, and they shall enter upon the discharge of official duty on the first day of January following. Every person elected or appointed sheriff for either of the counties of York, Cumberland, Kennebec or Penobscot, before receiving his commission, shall give bond to the treasurer of state, with at least three sufficient sureties, in the sum of forty thousand dollars; and for either of the other counties, in the sum of twenty-five thousand dollars, conditioned for the faithful performance of the duties of his office, and to answer for all neglects and misdoings of his deputies.

See Const. Art. ix, § 10; c. 7, § 53; c. 83, §§ 1-4; 11 Me. 245; 64 Me. 197.

Sec. 2. Approval of bond; filed with treasurer of state. R. S. c. 82, § 2. Every sheriff, having executed such bond, shall file it in the office of the clerk of the county commissioners of his county, to be presented to them at their next meeting for approval, and after the bond has been so approved, the clerk shall record it and certify the fact thereon, and retaining a copy thereof, deliver the original to the sheriff, who shall deliver it to the treasurer of state, within twenty days after its approval, to be filed in his office.

Sec. 3. Annual examination of bonds. R. S. c. 82, § 3. County commissioners, at their first meeting after the third Tuesday of June, on motion of the county attorney, shall annually examine into the sufficiency of the bond of the sheriff of their county, and cause a record of their determination to be made by their clerks, who shall certify the same to the treasurer of state within thirty days.

See c. 84, § 19.

Sec. 4. If adjudged insufficient, new bond must be given. R. S. c. 82, § 4. If the bond of any sheriff is adjudged insufficient, the clerk, within ten days, shall certify that fact to him, who, within twenty days thereafter, shall give a new bond with sufficient sureties, to be filed in the office of the clerk of the county commissioners and approved as aforesaid, and then filed in the office of the treasurer of state.

Sec. 5. Forfeiture for neglect to give bond. R. S. c. 82, § 5. Any sheriff, for each month's neglect to give the security required in sections one or four, forfeits one hundred and fifty dollars to the state, to be recovered in an action of debt by the treasurer of state, and the attorney-general shall prosecute therefor; and the clerk of courts of his county shall certify such sheriff's name to the governor and council and the attorney-general; and unless reasonable cause therefor is shown, or within twenty days after the clerk has so certified, he gives or renews his security to the satisfaction of the governor and council, he thereby vacates his office.

Sec. 6. Governor may require new bond in certain cases. R. S. c. 82, § 6. When the treasurer of state certifies to the governor and council that moneys due to the state on warrants, or any other sums or balances are in the hands of a sheriff, and furnishes the names of his sureties, and it appears to them that the sureties are insufficient, or have removed from the state, they may require him to give a new bond, with sufficient sureties, within sixty days after he is notified, to be filed as aforesaid, and if he neglects it, his office becomes vacant.

Sec. 7. New bonds required on application of sureties. R. S. c. 82, § 7. When a surety on the official bond of a sheriff, or his heirs, executors or administrators, petition the county commissioners of the same county to be discharged therefrom, they shall cause an attested copy of the petition to be served on such sheriff, and may require him to give a new bond to their satisfaction; and when it is given and accepted, such surety or his legal representatives are not liable for any neglect or misdoings thereafter.

Sec. 8. Shall notify coroners; may appoint deputies, and must furnish clerk of each county a list thereof. R. S. c. 82, § 8. Every sheriff, elected or appointed, shall give notice thereof to the coroners of his county; and may appoint deputies, for whose official misconduct and neglect he is answerable. Their appointment and discharge shall be in writing, signed by him, and recorded in the office of the clerk of courts in his county, and are not valid until so lodged and recorded, except by operation of law or by vacancy in the office of sheriff. He shall also furnish to the clerk of courts in each county, the names of the deputies by him appointed from time to time, with the residence and post-office address of each.

18 Me. 63, 279; 19 Me. 439; 23 Me. 327; 25 Me. 312; 29 Me. 74; 31 Me. 165; 33 Me. 424; 36 Me. 544; 51 Me. 550; 64 Me. 197; 71 Me. 416; 111 Me. 442.

Sec. 9. Obey orders of governor. R. S. c. 82, § 9. Sheriffs shall obey all such orders relating to the enforcement of the laws as they from time to time receive from the governor.

