

# 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.

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1841.

## TITLE TENTH.

### Of civil actions, their various forms, limitations and proceedings, and evidence therein.

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ARTICLE I. OF WRITS, AND WHERE ACTIONS MUST BE COMMENCED.

SECTION 1. The forms of writs in civil actions shall remain, as established in the year, eighteen hundred and twenty one, composing the sixty third chapter of the statutes of that year; which chapter remains unrepealed; but alterations may be made by the supreme judicial court or the district court, when necessary, to adapt them to changes in the law, or for other causes; but all such changes shall be subject to the final control of the supreme judicial court, which may, by general rules, regulate such changes for said courts or for justices of the peace.

SECT. 2. When the plaintiff and defendant both reside within the state, all personal and transitory actions shall be brought in the county, where one of the parties lives; and, where there are two or more plaintiffs, or two or more defendants, the action may be brought in the county, where either of the plaintiffs, or either of the defendants lives; and, when not so brought, on motion, or inspection by the court, the writ shall abate, and the defendant shall be allowed double costs; except as provided in the following sections.

Form of writs.

Where actions shall be commenced, if the parties live in this state.  
1821, 59, § 9.  
1839, 368, § 1.  
5 Mass. 94, 237.  
5 Mass. 331.  
3 Fairf. 17.

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Locality of actions on sheriffs' or coroners' bonds. 1821, 91, § 6.  
Actions on judgments rendered in this state. 1821, 59, § 34.

Jurisdiction sustained, if property be attached. 9 Mass. 462.  
4 Greenl. 124.

Where actions shall be commenced against a county. 1821, 59, § 10.  
7 Mass. 461.  
11 Mass. 221.

Actions by a county. 1821, 59, § 10.

Actions between a corporation and a county. 1821, 59, § 11.

Actions by an inhabitant, against a county. 1821, 59, § 12.

Actions between two counties. 1821, 59, § 13.

Actions between towns, and other quasi corporations.

Actions between quasi corporations and individuals.

Actions between corporations and natural persons. 21 Pick. 257.

Actions for recovery of forfeitures. 1821, 59, § 45.

SECT. 3. All actions brought on bonds, given by sheriffs and coroners to the treasurer of the state, shall be brought in the county, where such sheriff or coroner shall have been commissioned to act.

SECT. 4. All actions of debt, founded on judgment for damages and costs, or for costs only, rendered by any court of record in this state, may be brought in the county, where the same was rendered, or in the county in which either of the parties to such judgment, or his executor or administrator may reside, at the time of bringing such action.

SECT. 5. In all actions commenced in any court proper to try the same, jurisdiction shall be sustained, if goods, estate, effects or credits of any defendant, named in said action, are found within this state, and attached on the original writ; and service shall be made, as provided in the twenty eighth section of this chapter.

SECT. 6. Any local or transitory action against the inhabitants of a county, in their corporate capacity, may be commenced and tried, either in the county where the plaintiff lives, or in the county against which the action shall be brought.

SECT. 7. Any such action, commenced by a county, may be brought in the county where the defendant lives, unless he is an inhabitant of that county; in which case, the action may be commenced in any adjoining county.

SECT. 8. When any corporation shall be a party in any action, commenced by or against any county, it shall be commenced or tried in any adjoining county.

SECT. 9. Any such action against the inhabitants of a county, by a plaintiff belonging to such county, may be commenced and tried in such county, or in any adjoining county, at the plaintiff's election.

SECT. 10. Any local or transitory action, by one county against another county, may be commenced and tried in any adjoining county.

SECT. 11. When both parties are towns, parishes or school districts, the action shall be brought in the county, in which either of the parties shall be situated.

SECT. 12. When the action is between a town, parish or school district, and any other corporation or a natural person, it shall be brought either in the county, in which the plaintiff corporation is situated, or natural person lives, or in which the defendant corporation shall be situate, or natural person lives.

SECT. 13. When one of the parties is a corporation of any other description, than those mentioned in the two preceding sections, the action may be brought in any county, in which such corporation shall have an established place of business; or if either party is a natural person, the action may be brought in the county, in which he lives.

SECT. 14. Whenever any forfeiture is recoverable in a civil action, the same shall be brought in the county, in which the offence was committed, unless a different provision was made in the statute imposing the same; and, if on trial it shall not appear, that it was committed in the county where the action is brought, the verdict shall be in favor of the defendant.

SECT. 15. Any action, commenced against two or more defendants, residing in different counties, and to be tried before a municipal or police court, or a justice of the peace, may be brought in the county, where either of the defendants lives; and the writ in such case shall be executed in such counties, accordingly, by the proper officer. And any action, commenced before either of said courts, shall be brought in the town where the plaintiff, or some defendant or trustee, or the attorney commencing the action lives.

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Actions within the jurisdiction of justices.  
1827, 359, § 1.  
15 Mass. 280.  
3 Fairf. 17.  
15 Maine, 188.

## ARTICLE II. OF INDORSEMENT OF WRITS, AND OTHER REQUISITES.

SECT. 16. Every original writ, writ of scire facias, writ of error, writ of audita querela, petition for writ of certiorari, petition for review, and bill in equity, shall, before entry of the same in court, be indorsed by some sufficient person, who shall then be an inhabitant of the state, when the plaintiff or petitioner, in any of the cases before mentioned, shall not be an inhabitant of the state; and if, pending such suit, such plaintiff or petitioner shall remove from the state, he shall, on motion of the defendant or respondent, or any other party to the suit, be required to procure such [new] indorser.

What writs must be indorsed.  
1821, 59, § 8.  
8 Mass. 272.  
17 Mass. 222.  
1 Greenl. 399.  
3 Greenl. 27, 216.  
1 Fairf. 43.  
7 Pick. 117.  
11 Pick. 66.  
12 Pick. 569.

