

# MAINE STATE LEGISLATURE

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THE  
**REVISED STATUTES**

OF THE  
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

**THE CONSTITUTIONS**

OF THE

*United States and of the State of Maine,*

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

**APPENDIX.**

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PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

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**Augusta:**

PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE.

.....  
1841.

In and for the county of York, at Alfred, on the last Tuesday of April: CHAP. 96.  
York.

In and for the county of Oxford, at Paris, on the third Tuesday of May; Oxford.

In and for the county of Lincoln, at Wiscasset, on the fourth Monday in May; Lincoln.

In and for the county of Kennebec, at Augusta, on the first Tuesday, next after the fourth Tuesday of May; Kennebec.

In and for the county of Franklin, at Farmington, on the second Tuesday, next after the fourth Tuesday of May; Franklin.

In and for the county of Somerset, at Norridgewock, on the third Tuesday, next after the fourth Tuesday of May; Somerset.

In and for the county of Piscataquis, at Dover, on the fourth Tuesday, next after the fourth Tuesday of May; Piscataquis.

In and for the county of Penobscot, at Bangor, on the fifth Tuesday, next after the fourth Tuesday of May; Penobscot.

In and for the county of Washington, at Machias, on the sixth Tuesday, next after the fourth Tuesday of May; Washington.

In and for the county of Hancock, at Ellsworth, on the seventh Tuesday, next after the fourth Tuesday of May; Hancock.

In and for the county of Waldo, at Belfast, on the eighth Tuesday, next after the fourth Tuesday of May. Waldo.

SECT. 36. Pursuant to the provision, contained in the thirteenth section of this chapter, the court shall be holden at the several places and times, as follows: Times and places of holding nisi prius terms.

In and for the county of Cumberland, at Portland, on the second Tuesday of November; Cumberland.

In and for the county of York, at Alfred, on the third Tuesday of September; York.

In and for the county of Oxford, at Paris, on the second Tuesday of October; Oxford.

In and for the county of Lincoln, at Wiscasset, on Wednesday next after the second Tuesday of September; Lincoln.

In and for the county of Kennebec, at Augusta, on the first Tuesday of October; Kennebec.

In and for the county of Somerset, at Norridgewock, on the last Tuesday of September; Somerset.

In and for the county of Penobscot, at Bangor, on the fourth Tuesday of October; Penobscot.

In and for the county of Waldo, at Belfast, on the second Tuesday of December. Waldo.

## CHAPTER 97.

### OF DISTRICT COURTS, AND THEIR JURISDICTION.

SECT. 1. District courts continued. Three districts.  
 2. Western district.

SECT. 3. Middle.  
 4. Eastern.

- CHAP. 97.** **SECT. 5.** Of the several justices. Tenure of office. Qualifications.
6. Of their original and exclusive jurisdiction.
  7. Their original and concurrent jurisdiction.
  8. Original criminal, and appellate, civil and criminal jurisdiction.
  9. Incidental powers.
  10. When justice disqualified to preside, &c. cause transferred to the supreme judicial court.
  11. Provisions for adjournment or substitution, in case of absence of the justice.
  12. Forms of writs and processes.
  13. Aggrieved party may appeal to the supreme judicial court in certain cases.
  14. Of his recognizance.
  15. Of the costs, when the plaintiff appeals.
  16. Of the costs, when the defendant appeals.

17. Proceedings, if the appeal be not entered.
18. Of exceptions alleged by either party, and their effect to stay proceedings.
19. Duty of the party excepting. Supreme judicial court to have cognizance.
20. Consequences of his neglect, or if the exceptions be found frivolous.
21. Appeal to the supreme judicial court in criminal cases, by person convicted.
22. Proceedings, if the appeal be not entered and prosecuted.
23. Power of district court to grant new trials.
24. At the same, or a subsequent term.
25. Restrictions on such power, and limitation of time.
26. Power of court to make rules.
27. Times and places of holding the courts.

District courts continued.  
Three districts.  
1839, 373, § 2.

Western district.

Middle district.

Eastern district.

Of the several justices. Tenure of office. Qualifications.  
1839, 373, § 2.

Of their original and exclusive jurisdiction.  
1839, 373, § 1.