Have powers of inland fish and game wardens, c. 33, § 10; may call for aid of militia, c. 15, § 77; see c. 127, § 49; 67 Me. 375.

Sec. 10. Duty of sheriff and deputies to serve precepts; fees must be paid or secured. R. S. c. 82, § 10. Every sheriff and each of his deputies shall serve and execute, within his county, all writs and precepts issued by lawful authority, to him directed and committed, including those in which a town, plantation, parish, religious society or school district, of which he is at the time a member, is a party or interested, but his legal fees for service shall first be paid or secured to him; and if they are not, when the process is delivered to him, he shall forthwith return it to the

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plaintiff or attorney offering it; or if sent to him by mail or otherwise, he shall put it into some post-office within twenty-four hours, directed to the person sending it; otherwise he waives his right to his fees before service.

1 Me. 363; 42 Me. 426; 54 Me. 205.

Sec. 11. Service upon deputy. R. S. c. 82, § 11. Any writ or precept in which the deputy of a sheriff is a party may be served by any other deputy of the same sheriff.

75 Me. 296.

Sec. 12. Duty of sheriffs and deputies in serving processes, on vacating office. R. S. c. 82, § 12. Sheriffs and their deputies have the same authority, and their deputies are under the same obligation to serve, execute and return all processes in their hands, when, for any cause, they cease to hold such office, as before; and official neglects or misdoings of a deputy after his principal is out of office, are a breach of such sheriff's bond.

55 Me. 548.

Sec. 13. Actions survive against them. R. S. c. 82, § 13. Actions for the neglect or misdoings of a sheriff or his deputies survive the sheriff, and may be brought against his executors or administrators.

Sec. 14. Person injured by misdoings of sheriff, may sue his bond, at his own expense; indorsement of writ; costs; judgment. R. S. c. 82, § 14. Any person, injured by the neglect or misdoings of a sheriff, who has first ascertained the amount of his damages by judgment in a suit against him, his executors or administrators, or by a decree of the probate court allowing his claim, may, at his own expense, in the name of the treasurer, institute a suit on his official bond in the county where he was authorized to act, and prosecute it to final judgment and execution. His name and place of residence, or that of his attorney, shall be indorsed on the writ, and the indorser alone is liable for costs. If judgment is rendered for the treasurer, it shall be for the damages ascertained as aforesaid, or so much thereof as remains unpaid, with interest, and the party's name for whom the suit was brought, shall be expressed in the execution issued thereon. If the judgment is for the defendant, it shall be against the party for whom the suit was brought.

46 Me. 498; 49 Me. 177; 51 Me. 515, 547; 56 Me. 216; 106 Me. 166.

Sec. 15. Actions on sheriff's bond, proceedings. R. S. c. 82, § 15. Any other person, having a right of action on such bond, may file an additional declaration in the same action in the office of the clerk of courts, who shall issue a summons, directed to the defendant, specifying the cause of action and the amount demanded, returnable to the same court and indorsed by the name and place of residence of such other person, or his attorney; and such indorser is liable for costs like indorsers of writs.

Sec. 16. Service; right of person filing declaration; answer. R. S. c. 82, § 16. The property of the defendant may be attached on such summons as on mesne process, and it shall be served on the defendant as an original summons; and thereupon such person has all the rights of a plaintiff in the suit; and the defendant shall answer to said declaration, and judgment may be rendered thereon as if it were filed in an action originally instituted for the same cause.

Sec. 17. Damages assessed on rendition of judgment; issue of executions. R. S. c. 82, § 17. When judgment is rendered against the defendant in such action, damages shall be assessed on each declaration for the amount which the party filing it would recover in a suit on the bond, with costs; and executions shall issue therefor, in the name of each party so recovering, in the order in which the declarations were filed, but not beyond the amount of the bond. If judgment is for the defendant on any such declaration, execution for costs shall issue against the party filing it. No such action shall be dismissed, discontinued or nonsuited, except by order of court, without the consent of all parties interested as plaintiffs.

Sec. 18. Any person is entitled to a copy of the bond; unless execution is disputed, it is evidence. R. S. c. 82, § 18. The treasurer shall deliver an attested copy of a sheriff's bond to any one applying and paying for it, which shall be competent evidence in any case relating thereto, unless its execution is disputed, in which case, the court may order the treasurer to produce it in court for the purposes of the trial.