SECT. 17. But when, in any of the cases before named, there shall be two or more plaintiffs or petitioners, and any one of them is an inhabitant of the state, no indorser shall be required, except by special order of court, on motion of the other party.

Modification of this provision.  
21 Pick. 212.

SECT. 18. Every indorser shall be liable, in case of the avoidance or inability of the plaintiff or petitioner, to pay all such costs, as shall be adjudged against the plaintiff; provided, the suit therefor against the indorser shall be brought, within one year after the original judgment: which suit shall be an action on the case, brought in the court where the original judgment was rendered, and a return upon the execution issued in any such case, by an officer of the county, where said indorser lives, that he had demanded payment of the same of said indorser, and that said indorser has neglected either to pay the same, or to shew said officer personal property of the plaintiff, sufficient to satisfy said execution, or that he cannot find said indorser within his precinct, shall be conclusive evidence of the liability of said indorser in said suit; but the provisions of this and the preceding section shall not extend to any liability, as indorser, heretofore incurred.

Liability of the indorser.  
1821, 59, § 8.  
6 Mass. 494.  
8 Mass. 450.  
11 Mass. 411.  
2 Greenl. 128.  
4 Greenl. 79.  
6 Greenl. 350.  
2 Fairf. 443, 467, 491.  
15 Maine, 64.  
16 Maine, 18.

SECT. 19. If, pending any suit or petition as aforesaid, any indorser should, in the opinion of the court, be deemed insufficient, they may require, that a new indorser should be furnished, who is sufficient, the defendant consenting that the name of the original indorser should be struck out; and the new indorser, so furnished, shall be liable for all costs, from the beginning of the suit, in like manner, as if he had been the original indorser.

Proceedings, if indorser be deemed insufficient.  
1821, 59, § 8.  
13 Mass. 422.

SECT. 20. If the plaintiff or petitioner shall, in any case, fail to procure such new indorser, according to the order of court, at the time appointed, the action shall be dismissed, and the defendant shall recover his costs.

Same subject.  
1821, 59, § 8.

SECT. 21. All civil actions, excepting those founded on scire facias, or other special writs, shall be commenced by original writs, which shall be signed and sealed by the clerk and bear test of either

Writs, how authenticated.  
3 Fairf. 196.  
2 Pick. 592.

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Original writs may be issued by the clerk.

Form may be for attachment or summons.

Separate summons to be left, if attachment be made.  
1821, 59, § 1.

Writ and summons may be combined, in actions against corporations.

Service of original summons.  
1821, 59, § 2.

Service, if defendant be not an inhabitant of this state.  
1821, 59, § 1.  
6 Greenl. 218.

Same subject.  
1821, 59, § 1.  
1837, 285.

Personal estate liable to attachment.  
14 Mass. 190.  
21 Pick. 197.

of the justices of the court, who is not a party; provided, that writs issued by a justice of the peace, or judge of a municipal or police court, shall be sealed and signed by such justice or judge.

SECT. 22. All original writs, in the supreme judicial court, and any district court, may be issued by the clerk of said courts in any county, as well in vacation, as term time.

SECT. 23. The original writ may be framed either to attach the goods or estate of the defendant, and for want thereof to take his body; or it may be an original summons, either with or without an order, to attach the goods or estate.

SECT. 24. When goods or estate are attached on either of said writs, a separate summons, in form by law prescribed, shall be delivered to the defendant, or left at his dwelling house or place of last and usual abode, fourteen days before the sitting of the court, to which the same writ is made returnable; which shall be a sufficient service of the writ or original summons.

SECT. 25. In actions against corporations, and in other cases where goods or estate are attached, but in which the defendant is not liable to arrest, the writ and summons may be combined in one.

**ARTICLE III. OF THE SERVICE OF WRITS, ATTACHMENT OF PROPERTY, AND DISPOSAL THEREOF.**

SECT. 26. In all cases, wherein the process is by original summons, as against executors, administrators or guardians, in ejectment, dower, scire facias, error, review, and all other civil actions, wherein the law does not require a separate summons to be left with the defendant; the service thereof, by the proper officer, shall be sufficient, either by his reading the writ or original summons to the defendant, or by giving him in hand, or leaving at his dwelling house or place of last and usual abode, a certified copy thereof, fourteen days before the same is returnable.

SECT. 27. If the defendant was never an inhabitant of the state, or has removed therefrom, then the summons, where goods and estate are attached, or a copy of the original summons, as the case may require, shall be left with his tenant, agent or attorney, fourteen days before the sitting of the court, as aforesaid.

SECT. 28. When the goods or estate of any person, not being an inhabitant of the state, and having no tenant, agent or attorney, within the same, have been attached in any civil action, any justice of the court to which the writ is made returnable, may, in vacation, and before entry of the action, make his order, by him signed on the back of said writ, directing in what manner such defendant shall be notified of the said suit and attachment; or the court, after entry, may order such notice to the defendant, as justice may require; and such order having been complied with, and proof of the service of such notice being made to the satisfaction of the court, the defendant shall be held to answer to such suit, as in other cases, where service is made, as prescribed in the preceding section.

SECT. 29. All goods and chattels may be attached, and held as security to satisfy the judgment for damages and costs, which the plaintiff may recover, except such as from their nature and sit-

uation have been considered, as exempted from attachment, according to the principles of the common law, as adopted and practised in this state, and such as are hereinafter mentioned.

SECT. 30. All real estate, which is liable to be taken in execution, according to the provisions of chapter, ninety four, may be attached on mesne process, and held as security for the purposes, mentioned in the preceding section; but it shall not be deemed necessary that the officer, in order to make such an attachment, should enter on such estate, or be within view of it.