**SECTION 1.** The district court, heretofore established, is hereby continued, and the state is divided into three districts, which shall be denominated the western, the middle, and the eastern districts.

**SECT. 2.** The western district shall be composed of the counties of York, Cumberland, Oxford and Franklin.

**SECT. 3.** The middle district, shall be composed of the counties of Lincoln, Kennebec and Somerset.

**SECT. 4.** The eastern district, shall be composed of the counties of Waldo, Piscataquis, Penobscot, Hancock, Washington and Arrostook.

**SECT. 5.** There shall continue to be one justice of the district court, in and for the said western district; and one other justice of said court, in and for the said middle district; and two other justices of said court, in and for the said eastern district: and the justices of said court, who are now in office, shall continue to hold their said offices according to the tenor of their respective commissions, unless inconsistent with the constitution; and, when a vacancy shall occur in the office of either of said justices, it shall be the duty of the governor, with advice of the council, to appoint some person, learned in the law, to supply the said vacancy; who shall be commissioned, qualified and sworn, in the manner required by the constitution, to perform the duties appertaining to said office, in the counties composing their respective districts.

**SECT. 6.** The district court held in any district, by one justice thereof, shall have original and exclusive jurisdiction of all civil actions, where the debt or damage demanded does not exceed two hundred dollars; excepting actions, in which municipal or police courts, or justices of the peace have original jurisdiction, actions of replevin, trespass upon lands, ejection, real actions, actions by or against towns, and actions in which a judge of any district court is a party or interested.

SECT. 7. Such district court shall have original, and concurrent jurisdiction with the supreme judicial court, in all civil actions, in which the debt, or damages, demanded exceeds the sum of two hundred dollars; and also of all actions above described, except those cognizable by a municipal or police court, or by justices of the peace.

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Their original and concurrent jurisdiction.  
1839, 373, § 1.

SECT. 8. Such district court shall have jurisdiction of all such offences, crimes and misdemeanors, as are by law made, or shall be made, cognizable by said court; and appellate jurisdiction of all civil actions and of all crimes and offences, which may, by existing or future provisions of law, be carried by appeal to the said court.

Original criminal, and appellate, civil and criminal jurisdiction.  
1839, 373, § 1.

SECT. 9. The said district court may administer all necessary oaths, render judgment, and award execution; and do and perform whatever, by the constitution and laws, it shall be their duty to do, as a court of record and common law jurisdiction; and shall have in their respective counties the same powers, in relation to the records and business of the late court of common pleas, as that court would have, if it still continued.

Incidental powers.  
1839, 373, § 1.

SECT. 10. Whenever the justice in the western or middle district, or either of the justices in the eastern district, shall be interested, or otherwise disqualified to preside in the trial of any cause, pending in any court held by himself, the same shall be transferred to the supreme judicial court, next to be held in the county, in which the action is pending, if any term of the supreme judicial court shall be held therein, by law; and if not, then the cause shall be transferred to the court in that county in the district, having appellate jurisdiction of the same cause.

When justice is disqualified to preside, &c. cause transferred to the supreme judicial court.  
1839, 373, § 2.

SECT. 11. When no justice for the district shall attend at the time and place, when and where, by law or adjournment, a court ought to be held, the sheriff or, in his absence, the clerk of the court, may by oral proclamation adjourn from day to day, or to such time as the justice of the district shall attend; or, if necessary, may adjourn the court without day, and shall post notice of such adjournment, in writing, on the door of the court house; or the court may be held by the judge of some other district, if thereunto requested by the judge, whose duty it was to hold such court.

Provisions for adjournment or substitution, in case of absence of the justice.  
1839, 375, § 2.

SECT. 12. All writs and processes, issuing from such court, shall be in the form now in use, and shall be so authenticated, signed, sealed, served, returned and obeyed.

Forms of writs and processes.  
1839, 373, § 3.

SECT. 13. Any party, aggrieved at the judgment of any district court, on any demurrer or agreed statement of facts, or in any personal action, wherein issue in fact has been joined, and a verdict given, in which the debt or damage demanded exceeds two hundred dollars, or in any action of replevin, or action of trespass on lands, writ of entry or of dower, or action against a town, may appeal therefrom to the next supreme judicial court to be held for the same county.