Sec. 19. Exemption from arrest in civil action; proceedings upon failure to pay execution; office vacated. R. S. c. 82, § 19. No sheriff shall be arrested upon any writ or execution in a civil action; but when a judgment is rendered against him in his private or official capacity, the execution thereon shall issue against his property, but not against his body; yet he may, after notice that such execution has issued, unless upon a judgment for his own official delinquency, cite the creditor and make disclosure of the actual state of his affairs in the manner provided for poor debtors arrested upon execution; and if the execution is returned unsatisfied, and he has not made such disclosure, or if the judgment was rendered for his own official delinquency, the creditor may file an attested copy of such execution and return, with the governor and council, and serve on such sheriff a copy of such copy, attested by the secretary of state, with a notice under his hand of the day on which such first copy was filed; and if such sheriff does not, within forty days after such service, pay the creditor his full debt with reasonable costs for copies and service thereof, he thereby vacates his office. But when he ceases to be sheriff, the clerk may issue alias executions against his property and body, as in other cases.

Sec. 20. Fees from deputies. 1905, c. 174, § 1. No sheriff shall receive from any of his deputies any of the fees earned by said deputies, or any percentage thereon.

Sec. 21. Legal fees shall be collected and accounted for to county treasurer. R. S. c. 82, § 26. 1905, c. 174, § 2. All fees chargeable under the statutes of the state for the performance of any of the duties prescribed in section forty-one of chapter one hundred and seventeen, shall be charged and collected by said sheriffs as now provided by law, and an accurate account thereof, and of those specified in the following section, kept and transmitted to the county treasurer on the last days of March, June, September and December annually, and the amount deducted from the quarter's salary for the quarter then ending. If such fees are in excess of the amount of salary then due the sheriff, he shall pay said excess to the county treasurer. And no county treasurer shall pay any quarter's salary until said statement shall have been filed.

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Sec. 22. Fees collected from other counties, etc., shall be disposed of as in section 21. R. S. c. 82, § 27. 1905, c. 174, § 3. For all prisoners committed from other counties or from any court of the United States, and for all other persons confined for debt and on other civil processes, the said sheriffs shall collect the same fees for their entire support as are now provided by law, or may be fixed by the county commissioners under the authority vested in them by statute and include the same in the statement provided for in the preceding section, and the same shall be deducted from the salary as herein prescribed. They shall not make any charge or collect any fees for the support of prisoners committed on criminal process from any court in the county in which said jail is situated.

Sec. 23. Special deputies in Cumberland county; compensation. R. S. c. 82, § 28. The sheriff of Cumberland county shall appoint three deputy sheriffs, who shall serve at the pleasure of said sheriff, and whose special duty shall be to enforce the provisions of the last thirty-eight sections of chapter one hundred and twenty-seven, in said county, and who shall receive as compensation therefor, the sum of three dollars a day, to be paid from the county treasury, together with such incidental expenses as may be necessary for the proper enforcement of said chapter; bills for which shall be audited as provided in section one, chapter one hundred and thirty-eight.

See c. 127, § 51.

Sec. 24. Fees of deputy sheriffs shall be charged up to county. R. S. c. 82, § 29. The sheriff of said county, and his deputies appointed under the provisions of the preceding section, shall receive no fees for said service except as herein provided, but shall charge up all fees now allowed to sheriffs and their deputies for the enforcement of the provisions of said sections of chapter one hundred and twenty-seven, to the county of Cumberland and account for them as provided in the following section.

Sec. 25. Itemized account of fees shall be rendered. R. S. c. 82, § 30. The sheriff of Cumberland county, on the last secular days of June and December of each year, shall render to the treasurer of said county an itemized account of all fees charged up to said county by him, and by his deputies appointed as herein provided, for the enforcement of the provisions of the last thirty-eight sections of said chapter one hundred and twenty-seven, in said county, which said fees shall revert to the county of Cumberland.

Sec. 26. Restrictions upon payment of compensation for enforcement of liquor law. R. S. c. 82, § 31. No deputy sheriff, unless appointed under the provisions of section twenty-three, shall receive any compensation for the enforcement of the provisions of the last thirty-eight sections of said chapter one hundred and twenty-seven, in the city of Portland, unless such compensation shall be allowed by the county commissioners of said county.

