

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

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.

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

Augusta:

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

.....
1841.

SECT. 26. The said clerk shall receive and safely keep all such records and papers, and may grant certified copies of them, which shall be as good evidence, as if certified by the justice.

SECT. 27. If any justice has died or removed, or shall die or remove, from the state, without recording and signing any judgment by him rendered in any action before him, and his docket, original writ, and papers appertaining thereto, and execution, if any issued, shall have been deposited in the clerk's office, before mentioned, such clerk may, and shall, when required, on payment of usual fees, make out and certify copies of all the papers in such cause, and all facts appearing in such docket; and such copies shall be legal evidence.

SECT. 28. Any justice, whose commission has expired, or may expire, and shall not be renewed, is authorized to issue and renew executions on any judgment, by him rendered while in commission; which shall be obeyed by the officer, as if the commission of the justice had not expired; and also to certify copies of judgment rendered by him; but this power shall not continue more than two years, from the time such commission expired.

SECT. 29. Any justice may hear and decide causes at his dwelling house, office, or at any other suitable place; and the writ, in such cases, shall be made returnable accordingly.

SECT. 30. In all cases, except those mentioned in the first section, the defendant shall plead the general issue, and need not file any brief statement.

CHAP. 116.

Duty of the clerk, in such cases.

1826, 329, § 2.
Proceedings, if justice die or remove, not having completed his records.
1831, 498, § 1.

Certain powers of justices continued, after expiration of their commissions.
1821, 76, § 16.
1829, 441.

Place, where justice writs shall be returnable.

All trials to be upon the general issue.
14 Mass. 273.

CHAPTER 117.

OF THE LEVY OF EXECUTIONS ON PERSONAL PROPERTY.

- | | |
|--|--|
| <p>SECT. 1. Officer to set off executions against each other.</p> <p>2. What goods may be taken and sold on execution.</p> <p>3. Money may be so taken.</p> <p>4. Time of sale of goods on execution.</p> <p>5. Manner of advertising.</p> <p>6, 7. Adjournment of sale.</p> <p>8. Officer may require indemnity.</p> <p>9. Re-sale, if purchaser refuse to take the goods.</p> <p>10. Officer's return to specify the goods sold. Penalty for violation of his duty.</p> <p>11. Disposal of proceeds of sale.</p> <p>12. Sale of a building, or rents and profits thereof, on execution, for the ground rent.</p> <p>13. Shares in incorporated companies may be sold.</p> <p>14. Notice of seizure on execution.</p> | <p>SECT. 15. If attached, sale as of other chattels.</p> <p>16. Officer of the corporation to certify the shares owned by the debtor.</p> <p>17. Purchaser entitled to a certificate of the shares.</p> <p>18. Purchaser entitled to dividends after the attachment.</p> <p>19. Manner of giving notice of sale.</p> <p>20. Sale of franchise of a corporation, and notice therefor.</p> <p>21. Mode of selling.</p> <p>22. Delivery of possession.</p> <p>23. Rights and liabilities of the purchaser.</p> <p>24. Right of redemption.</p> <p>25. Mode of applying proceeds of sale on several executions.</p> <p>26. Notice of second attachment to be given to the first attaching officer, in certain cases.</p> |
|--|--|