Attachment of real estate on mesne process. 4 Pick. 277.

SECT. 31. A right in equity of redeeming lands mortgaged, or taken in execution, may be attached on mesne process; and, when so attached, if, before the levy of the execution, the lands, so mortgaged or taken in execution, are redeemed, and the incumbrance removed, the attachment shall hold the premises discharged of the mortgage or levy, as effectually as if no mortgage or levy had existed, and the premises had been attached.

Attachment of equities of redemption. 1821, 60, § 1. 1833, 87, § 1.

SECT. 32. No attachment of real estate on mesne process shall be deemed and considered, as creating any lien on such estate, unless the officer, making such attachment, within five days thereafter, shall file in the office of the register of deeds in the county or district, in which all or any part of said lands are situated, an attested copy of so much of the return, made by him on the writ, as relates to the attachment, together with the names of the parties, the sums sued for, the date of the writ, and the court to which it is returnable; except as mentioned in the thirty fourth section of this chapter. And such proceedings shall be had in such office by the register of deeds, as are prescribed in the eleventh chapter, eighteenth section.

Registry of attachment of real estate, within five days. 1838, 344, § 1.

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

In such case, plaintiff's demand shall be set forth in the declaration. 1838, 344, § 4.

SECT. 34. But if the attested copy of the return, on the writ made, shall be lodged in the office of the register of deeds, as mentioned in the thirty second section of this chapter, then the attachment shall take effect from the time it was made; otherwise it shall take effect from the time when such copy of the return is so deposited in the registry of deeds, notwithstanding it may be after the summons or copy was served on the defendant.

Effect of registry after five days.

SECT. 35. No personal property, and no real estate, except equities of redeeming real estate mortgaged, or taken in execution, or equities of redemption, which have been sold on execution, or an obligee's conditional right to a deed of conveyance of real estate to him, which has been sold on execution, and except property attached and replevied, and property attached, belonging to a person dying after an attachment of it had been made, or specially provided for in any other case, shall be held by virtue of an attachment, longer than thirty days next after the day, on which final judgment was rendered in the suit, in which the same was attached, to be taken in execution.

Duration of attachments. 1821, 60, § 1, 17. 15 Mass. 225. 3 Fairf. 241.

SECT. 36. When final judgment is rendered for the defendant, the attachment shall be thereby forthwith dissolved.

Attachment dissolved, by final judgment for defendant. 4 Mass. 99.

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Certain attachments valid, though the property be left in defendant's possession.

1821, 60, § 34.  
11 Mass. 184.  
7 Greenl. 178.

Property exempt from attachment.

1821, 95.  
Wearing apparel, beds and furniture.

15 Mass. 170.  
16 Maine, 263.

Tools.  
13 Mass. 82.  
1 Fairf. 135.  
2 Pick. 80.  
10 Pick. 423.

Books.

Stoves.

Stock and hay.  
1830, 478.  
15 Mass. 205.

Produce.  
1826, 341.  
14 Maine, 312.

Pew.  
1826, 341.

Potatoes.  
1828, 394.

Firewood.  
1831, 513.

Boat.  
1835, 172.

Plough, cart, harrow, cooking stove, and coal.  
1838, 307.

Certain neat stock, and hay.  
1839, 413, § 1.  
1840, 49, § 1.

SECT. 37. When hay in a barn, horses or neat cattle, are attached by a creditor, and are suffered to remain, by the permission of the officer, in the debtor's possession, on security given for their safe keeping and delivery to the officer, the same shall not be subject to a second attachment, to the prejudice of the first.

SECT. 38. The following goods and property shall be exempted from attachment and execution; that is to say:

*First.* The debtor's wearing apparel, beds, beadsteads, bedding and household utensils, necessary for himself, his wife and children; provided, that the beds and bedding, so exempted, shall not exceed one bed, bedstead and necessary bedding for every two persons, nor the other household furniture, the value of fifty dollars;

*Second.* The tools of any debtor, necessary for his trade or occupation;

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

*Fourth.* All cast iron and sheet iron stoves, used exclusively for warming buildings;

*Fifth.* One cow and one heifer, till she shall become three years old, two swine, one of which shall not weigh more than one hundred pounds; and when he owns a cow and heifer, more than three years old, or two swine, each weighing more than one hundred pounds, he may elect the cow or the heifer, or either of the swine, to be exempted as aforesaid; ten sheep, and the wool that may be shorn from them, and thirty hundred of hay for the use of said cow, and two tons for the use of said sheep, and a sufficient quantity for said heifer, according to its age;

*Sixth.* All produce of farms, while standing and growing, until harvested, and corn and grain necessary and sufficient for the sustenance of the debtor and his family, not exceeding thirty bushels;

*Seventh.* All the debtor's interest in one pew, in any meeting house, where he and his family stately worship;

*Eighth.* All potatoes, raised or purchased for the consumption of himself and family;

*Ninth.* All the firewood conveyed to debtor's house, for the use of himself and family, not exceeding twelve cords;

*Tenth.* One boat, not exceeding two tons burthen, usually employed in fishing business, belonging wholly to an inhabitant of this state;

*Eleventh.* One plough of the value of ten dollars, one cart of the value of twenty five dollars, one harrow, of the value of five dollars, and one cooking stove of the value of thirty five dollars, and all anthracite and bituminous coal, and charcoal, conveyed to any person's house, to be consumed in the family of such person, not exceeding five tons of anthracite and fifty bushels of bituminous;

*Twelfth.* One pair of bulls, steers or oxen, raised by the owner from his own cows, or purchased by him, before the said bulls or steers were one year old, or by him, at any time, obtained by exchange of said bulls, steers or oxen, for others of the same age, with a sufficient quantity of hay to keep the same through the winter season; provided, that the said owner began to raise, or pur-

chased the said stock, after the twenty fourth day of April, in the year, one thousand eight hundred and thirty nine. CHAP. 114.