Jails and Jailers.

Sec. 27. Sheriff has custody of jail and prisoners, and is answerable for jailer. R. S. c. 82, § 35. The sheriff has the custody and charge of the jail in his county, and of all prisoners therein, and shall keep it himself,

or by his deputy, as jailer, master or keeper, for whom he is responsible. The jailer, master or keeper shall appoint all subordinate assistants and employees for whom he is responsible, and the pay of whom, including the jailer, shall be fixed by the county commissioners, and paid by their several counties, except when otherwise provided by law.

Sec. 28. Upon vacancy in office of sheriff, jailer shall continue; unless governor appoints a jailer. R. S. c. 82, § 36. When a vacancy occurs in the office of sheriff, the jailer lawfully acting, continues in office, and shall retain charge of the jail, and of all prisoners therein, or committed thereto, and his official neglects and misdoings are a breach of his principal's official bond, until a new sheriff is qualified, or the governor and council remove such jailer and appoint another, which they may do; and the jailer so appointed shall give bond, in the manner required of a sheriff for the faithful discharge of his duties.

Sec. 29. When office of jailer and sheriff are vacant, county commissioners may appoint. R. S. c. 82, § 37. If the office of jailer becomes vacant, while the office of sheriff is vacant, the county commissioners may appoint a jailer, who shall give bond as a sheriff is required to do, and continue in office, if his appointment is confirmed at their next meeting, during the vacancy in the office of sheriff, or until he is removed, and a new jailer appointed.

Sec. 30. Jail must be kept clean and healthy. R. S. c. 82, § 38. The sheriff shall see that the jail in his county is kept as clean and healthy as may be; cause the walls to be whitewashed in April or May annually, and as often as the county commissioners order, at the expense of the county; and pay strict attention to the personal cleanliness of the prisoners.

See c. 142, § 12.

Sec. 31. Jailer must live in jail, if suitable. R. S. c. 82, § 39. Every keeper of a jail shall reside constantly, with his family, if he has any, in the house provided for him, if in the opinion of the county commissioners it is good and sufficient; and if he neglects so to do, he forfeits not exceeding three hundred dollars, to be recovered for the county by indictment.

Sec. 32. Jailer shall furnish a Bible and other books and instruction to prisoners. R. S. c. 82, § 41. The jailer, at the expense of the county, shall furnish to each prisoner who is able to read, a copy of the Bible, and to all, on Sundays, such religious instruction as he may be able to obtain without expense, and to such as may be benefited thereby, instruction in reading, writing and arithmetic one hour every evening, except on Sunday. It shall be his further duty to receive for their use, from whatever source, by loan or contribution, any books or literature of a moral or religious tone, and to exclude those of opposite tendencies.

Sec. 33. Pay for labor of prisoners, before sentence. R. S. c. 82, § 42. Any person charged with crime, or awaiting sentence, who, while confined in any jail where provision for labor has been made, chooses to labor, as provided for persons under sentence, shall receive therefor such sum as, in the judgment of the commissioners of said county, he has earned.

See c. 83, §§ 12, 13.

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Sec. 34. Commissioners shall furnish supplies for jails; shall not be interested parties; bills and accounts shall be audited quarterly. 1905, c. 174, § 4. 1909, c. 145. The county commissioners of the several counties shall, without extra charge or commission to themselves or to any other person, procure all necessary supplies, including necessary food, fuel, bedding and clothing for the jails and the prisoners therein to be furnished and purchased under their direction and at the expense of the counties. No county commissioner shall be interested directly or indirectly in the purchase of any such supplies or in any contract therefor made by the board of which and while he is a member thereof, and all contracts made in violation hereof are void. A suitable person shall be employed to prepare the food of the prisoners in each county at the expense of the county, and the service of the food to the prisoners shall be under the general direction of the jailer, master or keeper. The person employed to prepare the food of the prisoners shall be appointed by the sheriff in each county subject to the approval of the county commissioners. The county commissioners may at any time direct specific rations or articles of food, clothing, soap, fuel or other necessities to be furnished and served to the prisoners. The bills and accounts for supplies furnished and the items of expense incurred in preparing and serving the same shall be audited quarterly by some competent person appointed by one of the judges of the supreme judicial court and paid by the county treasurer. For services in auditing said account said judge shall allow reasonable compensation to be paid from the county treasury.