- CHAP. 117.** SECT. 27. Disposal of proceeds of sale of an equity of redemption.
28. Three preceding sections applicable to all officers. Provision for second attachment by other officers.
29. Shares in all incorporated companies to be sold as herein provided.
30. County commissioners may enforce payment of damages by turnpike corporations.
31. Sale of franchise may be adjourned.
32. In what county proceedings for such sale may be had.
33. If sale of property on execution be suspended by a prior attachment, lien to continue.
34. Such lien to continue thirty days.
35. Executions not to be set off, if one has been assigned.
36. Nor unless the parties be the same in both.
37. Nor to affect the lien of an attorney.
38. Proceedings, to attach and sell personal property under mortgage.
39. Application of the proceeds of sale.
- SECT. 40. Such property may be sold, subject to the claim of the mortgagee.
41. Action of debt on order or judgment of county commissioners.
42. Manner of issuing and executing warrants of distress against towns.
43. Mode of levying them on real estate.
44. Notice and incidents of sale, in such cases.
45. Indemnity of the person, whose property is so sold.
46. Any inhabitant or proprietor may pay his proportion of such warrant.
47. Such payment shall discharge his liability thereon.
48. And from executions in favor of others who have been levied upon.
49. Manner of ascertaining an individual's proportion.
50. Purchaser of a right, under a contract, to a conveyance of real estate, may have a bill in equity to compel performance.
51. Proceedings, if the obligor disclose an assignment of the obligation.

Officer to set off executions against each other.
1821, 60, § 4.
7 Mass. 140.

SECTION 1. When a sheriff, deputy sheriff, coroner or other officer, has in his hands executions, wherein the creditor in one execution is debtor in the other, any such officer is hereby directed to cause one execution to answer and satisfy the other, so far as the same will extend; and this shall be his duty also, if one of such executions is in the hands of such officer, and the creditor in the other shall be in possession of his execution, and shall tender the same to such officer, and demand of him to set off the one against the other, in the manner prescribed in this section; provided also, the creditor in one execution is, in the same capacity and trust, debtor in the other.

What goods may be taken and sold on execution.

SECT. 2. All chattels, real and personal, liable at common law to attachment, and not exempted therefrom, as provided in chapter, one hundred and fourteen, shall be liable to be taken and sold on execution, as prescribed in this chapter.

Money may be so taken.
1 Pick. 271.

SECT. 3. Current gold or silver coin may be taken on execution and paid to the creditor, as money collected; and bank notes, and all other evidences of debts, issued by any moneyed corporation, and circulated as money, may be taken on execution, and paid to the creditor at their par value, if he will accept them; otherwise, they may be sold like other chattels.

Time of sale of goods on execution.
1821, 60, § 5.
5 Mass. 399.

SECT. 4. Goods and chattels, legally taken on execution, shall be safely kept by the officer, at the expense of the debtor, for the space of four days, at least, next after the day on which they were taken, exclusive of Sunday; and they shall be sold within fourteen days next after the day of seizure, except as hereinafter provided;

unless, before such sale, the debtor shall redeem them, by otherwise CHAP. 117.
satisfying the execution.

SECT. 5. The officer shall post up public notice of the time and place of sale, at least forty eight hours before the time of sale, in two or more public places in the town, or place of sale. Manner of advertising.
1821, 60, § 5.

SECT. 6. If, at the time appointed for the sale, the officer should be prevented by sickness, or other casualty, from attending at the place appointed; or, being present, should deem it for the advantage of all concerned, to postpone the sale, for want of purchasers, or other sufficient cause, he may postpone the sale, not exceeding six days, next after the day appointed; and so, from time to time, for like good cause, giving notice of every adjournment, in like manner, as required in the preceding section. Adjournment of sale.
4 Pick. 354.

SECT. 7. For good reason, and for the purpose of obtaining a better price for the goods to be sold, he may, if he should deem it for the benefit of the debtor, adjourn the auction to another place in the same town. Same subject.
9 Mass. 255.
2 Fairf. 371.

SECT. 8. Where there is reasonable doubt, as to the ownership of goods, or their liability to be taken in execution, the officer may require sufficient security to indemnify himself. Officer may require indemnity.
4 Mass. 498.
7 Mass. 123.

SECT. 9. If the highest bidder, at such a sale, shall refuse to take and pay for an article, the officer shall sell the same again at auction, at any time within ten days, giving due notice of the second sale; and he shall account for what he shall receive on the second sale, and for any damages he may have recovered of the first bidder for a loss on the re-sale, as for so much received on the execution. Re-sale, if purchaser refuse to take the goods.
7 Mass. 392.