SECT. 39. When an attachment is made of any personal property, which, by reason of its bulk or other special cause, cannot be immediately removed, the officer may, within five days thereafter, file in the office of the clerk of the town, in which such attachment is made, an attested copy of so much of the return made by him on the writ, as relates to the attachment, together with the names of the parties, the sums sued for, the date of the writ, and the court to which it is returnable; and such attachment shall be effectual and valid, as if the property had remained in possession and custody of the officer.

Preservation of attachment on property, which cannot be removed.

SECT. 40. It shall be the duty of the clerk to receive such copy, and note thereon the time of his receiving it; and also record the same in a book kept for that purpose, for which he shall be entitled to ten cents.

Clerk to record the officer's return.

SECT. 41. When a suit shall be brought against a county, the summons shall be served, by leaving an attested copy thereof with one of the county commissioners, or with their clerk.

Service of a writ upon a county.

SECT. 42. In all suits against the inhabitants of any town, parish, religious society or school district, the summons shall be served by leaving a copy thereof with the clerk, or one of the selectmen or assessors of the corporation sued, if there be any such officer; if not, with any member of such corporation.

Service upon a town, or other quasi corporation. 1821, 59, § 6.

SECT. 43. In suits against all other corporations, whether created by act of the legislature, or, under a general law of the state, incorporated by application to a justice of the peace, for a warrant, and, after due notice to all concerned, by assembling, under the authority of such warrant, and thus forming a corporation and electing its officers, the summons shall be served by leaving a copy of it with the president or clerk, cashier, treasurer, or any general agent or director, as the case may be, of the corporation sued; if there be no such officer or agent, found within the county where such corporation is established, or where its records or papers are by law required to be kept, such copy may be left with any member of the corporation.

Service upon other corporations. 1821, 60, § 2. 16 Maine, 371.

SECT. 44. In all the cases mentioned in the three preceding sections, the writ shall be served thirty days before the sitting of the court, to which the writ is made returnable.

Time of service upon corporations. 1821, 59, § 6.

SECT. 45. When the share or interest of any person, in any incorporated company, shall be attached on mesne process, an attested copy of the writ, with a notice thereon of such attachment, signed by such officer, shall be left with the clerk, cashier or treasurer of such company; and such attachment shall be a lien on all accruing dividends, as well as on the share; and if the officer, having the writ of attachment, shall exhibit the same to the officer of the company, having custody of the account of shares, or interest of the stockholders, and request a certificate of the number held by the defendant, and such officer shall unreasonably refuse to give it, or wilfully give him a false certificate thereof, he shall pay double the damages, occasioned by such refusal or neglect; to be recovered against him, in an action on the case, by the creditor.

Attachment of shares in a corporation. 1821, 60, § 1, 8.

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Attachment of the franchise of certain corporations. 1821, 60, § 2.

Mode of service on one of several defendants, not an inhabitant of this state. 1821, 59, § 5.

Proceedings, where service of a writ is defective.

Mode of suing a person, whose name is unknown.

Attachments on the same writ, in different counties.

Writs of scire facias. 1830, 463, § 2.

Personal property attached, may be sold by consent. 1831, 508, § 1. 6 Pick. 455. 17 Pick. 429. 1 Metc. 34.

Living animals, and perishable goods attached, may be sold without consent. 18 Pick. 407.

Appointment of appraisers of such property.

SECT. 46. The franchise and all rights, privileges and immunities of any incorporated company, of demanding and receiving tolls, or other corporate property, may be attached on mesne process, and the officer, making the attachment, shall leave an attested copy of the writ, with a notice thereon of such attachment, signed by such officer, with the clerk, treasurer, or some officer or member of the corporation, as provided in section, forty three.

SECT. 47. When an action is commenced against two or more persons, on a joint obligation or contract, and any one or more of them is not an inhabitant of the state, and has no tenant, agent or attorney in the state, service made on him, as is provided in the twenty eighth section of this chapter, shall be deemed sufficient, unless further notice shall be ordered by the court.

SECT. 48. When the service of a writ is defective or insufficient, by reason of some mistake of the officer, or of the plaintiff, as to the place where, the time when, or the person with whom, the summons or copy should have been left, the court may, if they think proper, order a new summons to be issued and served, in such manner as they may direct; and such service shall be as effectual, as if made and returned on the original writ.

SECT. 49. When the name of a defendant is not known to the plaintiff, the writ may issue against him, by a fictitious name; and if duly served, it shall not be abated for that cause, but may be amended on such terms, as the court shall order.

SECT. 50. Different attachments in one or more counties may be made successively upon the same writ, and by different officers, before the service of the summons upon the person, whose property is attached; but none after such service.

SECT. 51. All writs of scire facias may contain a direction to the officer, who shall serve them, to attach the property of those against whom they issue, and also to arrest the bodies, when liable to be arrested, in the same manner as may be done in case of writs of attachment.

SECT. 52. When personal property is attached, if the creditor and debtor consent, the officer may sell the same before judgment, observing the directions for selling on execution; and, when the same property is attached by different creditors, in different suits, the same may be so sold by the first attaching officer, or, in case of his death, if he was a deputy sheriff, then by the sheriff or another deputy, by the written consent of the defendant and all attaching creditors; and the proceeds of the sales, after deducting the necessary expenses, shall be held by such first attaching officer, or the sheriff, subject to the successive attachments, in like manner, as if the sale had been on execution.