Sec. 35. Commissioners of Cumberland may annually advertise for proposals for supplies. R. S. c. 82, § 45. The county commissioners of the county of Cumberland may each year, as soon after the first day of January as may be, make an estimate of the amount of food, fuel, clothing and supplies as far as practicable, which will be required by the county jail and for the support of the prisoners therein for the current year, and advertise for sealed proposals for furnishing the same according to specifications furnished by them, in the daily papers of the city of Portland, three days successively, at least fourteen days before the time limited for the reception of such proposals at which time they shall examine all such proposals and award the contract to the lowest responsible bidder; and the county commissioners shall procure such other necessary supplies and articles for the foregoing purposes as may not be furnished by contract, and account for the same in the manner provided for in the preceding section.

Sec. 36. Deduction from sentence for good conduct; care of convicts, sick at expiration of sentence. R. S. c. 82, § 46. The keeper of each jail shall keep a record of the conduct of each convict, and for every month during which it thereby appears that he has faithfully observed all the rules and requirements of the prison, he is entitled to a deduction from his sentence according to and not exceeding the following rate and proportion: for a convict under sentence for six months and less than one year, two days for each month of good conduct; for one year and over, three days a month; and for every day that any convict is punished for disobedience

of said rules, a record thereof shall be made, and two days deducted therefor from any commutations to which he is entitled. Whenever a convict, at the expiration of his sentence, is sick and unable to be removed from jail, he shall be cared for by the jailer, at the expense of the county, until the county commissioners deem it safe for him to be removed.

Penalty for escapes from jail, c. 124, § 16; from work jails, c. 142, § 45;
71 Me. 241.

Sec. 37. Assistance to discharged prisoners. 1913, c. 123. The sheriff, or his deputy, keeping the jail, may, at the expense of the county, give a prisoner about to be discharged from jail a sum of money not exceeding two dollars, and wearing apparel to the value of not exceeding ten dollars, and may also furnish to such discharged prisoner a railroad ticket, non-transferable, to any place, to which the fare does not exceed eight dollars. All sums so expended by the sheriff or jailer shall be repaid to him from the county treasury, after the account thereof has been audited and the amount found correct by the county commissioners.

Sec. 38. Sheriff to keep record of persons committed. R. S. c. 82, § 47. Every sheriff shall keep, in a suitable bound book, a true and exact calendar, containing, distinctly and fairly registered, the names of all prisoners, committed to the jail under his charge, their places of abode, additions, time of their commitment, for what cause, and by what authority; and a particular description of the persons of those committed for offenses; and he shall register in said book the name and description, the time when, and the authority by which any prisoner was discharged; and the time and manner of any prisoner's escape.

92 Me. 250.

Sec. 39. Jailer to return list of prisoners at each criminal session of court. R. S. c. 82, § 48. Every jailer, at the opening of every criminal term of the supreme judicial or superior court for his county, shall return a list of prisoners in his custody, and afterwards a list of all committed during the session, certifying the cause for which and the person by whom committed; and shall have the calendar of prisoners in court for its inspection; and for neglecting so to do, the court may impose a reasonable fine.

71 Me. 407.

Sec. 40. Official papers, to be filed and kept with calendar, and delivered to successor. R. S. c. 82, § 49. All warrants, mittimus, processes and other official papers, by which any prisoner is committed or liberated, or attested copies thereof, shall be regularly filed in order of time; and with the calendar aforesaid safely kept; and when he vacates his office, they shall be, by the sheriff, or his personal representative, delivered to his successor, on penalty of forfeiting two hundred dollars to the county.

71 Me. 407.

Sec. 41. Sheriff is answerable for delivery of prisoners to successor. R. S. c. 82, § 50. Every sheriff is answerable for the delivery to his successor of all prisoners in his custody at the time of his removal; and for that purpose, shall retain the keeping of the jail in his county, and the prisoners therein, until his successor enters on the duties of his office.