SECT. 10. The officer, who shall make such sale, shall, in his return thereon, particularly describe the goods sold, and the price at which each article or lot, describing it, was sold; and, if any officer shall be guilty of any fraud in the sale or return, he shall be liable to the debtor, to pay him five times the sum of which he was defrauded; to be recovered in an action of the case. Officer's return to specify the goods sold.
Penalty, for violation of his duty.
1821, 60, § 5.
9 Mass. 138.
21 Pick. 197.

SECT. 11. The money, arising from the sale of any property on execution, shall be applied to paying the charges, and satisfying the execution; and the residue, if any, shall be returned to the debtor on demand, or otherwise legally applied, in the manner provided in section, twenty five. Disposal of proceeds of sale.
1821, 60, § 5.

SECT. 12. When a lessor of any lands, leased for the purpose of having any buildings erected thereon, shall commence an action against the lessee, and attach the same building, within six months after the rent becomes due, and recover such rent, he may on execution cause the rents and profits of such buildings to be sold for such term of time, as will be sufficient to pay the debt and costs; or cause such building to be sold, observing the same directions of law, as in the sale of any other personal estate; and, in the latter case, saving, to the debtor, the right to redeem the same within one year, by payment, to the purchaser, of the full amount paid by him and interest thereon. Sale of a building, or rents and profits thereof, on execution, for the ground rent.
1824, 258, § 1, 2.
1825, 318.

SECT. 13. Any share or interest of any stockholder or proprietor, in any incorporated company, may be taken on execution, and sold in the following manner. Shares in incorporated companies may be sold.
1821, 60, § 25.
8 Mass. 326.

CHAP. 117.

Notice of seizure on execution.
1821, 60, § 6.

If attached, sale as of other chattels.

Officer of the corporation to certify the shares owned by the debtor.

Purchaser entitled to a certificate of the shares.
1821, 60, § 6.

Purchaser entitled to the dividends after the attachment.
1821, 60, § 6.

Manner of giving notice of sale.
1821, 60, § 7.

Sale of franchise of a corporation, and notice therefor.
1821, 60, § 9.

SECT. 14. If the property has not been attached on mesne process in the same suit, the officer shall leave a copy of the execution with the treasurer, cashier, clerk or other recording officer of such incorporated company; and the property shall be considered as seized on execution, when the copy is so left.

SECT. 15. If the property has been, and then is attached, the officer shall proceed in seizing and selling it on execution, in the same manner, as in case of goods and chattels.

SECT. 16. The officer of the company, having the care of the records, or account of shares or interest of the stockholders, shall, upon the exhibition to him of the execution, be bound to give such officers a certificate of the number of shares, held by the judgment debtor, or amount of his interest, under the same penalty, as is prescribed for refusal to give such certificate to an officer, exhibiting a writ of attachment, as provided in chapter, one hundred and fourteen, section, forty five.

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

SECT. 18. If the shares or interest of the judgment debtor had been attached in the suit, in which the execution issued, the purchaser shall be entitled to all dividends, which shall have accrued after the attachment.

SECT. 19. In making sale of such shares, or interest, of any stockholder or proprietor, the officer holding the execution shall give notice in writing of the time and place of sale to the debtor, by leaving the same at his last and usual place of abode, if within the county, where such officer dwells; and public notice of such time and place of sale, by posting up notice thereof in one or more public places in the town or plantation, where the sale is to be made, and also in two adjoining towns, if there be so many, thirty days, at least, before the day of sale; and shall also publish an advertisement of the same import, and naming the judgment debtor, three weeks successively before the day of sale, in some public newspaper, printed in the same county, if there be one, if not, then in an adjoining county; and, if the debtor never lived in such county, the posting of the notification and publishing the advertisement, as aforesaid, shall be held sufficient.