SECT. 53. When living animals, or goods liable to perish or waste, or be greatly reduced in value by keeping, or which cannot be kept without great expense, are attached, and the parties shall not consent to a sale thereof, as before provided, the property so attached, at the request of either of the parties interested therein, may be examined and appraised in the manner following.

SECT. 54. Upon such request made to the officer, he shall give notice to all parties, and prepare a schedule of the goods, and cause

three disinterested persons, acquainted with the nature and value of such goods, to be appointed and duly sworn, as appraisers of such goods. CHAP. 114.

SECT. 55. The appraisers shall be appointed, one by the creditor or creditors, one by the debtor or debtors, and one by the officer; and, if the creditors neglect to appoint one, or cannot agree, the officer shall appoint one in their behalf, and he shall do the same, if the debtor or debtors neglect, or cannot agree, to appoint one. Same subject.

SECT. 56. The appraisers shall examine the property attached, and, if they are of opinion, that the same, or any part of it, is liable to perish, or waste, or to be greatly reduced in value by keeping, or be kept at a great expense, they shall proceed to appraise the same, according to their best judgment, at the value thereof in money; and the goods shall thereupon be sold by the officer, and the proceeds shall be held and disposed of in the manner before provided, in the case of a sale by consent of parties, unless the goods shall be taken by the debtor, as provided in the following section. Mode of appraisal.  
18 Pick. 407.

SECT. 57. The goods shall be delivered to the debtor, after having been thus appraised, if he shall require it, on his depositing, with the attaching officer, the value thereof in money, or giving bond to him with two sufficient sureties, with condition, either to pay him the appraised value of the goods, or to satisfy all such judgments, as shall be recovered in the suits, in which the goods were attached, if demanded within the time, during which the goods would have been held by the respective attachments, or within thirty days after the time, when the creditors respectively might have been entitled to demand payment out of the proceeds of said goods, if they had been sold as before provided. Defendant may have the property, on giving bond.

SECT. 58. The officer taking such bond, shall return the same with the writ, on which the first attachment is made, in like manner, as bail bonds are returned, with a certificate of his doings in relation thereto; and, in case of a forfeiture of said bond, the creditors, or any one or more of them, may bring an action of debt thereon, in the name of the officer. Bond to be returned with the writ. Suit thereon.

SECT. 59. The writ, in such action, shall be indorsed with the names of the creditors, by whom the action is brought; and in case judgment is rendered for the defendants, execution for the costs shall be issued against all the creditors, whose names are so indorsed, or separate executions against each creditor for his proper proportion, as the court shall consider most equitable and just. Proceedings in such suit.

SECT. 60. If judgment shall be rendered for the plaintiff, the money recovered shall be first applied, under the order of court, to pay the reasonable expenses, incurred by the creditors, in prosecuting the suit, so far as the same shall not be reimbursed by the costs recovered of the defendant; and the residue shall belong to all the attaching creditors, according to their respective rights. Application of the money recovered.

SECT. 61. No judgment or execution shall be awarded, for the use of any creditor, without reserving as much as may be due upon any prior attachment, whether the creditor in such prior suit be or be not, one of those by whom the action is brought on the bond. Priority of executions.

SECT. 62. Any creditor, entitled to the benefit of the bond, who Mode of secur-

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ing the rights of persons, not parties to the suit, but interested in the bond.

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

Priority of satisfaction, in case of sale.

SECT. 63. When goods, which are sold or appraised and delivered to the debtor, in the manner before provided, shall have been attached by several creditors, any one of them may demand and receive satisfaction of his judgment, notwithstanding any prior attachments; provided, he is otherwise entitled to demand the money; and provided also, that a sufficient sum be left, of the proceeds of the goods, or of the appraised value, to satisfy all prior attachments.

Surplus proceeds of sale, liable to attachment in the officer's hands.

SECT. 64. When goods are sold or disposed of, either by consent of parties, or after an appraisal as aforesaid, the proceeds thereof, whilst remaining in the hands of the officer, shall be liable to be further attached by him, as the property of the original defendant, in like manner as the goods themselves would have been liable, if they had remained in the possession of the officer; and the proceeds, so attached, shall be held and disposed of in the same manner; as if the attachment had been made, on the goods themselves, before the sale thereof; but nothing in this section shall prevent the officer from paying over to the defendant the surplus of the proceeds of any sale, after retaining enough to satisfy all the attachments, actually existing thereon at the time of such payment.

Defendant's share of property attached, may be appraised, on request of another part owner.

SECT. 65. When any personal property, belonging to two or more persons, is attached in any suit against one or more of the part owners thereof, it shall, upon the request of any other of the part owners, be examined and appraised, in the manner before provided for an appraisement, when made at the request of any party in the suit; except, that the part owner, who makes the application, shall appoint one of the appraisers, and the defendant shall not appoint any.

Property to be delivered to such part owner, on his giving bond.

SECT. 66. The property shall be delivered to the part owner, at whose request it was appraised, upon his giving bond to the attaching officer in a sufficient penalty, with two sufficient sureties, with condition to restore the same in like good order, or pay the officer the appraised value of the defendant's share or interest in such property, or to satisfy all such judgments as shall be recovered in the suit, in which the property is attached, if demanded within the time, during which the property would have been held by the respective attachments.

Lien thereon,

SECT. 67. If such appraised value, or any part thereof, shall be

so paid, the defendant's share of the property shall thereby become pledged to the party to whom it was delivered; and he may sell the same, if not redeemed, and shall account to the defendant for the balance, if any, of the proceeds of such sale.

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if he discharge the attachment.

SECT. 68. If the attachment shall, in any way, be dissolved, the party, to whom the defendant's share was delivered, shall restore the same to the defendant, or to the officer, who made the attachment; to be by him delivered to the defendant.