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Sec. 42. Upon application, transfer of prisoners when jail is adjudged unfit or insecure. R. S. c. 82, § 51. Whenever complaint on oath is made to a judge of the supreme judicial court that any jail is unfit for occupation, or is insufficient for the secure keeping of any person charged with crime and committed to await trial or under sentence, he shall cause not less than three days' notice of such complaint to be given to the jailer or sheriff of the county, to appear at the time and place fixed in such notice, and if on examination the matter complained of, is found true, he may issue his warrant for the transfer of such prisoner at the expense of said county, to any jail where he may be more securely kept. And if by fire or other casualty any jail is destroyed or rendered unfit for use, any judge of the supreme judicial court may, upon being notified by the county attorney of the county where such jail was or is located, issue his order to the sheriff and his deputies and constables of said county to cause all prisoners who might be liable to imprisonment in said county, to be imprisoned in the jail of some adjoining county, said order to be printed in the newspapers of said county.

Note. Plans for new jails to be submitted to state board of charities and corrections, c. 147, § 7.

Sec. 43. Liability of sheriff for escape of prisoners. R. S. c. 82, § 52. When a prisoner escapes through the insufficiency of the jail, or the negligence of the sheriff or jailer, the sheriff is chargeable to the creditor, or other person at whose suit he was committed, or to whose use any forfeiture was adjudged against such prisoner.

71 Me. 578.

Sec. 44. If escape happens through insufficiency of jail, sum paid, reimbursed; proceedings. R. S. c. 82, § 53. When such escape happens through the insufficiency of the jail, the county commissioners may order the county treasurer to pay to the sheriff the amount paid by him to such party; and if they do not make such order within six months after the demand is laid before them, the sheriff may bring his action on the case against the inhabitants of such county, to be tried therein, or in an adjoining county; and an attested copy of the writ left with the county treasurer, thirty days before the sitting of the court to which it is returnable, is a sufficient service.

Sec. 45. Agent to defend county may be appointed by commissioners; execution, how levied. R. S. c. 82, § 54. The commissioners may appoint an agent, to appear and defend the suit; and if they have no meeting between the time of service and the return day thereof, it shall be continued to the next term, saving all advantages to the defendants; and if judgment is rendered against the county, the execution may be levied on the estate of any inhabitant, who has his remedy against the county to recover the amount so levied.

Sec. 46. Treatment of prisoners for debt, and minors. R. S. c. 82, § 55. Every prison keeper shall keep prisoners committed for debt, separate from prisoners charged with felony or infamous crimes; and shall keep all minors so committed, and all prisoners upon a first charge, before or after conviction, separate from notorious offenders, and those convicted more than once of felony or infamous crimes, so far as the construction or state of the prison admits.

Sec. 47. Penalty for violation of preceding section, or for furnishing intoxicating liquor to prisoners. R. S. c. 82, § 56. If any prison keeper violates the preceding section, or voluntarily or negligently suffers any prisoner in his custody, charged with or convicted of any offense, to have any intoxicating liquor, unless the physician authorized to attend the sick in such prison, in writing certifies that such prisoner's health requires it and prescribes the quantity, he forfeits in each case, for the first offense, twenty-five dollars, and for the second, fifty dollars, to be recovered for the county by indictment, or by any person suing therefor, to his own use; and shall be removed from office, and shall be incapable of holding the office of sheriff, deputy sheriff or jailer, for five years.

See c. 127, § 26.

Sec. 48. Liability of keeper and sheriff, if prisoner escapes. R. S. c. 82, § 57. If any prison keeper, through negligence, suffers a prisoner charged with an offense to escape, he shall be fined according to the nature of the offense charged against the escaped prisoner; but if a person committed for debt escapes from prison, and the sheriff or jail keeper, within three months thereafter, returns him thereto, the sheriff is liable only for the costs of any action commenced against him therefor.

See c. 124, § 15; c. 83, § 14.

Sec. 49. Jailers to receive United States prisoners. R. S. c. 82, § 58. The keepers of the several jails shall receive and safely keep all prisoners committed under authority of the United States, until discharged, under the penalties provided for the safe-keeping of prisoners under the laws of the state.

Sec. 50. Disposal of body of person dying in jail. R. S. c. 82, § 59. When a person dies in jail, the jailer or sheriff shall deliver the body to his friends, if requested; otherwise, he shall dispose of it for anatomical purposes as provided in chapter eighteen, unless the deceased at any time requested to be buried, in which case he shall bury the body in the common burying-ground, and the expenses thereof shall be paid by the town in which he had a settlement, if he had any in the state, and if not, by the state.