SECT. 20. Whenever judgment has been recovered against any turnpike, bridge, canal, or other incorporated company with power to receive toll, the franchise of such corporation may be sold on execution at public auction; the officer giving notice of the time and place of sale, by posting a notification in any town or plantation, in which the treasurer, clerk or any officer of the company, if there be any officers, if not, where any stockholder may reside, thirty days at least before the day of sale, and by causing an advertisement, naming the creditor therein, to be inserted three weeks successively in some public newspaper printed in any county, where either of said officers, or if without officers, any stockholder resides,

four days before the day of sale; and, if there be no newspaper printed in any such county; then in any adjoining county. CHAP. 117.

SECT. 21. In the sale of such franchise, whoever will pay and satisfy such execution, and all fees and incidental expenses, in consideration of being entitled to receive to his own use all such toll, as the corporation may be entitled to demand and receive, for the shortest period of time, shall be deemed the highest bidder, and the purchaser for such period of time. Mode of selling.
1821, 60, § 10.

SECT. 22. Immediately after such sale, the officer shall deliver to such purchaser, possession of the toll houses and gates, in whatever county they may be situated; who may receive to his own use the tolls accruing within the time limited by his purchase; which proceedings shall be stated in the return of said officer. Delivery of possession.
1821, 60, § 10.

SECT. 23. The purchaser of such franchise, and those claiming under him, shall have all the powers necessary for the convenient use of the same, which were before vested in the corporation, and be bound to discharge the same duties, and be liable to the same penalties and forfeitures, during the term of the said purchase, as before were required of the corporation; and said purchaser, or those claiming under him, may recover of said corporation, any moneys paid by him, or expenses incurred, in consequence of his said liability, and without any fault or negligence on his part. Rights and liabilities of the purchaser.
1821, 60, § 10.

SECT. 24. The corporation may, at any time, within three months after the day of sale, redeem said franchise, paying to the purchaser such sums as he may have paid in satisfaction of the execution, with twelve per cent. interest thereon, in addition to the toll he may have received. Right of redemption.
1821, 60, § 10.

SECT. 25. If goods, or any other property sold on execution, shall have been attached by any other creditor, or seized on any other execution, by the same or any other officer, or if, before payment of such residue to the debtor, any other writ of attachment or execution against him shall be delivered to the officer, who made the sale, the proceeds of the sale shall be applied to the discharge of the several judgments, in the order in which the respective writs of attachments or executions shall have been served; and the residue, if any, shall be paid over to the debtor. Mode of applying proceeds of sale on several executions.
1821, 60, § 20.
5 Mass. 271.
2 Pick. 528.
4 Pick. 277.

SECT. 26. If an attachment or seizure is made, on execution, of a share in any incorporated company, or of any other property which may be attached without taking and keeping exclusive possession thereof, and if the same property shall be subsequently attached or taken on execution by any other officer, he shall give notice thereof to the officer, who makes the sale under the first attachment or seizure; and, if the latter, without such notice, pay to the debtor the balance of the proceeds of the sale, he shall not be liable therefor, to the person claiming under such subsequent attachment or seizure. Notice of second attachment to be given to first attaching officer, in certain cases.
1821, 60, § 21.

SECT. 27. When the right of redeeming mortgaged real estate is sold on execution, the proceeds of the sale, after satisfying the execution on which the sale was made, shall be applied and disposed of in the same manner, as is provided in case of sale of goods. Disposal of proceeds of sale of an equity of redemption.
1821, 60, § 21, 22.
4 Pick. 277.

SECT. 28. The provisions in the three preceding sections shall Three preceding sections ap-

CHAP. 117. be equally applicable to sheriffs, deputy sheriffs, coroners and constables, and their official proceedings in the cases mentioned, in said sections; and personal property, attached by a coroner, may be again attached by a sheriff, deputy sheriff or constable, subject to the former attachment, by giving notice thereof to such coroner, and furnishing him with a copy of the precept within a reasonable time thereafter, and vice versa; and personal property, attached by a constable, may be again attached by a coroner, or by a sheriff or deputy, when necessary, in the same manner.