Aggrieved party may appeal to the supreme judicial court, in certain cases.  
1839, 373, § 4.  
5 Mass. 193.  
1 Fairf. 68.  
15 Maine, 365.  
4 Pick. 158.  
8 Pick. 522.  
10 Pick. 440.

SECT. 14. The party appealing, before such appeal shall be allowed, shall recognize with sufficient surety or sureties, to the adverse party, in such sum, as the court shall order, to prosecute his appeal with effect, and pay all intervening damages and costs.

Of his recognizance.  
1839, 373, § 4.  
4 Greenl. 62.  
6 Greenl. 239.

SECT. 15. When any such appeal shall be made in any action,

Of the costs,

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when the plaintiff appeals.  
1839, 373, § 4.  
1 Greenl. 15,  
406.  
4 Greenl. 66.  
21 Pick. 210.

except actions of trespass on land, replevin, actions against towns, writs of entry or writs of dower, from judgment on demurrer filed, by consent of parties, with an agreement to waive the same, or judgment on an agreed statement of facts, by any plaintiff; and he shall not recover more than two hundred dollars, debt or damage, he shall not recover any costs after such appeal; but the defendant shall recover his costs, on such appeal, against the plaintiff, to be set off against the plaintiff's claim; but if it exceed said claim, the defendant shall have execution for the residue.

Of the costs, when the defendant appeals.  
1839, 373, § 4.  
7 Greenl. 356.  
1 Fairf. 69.

**SECT. 16.** When such appeal is made by the defendant, and the debt or damages are not reduced, the plaintiff shall be entitled to recover double costs on the appeal; unless the justice, trying the cause in the district court, shall certify, that there was just and reasonable cause for such appeal.

Proceedings, if the appeal be not entered.  
1839, 373, § 4.

**SECT. 17.** If the appellant shall not enter his appeal in the supreme judicial court, they may, on complaint of the appellee, render judgment in such action, affirming the former judgment, with interest on the damages, if for the plaintiff, and in all cases with the subsequent costs.

Of exceptions alleged by either party, and their effect to stay proceedings.  
1839, 373, § 5.  
2 Greenl. 198,  
336.  
3 Greenl. 216.  
8 Greenl. 283.

**SECT. 18.** Any party aggrieved by any opinion, direction or judgment of the district court in any matter of law, in a cause not otherwise appealable, may allege exceptions to the same; and when reduced to writing in a summary way, and being found correct, the exceptions shall be allowed and signed by the presiding judge of the court, before the adjournment thereof without day; and all further proceedings in said court shall be stayed, excepting, that any trial before a jury shall proceed until a verdict is rendered; and the excepting party shall recognize, as provided in section, fourteen.

Duty of the party excepting. Supreme judicial court to have cognizance.  
1839, 373, § 5.  
6 Greenl. 50.  
14 Maine, 97.  
1 Metc. 225.

**SECT. 19.** In such case, the party alleging the exceptions shall enter the action in the supreme judicial court, at the next term thereof in the same county, and produce all the papers, as in case of appeal; and the supreme judicial court shall have cognizance of the cause, and determine the same, as they may actions, originally commenced in that court, and render judgment, or grant a new trial, as in such cases.

Consequences of his neglect, or if the exceptions be found frivolous.  
1839, 373, § 5.

**SECT. 20.** When the party alleging exceptions shall fail to enter the action at the supreme judicial court at the next term, and the adverse party shall enter his complaint; or when the court shall determine the exceptions frivolous, or alleged for delay, the court shall award double costs against the excepting party, and increase the damages, if any, by adding legal interest thereon.

Appeal to the supreme judicial court in criminal cases, by person convicted.  
1839, 373, § 5.  
4 Greenl. 541.

**SECT. 21.** Any person, convicted of an offence in the district court, may allege exceptions to any opinion, direction or judgment of said court, which shall be allowed and signed by the presiding judge, in the manner mentioned in section, eighteen; and the person alleging the exceptions shall recognize with sureties, as the court shall direct, to produce the papers, and prosecute his exceptions before the supreme judicial court, and abide the sentence and order of said court, or, if the cause should be remanded, of the district court, and not depart without license; and the supreme judicial court shall have cognizance thereof, and may affirm the

verdict, rendered in the district court, or grant a new trial and enter judgment, or remand the cause to the district court, as justice may require.