Sec. 51. Fines to be applied to building and repair of jails. R. S. c. 82, § 60. All fines imposed by this chapter, not otherwise appropriated, shall be applied to building and repairing the jails in the county where the offense is committed.

Coroners.

Sec. 52. Appointment and bond of coroners. R. S. c. 82, § 61. Every coroner shall be appointed and hold his office, as provided in the constitution, and give bond to the treasurer of state, with sufficient sureties to the satisfaction of the county commissioners of his county, for the faithful discharge of his duties; such bond shall be transmitted to said treasurer, like a sheriff's bond; but when it is approved by the certificate of two county commissioners, and filed with the clerk of his county, he may discharge his duties until the first day of their next stated session, and not afterwards, unless his bond is then approved by them.

See Constitution, Art. v, Part 1, § 8; 72 Me. 556.

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Sec. 53. Certain sections apply to coroners. R. S. c. 82, § 62. All the provisions of sections three, four, seven and fourteen to eighteen, inclusive, apply to coroners as well as to sheriffs; and any coroner neglecting to give the new bond required by section four, thereby vacates his office.

Sec. 54. Of coroner's powers to serve precepts. R. S. c. 82, § 63. Every coroner shall serve and execute, within his county, all writs and precepts in which the sheriff thereof is a party, unless served by a constable, or while the office of sheriff therein is vacant, including those in which a town, plantation, parish, religious society or school district, of which he is at the time a member, is a party or interested; and may lawfully serve, execute and return any process in his hands when his term of office expires, or when he is notified of the qualification of the sheriff of his county, after a vacancy.

1 Me. 363; 21 Me. 482; 51 Me. 548; 54 Me. 205; 63 Me. 464.

Constables, and Police Officers.

Sec. 55. Constables may serve precepts; bond. R. S. c. 82, § 64. A constable may serve, execute and return, upon any person in his town, or in an adjoining plantation, any writ of forcible entry and detainer, or any precept in a personal action, when the damage claimed does not exceed one hundred dollars, including those in which a town, plantation, parish, religious society or school district, of which he is a member, is a party or interested; but before he serves any process, he shall give bond to the inhabitants of his town in the sum of five hundred dollars, with two sureties, approved by the municipal officers thereof, who shall indorse their approval on said bond in their own hands, for the faithful performance of the duties of his office, as to all processes by him served or executed; and for every process that he serves before giving such bond, he forfeits not less than twenty, nor more than fifty dollars, to the prosecutor.

5 Me. 79; 11 Me. 333; 31 Me. 122, 496; 35 Me. 210; 48 Me. 255; 64 Me. 35; 68 Me. 201; 74 Me. 309; 82 Me. 97; 106 Me. 167.

Sec. 56. Remedy for misconduct of constable. R. S. c. 82, § 65. Persons injured by the neglect or misdoings of a constable have the same remedy by preliminary action, and action on his bond, as in case of a sheriff's bond.

See § 14; 14 Me. 114; 29 Me. 462; 106 Me. 166.

Sec. 57. Constables of Bristol may serve on islands. R. S. c. 82, § 66. The constables of the town of Bristol may serve all precepts on Muscongus and Harbor islands, in the county of Lincoln, the same as in their own town, until said islands can legally elect constables.

Sec. 58. Powers of police. R. S. c. 82, § 67. Police officers, appointed in any city, have the powers of constables in all matters criminal, or relating to the by-laws of their city.

Note. See c. 4, § 100; c. 33, § 10. Duties of constables and police officers to enforce law as to dairy products, c. 37, § 6.

Provisions Relating to Sheriffs, Coroners and Constables.

Sec. 59. Service of precepts by constables; right of pursuit. R. S. c. 82, § 68. A warrant issued by a municipal or police court or a trial justice, for an offense committed in his county, or under the laws for the main-

tenance of bastard children, may be directed to and executed by a constable of any town therein; and if the accused has gone into another county before or after the warrant was issued, a sheriff or his deputy, coroner or constable, having the warrant, may pursue and arrest him in any county, and carry him to the county where the act complained of was committed; and when such officer arrests a person to commit to the jail of his county, he may convey him by the most convenient and suitable route, although it pass through other counties. But, except for the purpose of retaking a prisoner whom he has arrested and who has escaped, or for the purpose of taking a person before such a court or trial justice, or for the purpose of executing a mittimus given to him by such a court or trial justice, or for the purpose of pursuing a person who has gone into another town and for whose arrest such constable or marshal has a warrant, no constable of the several towns or city marshal of the several cities shall have any authority in criminal matters beyond the limits of the town or city in which he is elected or chosen.