Defendant's rights, if attachment be dissolved.

SECT. 69. The doings of the officer, together with the bond aforesaid, shall be returned by him in the manner above provided, in the case of a bond given by a debtor upon the delivery of property attached; and in case of the forfeiture of any such bond by a part owner, the like proceedings may be had thereon, as before provided, upon the forfeiture of the bond given by a debtor.

Officer to return the bond, with the writ.

SECT. 70. It shall be lawful, in any civil action, to attach any personal property, mortgaged, pledged, or subject to any lien created by law, not by law exempted from attachment, and of which the debtor has the right of redemption, and to hold the same, in like manner as if it were unincumbered; provided, the attaching creditor shall first tender or pay to the mortgagee, pledgee or holder, the full amount of the demand, for which the said property is mortgaged, pledged, or subject to any lien as aforesaid.

Attachment of the right of redeeming personal property. 1835, 188, § 2. 17 Pick. 85.

SECT. 71. Every mortgagee, pledgee, or holder of personal property shall, on demand in writing made upon him by any person, desirous of attaching the same for a debt or demand against the mortgager, pledger or general owner, render a just and true account of the debt or demand secured by such mortgage, pledge or lien; and any mortgagee, pledgee or holder, who shall, after six hours next after such demand made, unreasonably neglect to render such account, or shall receive more than is justly due him on account of the demand, so secured, shall refund the excess, with ten per cent. interest thereon, to the time of recovering judgment.

Holder bound to state the amount due. 1835, 188, § 3.

SECT. 72. When any property, attached on mesne process, shall be claimed by any person, not being a party to the suit, and such person shall omit, for the space of ten days after notice, given him therefor by the attaching creditor, to bring his action of replevin for such property, the officer making the attachment may, at the request of the plaintiff, and on his responsibility, the other attaching creditors, if any; consenting thereto, sell the same at public auction, in the manner provided for the sale of goods on execution, in the one hundred and seventeenth chapter; unless the defendant shall claim the property in his own right, and forbid such sale; but the sale shall not impair the rights of any party claiming the property.

Sale of property attached, when claimed by a third person. 1831, 508, § 7.

SECT. 73. Not only the right in equity of redeeming lands mortgaged, but also the right of redeeming such right or equity of redemption, after the same has been sold on execution, and also the right of redeeming lands, levied upon or sold on execution, and the right, title and interest which any person has, by virtue of a bond or contract, to a deed of conveyance of real estate, on specified conditions, may be attached on mesne process, and the same lien thereon shall be thereby created by such attachment, as if they were tangible property.

Attachment of certain other interests in real estate. 1829, 431, § 1. 1833, 87. 1 Fairf. 113. 14 Maine, 34. 15 Maine, 157.

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Cross actions, and set offs, where plaintiff is an inhabitant of another state.

Same, in case of several defendants.  
1 Metc. 30.

Service of writ, in such cross action.

Disposal of goods attached by an officer, in case of his death.

How far goods, taken from an officer by replevin, are to be considered as in his custody.

Liability of the plaintiff in replevin, on the bond, in case of judgment for a return.

In case an officer dies, having goods under attachment, they are liable to be further attached.

Notice how given, of such subsequent attachment.

SECT. 74. When an action is brought in this state by any person, who is not an inhabitant thereof, or who cannot be found therein to be served with process, he shall be held to answer to any action brought against him by the defendant; provided, the demand in the two cases be of such a nature, that the judgment or execution, in the one case, can be set off against the judgment or execution, in the other.

SECT. 75. If there are several defendants in the original action, each of them shall be authorized to bring such cross action against the original plaintiff; and, upon recovering judgment therein, he may be allowed to set off his judgment against that, which may be recovered against himself and his co-defendants, in like manner, as if the latter judgment had been against himself alone.

SECT. 76. The writ, in such cross action, may be served on the person, who appears as attorney of the plaintiff in the original action; and such service shall be as valid and effectual, as if made on the party himself in the state; and, in the cases mentioned in the two preceding sections, the court may order such continuances, as justice may require for the defence of either of the actions, or for setting off the demands, as therein provided.

SECT. 77. Goods and chattels, attached by an officer, in case of his death, whether remaining in his custody or taken from him by replevin or otherwise, and also all claims for damages to goods so taken from him, shall remain subject to the attachment in like manner, as if the officer had lived; and shall not be considered as assets in the hands of his executors or administrators.

SECT. 78. All goods taken, by replevin, from an officer, who has attached them, shall be considered as remaining in his custody and control, so far as to be liable to further successive attachments, in like manner as if the goods themselves had remained in his possession; subject to the provisions in the three following sections.

SECT. 79. In case of judgment for a return of the goods, so replevied, the plaintiff in replevin and his sureties shall be liable for the whole of the goods, or the value thereof, although the attachment, for which they were eventually held, should have been made, after the taking of the goods by the replevin.

SECT. 80. If an officer, after making an attachment of goods, shall die or be removed from office, whilst the attachment remains in force, the same goods, whether replevied or remaining in the possession of the officer, or of his executors or administrators, or other person having the possession or care of them, may be further attached by any officer, so as to bind the goods, or the proceeds thereof, in like manner, as if the latter attachment had been made by the first mentioned officer.

SECT. 81. The officer, making the latter attachment, shall not take the goods themselves, but the attachment shall be made by a return, setting forth an attachment in the common form, and stating by whom the goods were previously attached; and, if the goods have not been replevied, by leaving a certified copy of the writ, omitting the declaration, and of the return of that attachment, with the former officer, if living, or if he is dead, with his executor or administrator, or if none are appointed, then with the person hav-

ing possession of the goods; or, if the goods have been replevied, and the officer, who made the original attachment, is dead, such copy shall be left with the plaintiff in replevin, or his executors or administrators; and the attachment shall be considered as made, when such copy is delivered, in either of the modes before described.