SECT. 22. If he shall fail to enter and prosecute his appeal, the court may sentence him to such punishment, as the district court might have inflicted; and for that purpose may issue process to compel his attendance, if absent, or adjudge the recognizance forfeited, or both, as the case may require.

Proceedings, if the appeal be not entered and prosecuted. 1839, 373, § 5.

SECT. 23. The district court, before rendering judgment, shall have power to grant a new trial of any action, and for any cause for which, by the common law, a new trial may be granted, or when, in the opinion of the court, justice has not been done between the parties, on such conditions, as the court may think proper to impose.

Power of district court to grant new trials. 1839, 373, § 7. 11 Pick. 189.

SECT. 24. Such new trial may be granted at the same term, at which the judgment was rendered, or at a subsequent term.

At the same, or a subsequent term. 1839, 373, § 7.

SECT. 25. But no such new trial shall be granted, except when the judgment of the district court is final; nor, unless due notice has been given to the adverse party; nor where there have been two verdicts in the cause against the applicant; nor unless a motion therefor shall have been filed, within one year after such verdict.

Restrictions on such power, and limitation of time. 1839, 373, § 7. 4 Greenl. 58.

SECT. 26. The court shall have power, from time to time, to establish rules, as to entry of actions, filing pleas in abatement, and demurrers to declarations, and the conduct of business, as they may think proper, not repugnant to the laws of the state.

Power of court to make rules. 1839, 373, § 7. 3 Pick. 512.

SECT. 27. The district court shall be held annually, in the several counties in the state, at the places and times hereinafter mentioned; that is to say:

Times and places of holding the courts.

At Alfred, for the county of York, on the second Monday of February, the last Monday of May, and the third Monday of October;

York.

At Portland, for the county of Cumberland, on the first Tuesday of March, the third Tuesday of June, and the first Tuesday of October;

Cumberland.

At Warren, for the county of Lincoln, on the fourth Tuesday of April; at Topsham, on the fourth Tuesday of August; and at Wiscasset, on the fourth Tuesday of December;

Lincoln.

At Augusta, for the county of Kennebec, on the first Tuesdays of April, August and December;

Kennebec.

At Norridgewock, for the county of Somerset, on the second Tuesday of March, the last Tuesday of June, and the first Tuesday of November;

Somerset.

At Ellsworth, for the county of Hancock, on the fourth Tuesday of April, and the third Tuesday of October;

Hancock.

At Machias, for the county of Washington, on the last Tuesday in February, and third Tuesday in September;

Washington.

At Paris, for the county of Oxford, on the second Tuesdays of June and November;

Oxford.

At Bangor, for the county of Penobscot, on the first Tuesday of January, the first Tuesday in October, and the fourth Tuesday in May;

Penobscot.

At Belfast, for the county of Waldo, on the fourth Tuesdays of March and September.

Waldo.

- CHAP. 97.** At Farmington, for the county of Franklin, on the last Mondays of March and September ;  
 Franklin. At Dover, for the county of Piscataquis, on the fourth Tuesday of March, and second Tuesday in September ;  
 Piscataquis. At Houlton, for the county of Aroostook, on the third Tuesday of January, and the second Tuesday of June.  
 Aroostook.

## CHAPTER 98.

### OF THE MUNICIPAL AND POLICE COURTS IN THE STATE.

#### ARTICLE I. MUNICIPAL COURT IN PORTLAND.

- SECT. 1. Court continued with its present judge.  
 2. New appointment in case of vacancy. One judge.  
 3. His jurisdiction, as a justice of the peace, concurrent or exclusive.  
 4. Not to act as counselor or attorney, in any court.  
 5. His jurisdiction in cases of larceny, and offences against city by laws.  
 6. Houses of ill fame.  
 7. Right of appeal.  
 8. Fines to be accounted for.  
 9. Jurisdiction, though penalty accrue to the city.  
 10. Time of holding courts.  
 11. Of the recorder. His appointment, duties and fees.  
 12. Recorder's powers in the absence of the judge.  
 13. Justice of the peace substituted, in absence of the judge and recorder.  
 14. Provision, when office of judge is vacant.  
 15. Restrictions on justices of the peace, in Portland.  
 16. Exception, under the laws of the United States.  
 17. When recorder may issue warrants.