87 Me. 215.

Sec. 60. Officers may serve precepts for work-jails in one or more counties. R. S. c. 82, § 69. An officer of any county qualified to serve precepts in criminal cases in the county where he resides, may serve any precept required by the laws providing for work-jails, whether such service is performed in whole or in part in one or more counties, and processes shall be issued and directed accordingly.

Sec. 61. Aid may be required by officer; penalty for refusal. R. S. c. 82, § 70. Any officer aforesaid, in the execution of the duties of his office in criminal cases, for the preservation of the peace, for apprehending or securing any person for the breach thereof, or in case of the escape or rescue of persons arrested on civil process, may require suitable aid therein; and any person, so required to aid, who neglects or refuses so to do, forfeits to the county not less than three, nor more than fifty dollars; and if he does not forthwith pay such fine, the court may imprison him not exceeding thirty days.

See c. 124, § 19.

Sec. 62. Execution of precepts commenced, when officer becomes disqualified. R. S. c. 82, § 71. If any officer aforesaid, who has commenced the service or execution of a precept, becomes disqualified, it may be completed, with the same legal effect, by any other qualified officer; and if any officer aforesaid has made, in fact, any service, attachment or levy, by virtue of any process placed in his hands for service, and for any cause, has not made his return thereon, such return shall be made by a sheriff, any deputy, or other proper officer, under direction of a justice of the supreme judicial court, held in the county where said writ is returnable, the facts to be set forth by said officer in said return, to be proved to the satisfaction of said justice; or if a deputy sheriff dies after he has served and returned a precept, the sheriff, if alive, and if not, any deputy in commission at the time of such service, may be allowed by the court to amend such return as the officer who made it might, but the rights of third parties shall not be affected thereby.

41 Me. 342.

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Sec. 63. Copy of writ to be delivered to defendant on request; penalty for neglect. R. S. c. 82, § 72. Every officer, plaintiff or his attorney, having in his possession a writ on which an attachment has been made, shall make and deliver to the debtor or his attorney, if requested and the legal fee tendered, an attested copy thereof. And if he unreasonably refuses or neglects so to do for twenty-four hours, he forfeits five dollars, and five dollars additional for every subsequent twenty-four hours that he so refuses or neglects; to be recovered by the debtor to his own use, in an action of debt.

Sec. 64. Officer to pay money collected; penalty. R. S. c. 82, § 73. Any officer aforesaid who unreasonably neglects or refuses, on demand, to pay money received by him on execution to the person entitled to it, shall pay five times the lawful interest thereon so long as he so retains it.

8 Me. 133; 18 Me. 63.

Sec. 65. No officer to be attorney or draw papers; no employee of jailer to act as magistrate or attorney. R. S. c. 82, § 74. No officer aforesaid shall appear before any court or justice of the peace as attorney or adviser of any party in a suit, or draw any writ, plaint, declaration, citation, process or plea, for any other person; and all such acts done by either of them are void; and no person employed by the keeper of a jail in any capacity, shall exercise any power or duty of a magistrate, or act as attorney for any person confined in the jail; and all such acts are void.

67 Me. 374.

Sec. 66. Service of writs in actions against officers for breach of duty, where principal defendant is out of state. R. S. c. 82, § 75. In actions against sheriffs, deputy sheriffs, coroners and constables, for breach of official duty, where the principal defendant is out of the state, the writ may be served on such defendant by leaving a copy of the same with each of the sureties on his official bond fourteen days before the return day thereof, and the court in the county where the writ is returnable, either before or after entry, may order further notice to the defendant by publication of an abstract of the writ and order thereon, in some newspaper published in the county where the writ is returnable, or in the state paper, or in such other manner as the court directs; and if the order is complied with and proved, the defendant shall answer to the suit, and judgment in such case has the same effect as if personal service was made upon the principal defendant.