SECT. 82. Goods, that have been taken by replevin from an attaching officer, shall not be further attached as the property of the original defendant, in any other manner than that provided in the four preceding sections, so long as they are held by the person who replevied them, or by any one holding under him; unless the original defendant shall have acquired a new title to the goods.

SECT. 83. When any estate, or goods and chattels, are attached, and the debtor dies, before they are taken in execution, the attachment shall remain in full force, in like manner as if the defendant were alive, unless the estate of the deceased shall be represented by the executors or administrators of the deceased as insolvent; and a commission of insolvency shall thereupon issue within one year, next after the defendant's death.

SECT. 84. After the decease of any defendant, and before the issuing of any commission of insolvency, as mentioned in the preceding section, the executor or administrator on the estate of the deceased may demand of the officer, who made the attachment of such estate or goods and chattels, a certified copy of the return of said attachment, and a description of such property, so particular as to enable such executor or administrator to describe the same in the inventory of the estate, subject to such attachment, so far as is before mentioned; and the appraisers may also demand of such officer a view of such goods and chattels; so that they may know their value: and, if such officer shall refuse or neglect to comply with either of such demands, he shall forfeit and pay, to such executor or administrator, a sum not exceeding thirty, nor less than ten dollars.

SECT. 85. When a commission of insolvency shall have been issued, within one year from the death of the debtor, and such attachment thereby dissolved, the officer, on demand, shall restore the goods and chattels attached, to such executor or administrator, to be administered according to law, on payment of his legal fees and charges of keeping the goods.

SECT. 86. If, before any demand made on the officer as above provided, he shall have sold the goods and chattels, attached by him as aforesaid, upon execution, or any other chattel interest, or right of redemption, he shall not be deemed a trespasser in so doing, but shall be liable only for the proceeds of the sale, after deducting his legal fees, and charges for keeping the goods; and such proceeds may be recovered by the executor or administrator, in an action for money had and received.

SECT. 87. If such officer shall have paid over the proceeds to the judgment creditor, before such demand, the executor or administrator may recover such sum from the creditor, by a similar action for money had and received.

SECT. 88. In an action founded on either of the preceding sections, the defendant shall not be allowed, in any manner, to set off

Limitation of the right to attach goods replevied.

Attachment not dissolved by defendant's death, unless his estate be insolvent.  
1821, 60, § 32.  
7 Mass. 254.  
9 Mass. 209.  
1 Greenl. 333.

Officer to permit the appraisal of the property of a deceased person under attachment.

If commission of insolvency issue, officer to return the property.

If he have sold the property, he shall account for the proceeds.

If paid to the creditor, he shall refund.

Set off not allowed, in an action for re-

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covery of such proceeds.

Any action by an officer to recover attached property shall not abate by his death.

Money recovered in such suit, not to be assets.

Proceedings, if judgment be for defendant.

Attachment dissolved, by reference of the action and of all demands.  
4 Greenl. 277.

Also, by an amendment, increasing the claim in the suit.  
7 Greenl. 348.

Definition of, "final judgment," in an action.

**SECT. 89.** When an action of replevin, trover or trespass shall be brought by an officer against any person, for taking away from his possession any goods or chattels by him attached, such action shall not abate by the death of either of the parties; but may be prosecuted by or against the executors or administrators of the deceased party, in like manner as in actions on contract.

**SECT. 90.** If, in such action, judgment should be recovered by the plaintiff, the goods or money recovered shall be held and appropriated, and disposed of, in the same manner, as they would, and ought to have been, by the officer, if he had lived and recovered the same himself.

**SECT. 91.** If judgment be rendered against the executor or administrator, the goods, and damages recovered, shall be returned, delivered and paid, in full, by the executor or administrator, though the estate of the deceased be insolvent.

**SECT. 92.** Whenever an attachment of real or personal property shall be made, and afterwards the parties in the action, by a rule of court, submit the same action, and all other demands which they may have on each other, to the decision of referees, and judgment be rendered on their report, such submission and proceeding shall dissolve the attachment.

**SECT. 93.** If, by consent of parties, the declaration is amended, so as to embrace a larger demand than it originally contained, and judgment be thereon rendered for the plaintiff, the attachment made on the mesne process shall be thereby dissolved, unless it shall appear by the record, that no claim was allowed to the plaintiff, except those stated in the writ.

**SECT. 94.** The final judgment, mentioned in the thirty fifth and thirty sixth sections, shall be construed to be, that which is rendered in the original action, and not such as may be rendered on review or a writ of error.

#### ARTICLE IV. OF ARRESTS, AND BAIL IN CIVIL ACTIONS.

How bail shall be taken.  
1821, 67, § 1.  
8 Greenl. 422.

What bail an officer must take.  
9 Mass. 479.  
12 Mass. 127.  
13 Mass. 187.  
2 Greenl. 46.

In what cases obligors are holden.  
2 Pick. 284.

Bond to be returned with the writ.  
1821, 67, § 1.

**SECT. 95.** When bail is taken on mesne process, it shall be by bond to the sheriff, if the process be served by him, or his deputy, otherwise to the officer making the arrest, with condition, that the defendant shall appear and answer to the suit, and that he will abide the final judgment thereon, and not avoid.

**SECT. 96.** No officer shall be obliged to accept a bail bond, unless signed by two sureties, at least, having sufficient property in the county in which the principal is arrested; or held in custody; and, if he shall take a bail bond, with only one surety, he shall be liable to the plaintiff for any deficiency of the bail, though the surety was, at the time he was taken, actually sufficient.