#### ARTICLE II. MUNICIPAL COURT IN BATH.

- SECT. 18. Court continued with its present judge.  
 19. New appointment, in case of vacancy.  
 20. Time and place of holding court. Its expenses.  
 21. Extent of its jurisdiction.  
 22. Right of appeal.  
 23. Of the recorder.  
 24. To act as judge, in case of death of judge.  
 25. Judge not to be counselor, nor attorney, &c.  
 26. Fines to be accounted for.  
 27. Restrictions on justices of the peace, in Bath.

#### ARTICLE III. POLICE COURT IN BANGOR.

28. Court continued with its present judge.  
 29, 30, 31, 32. Jurisdiction.  
 33. Right of appeal.  
 34. Records to be kept by the judge.  
 35. Time and place of holding court. Fees. Disposal of fines.  
 36. Provision, in case the judge dies, or is unable to attend.  
 37. Expenses of the court, defrayed by the city.  
 38. Judge, not to be counsel, nor attorney, &c.  
 39. Repeal of inconsistent parts of the city charter.

#### ARTICLE I. MUNICIPAL COURT IN PORTLAND.

SECTION 1. The municipal court, established in the city of Portland and county of Cumberland, clothed with its present jurisdiction and powers, shall continue, until altered by law; and the judge thereof continue to hold his office, according to the tenor of his commission.

SECT. 2. Whenever a vacancy in the office shall occur, it shall be the duty of the governor, by advice of the council, to appoint a judge thereof, who shall be duly sworn; and said court shall always consist of one judge.

Court continued with its present judge. 1825, 294, § 1.

New appointment in case of vacancy. One judge. 1825, 294, § 1.



**The following page(s) from  
“An Act to Amend the Revised Statutes”  
include amendments to this chapter.**

Right of redemption, where real estate of banks or manufacturing corporations has been sold on execution. 1838, 332, § 1, 2.

And such corporation shall have the right to redeem any lands, and, if mortgaged; the debts secured thereby, sold by virtue of the provisions of this section, within the time and in like manner, and with like remedies to compel a reconveyance, as are provided in the forty first and forty second sections; and such right of redeeming shall be liable to attachment on mesne process, and seizure and sale on execution, as provided in the forty third section, for the attachment and sale of the right of redeeming an equity of redemption; reserving to the corporation the same right of redeeming from the purchaser at said second sale.

The same chapter shall be further amended, by inserting, at the end thereof, a new section, as follows:

Right, by contract, to a deed of real estate may be sold on execution. Right of redemption of certain interests in real estate. Such right of redemption may be sold on execution. 1829, 431, § 1, 2. 1833, 87.

SECT. 50. All the right and title, to a conveyance of real estate, by virtue of a bond or contract which any debtor may have, may be taken and sold on execution, in the manner prescribed in the thirty sixth and four following sections; and any such right, so sold, and also any right, title and interest, which any person owns, in virtue of a possession and improvement, having been sold on execution, as provided in the said thirty sixth and four following sections, may be redeemed from the purchaser, or person holding under him, by like proceedings, on the same conditions, and with the same remedies to compel a reconveyance thereof, as are provided in the forty first and forty second sections; and this right to redeem from the purchaser shall be liable to attachment on mesne process, and seizure and sale on execution, as provided in the forty third section, for the attachment and sale of the right of redeeming an equity of redemption; and, in all cases, where a right to redeem from a former sale or levy has been sold on execution, the debtor shall have the same right of redeeming it, as is allowed upon the first sale of rights in equity of redeeming mortgaged real estate.

R. S. ch. 96.

SECTION 11. The ninety sixth chapter shall be amended in the seventh section, by inserting, at the close thereof, the following:

Supreme judicial court to control the records and documents of the supreme judicial court of Massachusetts, now remaining in this state. 1820, 54, § 1.