SECT. 29. The shares or interest, held by any persons in any incorporated company as aforesaid, may be attached, and taken and sold on execution, in the manner provided in this chapter, and in no other manner, notwithstanding any thing to the contrary, in the act incorporating such company.

SECT. 30. Whenever any damages are assessed, in favor of any person, by the county commissioners, or by a committee or a verdict of a jury, for any injury sustained by him, by any acts of any of the corporations aforesaid, authorized to demand and receive toll, and the damages shall not be paid in thirty days after order, or the acceptance of such verdict, or of the report of the committee, such person may have a warrant of distress, against any such corporation, for the damages assessed, and interest and costs.

SECT. 31. The officer, holding such warrant, shall have the same right to adjourn the vendue, as in case of sale of goods on execution.

SECT. 32. All proceedings, respecting the attachment and sale on execution of the franchise of any corporation, entitled to demand and receive toll, and sales on warrant of distress, as mentioned in the thirtieth section, may be had in any county, in which either the creditor, or the president, clerk, treasurer, or any director of said corporation, if there be any such officer, if not, where any stockholder may reside.

SECT. 33. When any estate, real or personal, is seized on execution, and further service of the execution is suspended, by reason of any prior attachment of the same, such estate shall be bound by seizure, until it is set off or sold, in whole or in part, under the prior attachment, or until the same is dissolved.

SECT. 34. If the estate is set off or sold, in part, under the prior attachment, or, if the same be dissolved, the estate, or such part thereof as remains undisposed of, shall continue bound for thirty days thereafter, by the seizure on execution; and the service of the execution may be completed, in like manner as if the estate had been first seized thereon, at any time within thirty days, although the return day of the execution may have passed.

SECT. 35. Executions shall not be set off against each other, when the sum, due on the first, has been lawfully and in good faith assigned to another person, before the creditor in the second execution became entitled to the sum due thereon.

SECT. 36. Nor, where there are several creditors in one execution, and the sum due on the other, is due from a part of them only; or where there are several debtors in an execution, and the sum due on the other, is due to a part of them only.

licable to all officers. Provision for second attachment by other officers.
1821, 6, 21, 22, 23, 24.

Shares in all incorporated companies to be sold as herein provided.

County commissioners may enforce payment of damages by turnpike corporations.
1821, 60, § 11.

Sale of franchise may be adjourned.
1821, 60, § 12.

In what county proceedings for such sale may be had.
1821, 60, § 26.

If sale of property on execution be suspended by a prior attachment, lien to continue.

Such lien to continue thirty days.

Executions not to be set off, if one has been assigned.
1821, 60, § 4.
12 Mass. 195.

Nor, unless the parties be the same in both.
1821, 60, § 4.
7 Greenl. 82.

SECT. 37. Nor shall it be allowed, as to so much of the first execution as may be due to the attorney in the suit, for his fees and disbursements therein.

SECT. 38. When a creditor of a mortgager or pledger of any personal property, instead of summoning the mortgagee, pledgee or holder, to answer to him in a process of foreign attachment, elects to attach the property so mortgaged or pledged, it may be lawful for him so to do, first paying or tendering to such mortgagee, pledgee or holder, the full amount of the debt for which it is so mortgaged or pledged; and, any such property, so redeemed, may be sold on execution, as any other personal property.

SECT. 39. The officer shall apply the proceeds of the sale, after deducting his fees and charges of sale, to the payment of the sum, so paid or tendered to the mortgagee, pledgee or holder, and the interest thereon from the time of such payment; and the residue of such proceeds shall be applied to the satisfaction of the plaintiff's judgment, in manner by law provided.

SECT. 40. Such plaintiff may have the same attached and seized, and sold on the execution, as in other cases, subject to the rights and interest of such mortgagee, pledgee, or holder, without paying or tendering payment of the debt due to the mortgagee, pledgee, or holder.