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

**SECT. 98.** The bail bond taken shall be returned with the writ, and the clerk shall note upon the writ, that a bond is so filed.

SECT. 99. Any person, who has become bail for another, may, before the action is entered in court, exonerate himself from all liability by surrendering his principal to the common jail in the county, where the arrest was made, or in the county where the writ is made returnable, leaving with the jailer of such county, within fifteen days after such commitment, an attested copy of the writ or process, whereby the arrest was made, and of the return indorsed thereon, and of the bail bond; and such jailer shall receive the person into his custody, in the same manner as if the officer, who made the arrest, had committed him; and provided, that such bail should have notified, in writing, the plaintiff or his attorney, of the time when, and place where the principal has been committed, within fifteen days after such commitment.

SECT. 100. In all cases of bond, given by a person, charged as the father of a bastard child, the sureties shall have the same power to surrender the principal, at any time, as well before entry of the prosecution, as after, as the bail in civil actions have; and thereupon entitle themselves to be discharged from their liability.

SECT. 101. No person shall be arrested, in any civil action, on mesne process or execution, or on any warrant of distress for taxes, on the fourth day of July, or on the day of the annual fast or thanksgiving.

SECT. 102. On the day of any military training, inspection, review or election, no officer, whose duty it may be to attend, and no soldier, who is enrolled as such, liable to do military duty, and shall have been duly notified to attend on said days, shall be arrested on mesne process or execution, or for taxes as aforesaid.

SECT. 103. No elector shall be arrested, except for treason, felony, or breach of the peace, on the days of election of United States, state and town officers.

#### ARTICLE V. LORD'S DAYS.

SECT. 104. No person shall serve or execute any civil process, from midnight preceding, to midnight following the Lord's day; but such service shall be void, and the person, executing such process, shall be liable in damages to the party aggrieved, in like manner, as if he had not had any such process.

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Surrender of principal before court. 1821, 67, § 1. 1831, 522. 16 Mass. 218.

Surrender of principal by bail, in a bastardy process. 1836, 210, § 2.

Freedom from arrest on fourth of July, and on fast and thanksgiving days. 1836, 232, § 1.

Freedom of officers and soldiers from arrest on training days. 1836, 232, § 2. 16 Maine, 132.

Freedom of electors from arrest on election days. Const. art. 2, § 2. 8 Greenl. 187.

Civil process not to be served on Lord's days. 1821, 9, § 9. 15 Pick. 465.

## CHAPTER 115.

### OF PROCEEDINGS IN CIVIL ACTIONS IN COURT.

SECT. 1. Time of entry. Provision, if the court be not held.

2. Default of defendant, if he fail to appear. Proviso.

3, 4. Proceedings, if defendant were out of the state, at the time of service.

SECT. 5. Bond to be given, if absent defendant be defaulted, not having received notice.

6. Bond to be left with the clerk.

7. Right of review in one year, in such case.

8. Review after a year in certain cases.

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

When a judge is interested, estate to be settled in the most ancient adjoining county. Transcript of proceedings to be recorded in the county where the estate belongs.

SECT. 18. Whenever any judge of probate shall be interested, either in his own right, or in trust, or in any other manner, or be within the degree of kindred, by means of which, by law, he might, by any possibility, be heir to any part of the estate of any person deceased, such estate shall be settled in the probate court of the most ancient adjoining county; provided, that the amount of the interest of such judge shall not be less than one hundred dollars, in such estate. If his interest commence at any time, after he shall regularly have assumed jurisdiction of such estate, or if he be interested at the time of his appointment to office, further proceedings therein shall be transferred to the probate court held in the most ancient adjoining county. 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.

R. S. ch. 107.

SECTION 16. The one hundred and seventh chapter shall be amended in the thirteenth section, by striking out the word "nevertheless," and inserting the words "notwithstanding there may be an appeal"; so that the section, as amended, shall be as follows:

Special administrator to proceed in his duties, though there may be an appeal.

SECT. 13. When, by reason of a suit concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary or of administration, the judge of probate may, in his discretion, appoint a special administrator, who shall, notwithstanding there may be an appeal, proceed in the execution of his duties, until it shall be otherwise ordered by the supreme court of probate.

R. S. ch. 108.

SECTION 17. The one hundred and eighth chapter shall be amended in the twenty fifth section, by adding at the close the following words: "or other appropriate action"; so that the section, as amended, shall be as follows:

Legatee may bring an appropriate action against executor, for a legacy.

SECT. 25. Any residuary legatee, or any person having a particular legacy given him, under any last will, may sue for and recover the same of the executor, in an action of debt at common law, or other appropriate action.

R. S. ch. 114.

SECTION 18. The one hundred and fourteenth chapter shall be amended, in section fifteenth, after the word "officer," by inserting the following words: "if there be but one defendant, such action shall be commenced in the county where he resides;" so that said fifteenth section, as amended, will be as follows:

Actions within the jurisdiction of justices, where to be commenced.

SECT. 15. Any action, commenced against two or more defendants, residing in different counties, and to be tried before a municipal or police court, or a justice of the peace, may be brought in the county where either of the defendants lives; and the writ, in such case, shall be executed in such counties accordingly, by the proper officer. If there be but one defendant, such action shall be commenced in the county where he resides; and any action, commenced before either of said courts, shall be brought in the town where the plaintiff, or some defendant or trustee, or the attorney, commencing the action, lives.

R. S. ch. 115.

SECTION 19. The one hundred and fifteenth chapter shall be amended, in section two, by striking out the words, "except as hereinafter provided," and inserting, instead thereof, the following words: "and the charge in the dec-