All records and documents of the supreme judicial court of Massachusetts, previous to the separation of Maine, now remaining in the several counties in this state, shall remain under the control and authority of the supreme judicial court of this state, in the same manner and for the same purposes, as the records and documents of their own doings; and the clerks of the same court shall have the like power in relation to the one, as the other of those records and documents.

R. S. ch. 97.

SECTION 12. The ninety seventh chapter shall be amended in the thirteenth section, by inserting, after the word "town," the following, "or in any libel for forfeited goods originally commenced in the district court"; so that the section, as amended, will be as follows:

Appeal in cases of libel for forfeited goods. 1821, 81, § 2.

SECT. 13. Any party, aggrieved at the judgment of any district court, on any demurrer or agreed statement of facts, or in any personal action, wherein issue in fact has been joined and a verdict given, in which the debt or damage demanded exceeds two hundred dollars, or in any action of replevin, or action of trespass on lands, writ of entry or of dower, or action against a town, or in any libel for forfeited goods, originally commenced in the said court,

may appeal therefrom to the next supreme judicial court to be held for the same county.

The same chapter shall be further amended in the fourteenth section, by inserting, at the close thereof, the following words :

If there shall not be, in the opinion of the court, a reasonable time for the party appealing to produce the sureties required, during the term of the court, the court may designate some justice of the peace, to take such recognizance, within ten days after the adjournment of the court, and the court shall order a stay of execution accordingly; and the recognizance, if so taken, and filed with the clerk, shall be as valid, as if taken in court.

Recognizance on an appeal may be taken by a justice of the peace in certain cases. 1831, 505, § 2, 3.

SECTION 13. The ninety ninth chapter shall be amended in the twenty first section, by striking out the words "or scire facias"; so that the section, as amended, shall be as follows:

R. S. ch. 99.

SECT. 21. The party, for whose benefit any judgment shall have been rendered by the commissioners of any county, shall have like remedy for the same and interest, by an action of debt upon such judgment, before any court of competent jurisdiction, as is provided for judgments recovered before the judicial courts.

Action of debt on a judgment of a court of county commissioners.

SECTION 14. The one hundred and fourth chapter shall be amended, in the twelfth section, by striking out, after the words "official bond," the following words: "for any neglects or misdoings, which may occur after such new bond shall have been filed and accepted," and inserting the last mentioned words at the close of the section; so that the section, as amended, shall be as follows:

R. S. ch. 104.

SECT. 12. Whenever any surety upon the official bond of any sheriff or coroner, or the heirs, executors or administrators of such surety, shall petition the county commissioners, in the county of such sheriff or coroner, to be discharged from such bond, the court shall cause such sheriff or coroner to be served with an attested copy of the petition, and may require him to give a new bond to their satisfaction; and, upon such new security being given, such surety or his legal representatives shall be free from any further responsibility on such bond, for any neglects or misdoings, which may occur after such new bond shall have been filed and accepted.

New bond may be required of a sheriff or coroner on application of his sureties.

The same chapter shall be amended in the twenty seventh section, by inserting, after the word "deputy," the words "coroner or constable"; so that the section, as amended, shall be as follows:

SECT. 27. Any sheriff or his deputy, coroner or constable, who shall unreasonably refuse or neglect to pay to any person moneys, received by him upon execution, to the use of such person, upon demand made therefor, shall pay five times the lawful interest of such money, so long as he shall unreasonably detain it.

Liability, if coroner or constable detain money collected, after demand.

SECTION 15. The one hundred and fifth chapter shall be amended in the eighteenth section, by striking out the words "as heir, legatee, creditor or debtor, or," and inserting, instead thereof, the words "either in his own right, or in trust, or in any other manner, or be"; and by inserting, after the words "jurisdiction of such estate," the following words: "or if he be interested at the time of his appointment to office"; and by inserting, at the end of said section, the following words: "and in all cases, where, by reason of the interest of the judge, or for any other cause, an estate shall be settled in an adjoining county, the register of probate of such adjoining county shall transmit to the probate office of the county where such estate should otherwise have been settled, copies of all records relating to said estate, to be recorded on the records of the county where such estate belongs"; so that the said eighteenth section, as amended, will be as follows:

R. S. ch. 105.