SECT. 41. When a warrant of distress has been, or shall be issued by any court of county commissioners, and has been or may be returned, in whole or in part unsatisfied, and the same remains unsatisfied, the party interested, and for whose benefit the warrant was issued, may have and maintain an action of debt founded on said order, or judgment of said commissioners, before the proper court of the county, in which the record exists, in the same manner, and under the same regulations, as actions of debt may be brought and maintained on a judgment of any other court; in which action, interest shall be allowed on the sum due, and included in the judgment.

SECT. 42. All executions or warrants of distress, against any town, shall be issued against the goods and chattels of the inhabitants thereof, and against the real estate therein situated, whether the same is owned by such town or not; and it shall be the duty of the officer, executing such precept, to satisfy the same by distress and sale of the goods and chattels of the inhabitants, in the manner by law provided.

SECT. 43. For want of sufficient goods and chattels to satisfy the same, after diligent search, which fact the officer shall certify in his return, it shall be the duty of the officer to levy upon and sell the real estate in said town, by lots, as the same are owned or occupied, or as the same may have been lotted out on the plan thereof; so much as may be necessary to satisfy said precept and expenses of sale.

SECT. 44. It shall be the duty of the officer to advertise in the newspaper, published by the printer to the state, and also in one of the newspapers printed in the county, where the lands lie, if any there be, three weeks successively, the names of such proprietors as are known to him, of the lands which he proposes to sell, together

CHAP. 117.

Nor to affect the lien of an attorney.

1821, 60, § 4.
11 Mass. 235.
13 Mass. 525.
3 Greenl. 34.
22 Pick. 210.

Proceedings, to attach and sell personal property under mortgage.

1835, 188, § 2.

Application of the proceeds of sale.

1835, 188, § 2.

Such property may be sold, subject to the claim of the mortgagee.

1835, 188, § 2.

Action of debt, on order or judgment of county commissioners.

1833, 64, § 2.

Manner of issuing and executing warrants of distress against towns.

1833, 64, § 3.

Mode of levying them on real estate.

1833, 64, § 3.

Notice, and incidents of sale, in such cases.

1833, 64, § 3.

CHAP. 117. with the amount of the execution or warrant of distress; and, where the names of the proprietors are not known, he shall publish the numbers of the lots or divisions of said land; the last publication to be three months before the time appointed for the sale. And, if necessary to complete the sale, he may adjourn the same, from day to day, not exceeding three days. And he shall give a deed to the purchaser, to hold said land in fee; expressing in said deed the cause of sale. And the proprietor of the land, so sold, shall have a right to redeem the same, at any time within one year from the time of sale, on paying the sum for which the same was sold, and the necessary charges and interest thereon.

Indemnity of the person, whose property is so sold.
1833, 64, § 4.

SECT. 45. The owner of any real or personal estate, so sold for the purposes above mentioned, shall be entitled to recover against such town, in an action of assumpsit, the full value of the property so taken and sold, with interest, at the rate of twelve per cent. yearly, with costs of suit; and may be admitted to prove the real value thereof, whatever may have been the price at which the same was sold.

Any inhabitant, or proprietor, may pay his proportion of such warrant.
1834, 133, § 1.

SECT. 46. Whenever any such warrant of distress or execution shall be issued, as aforesaid, against any town, it shall be lawful for any inhabitant thereof, or for any proprietor of any lands therein, either before or after the issuing of such precept, to pay his part or proportion of such order or judgment; which part or proportion shall be ascertained by an assessment or apportionment thereof, made by the assessors of said town; and which service they shall be required to perform, at the request of any such inhabitant, or proprietor, or on notice given them by the county commissioners.

Such payment shall discharge his liability thereon.
1834, 133, § 2.

SECT. 47. Every person, so paying his part or proportion to the treasurer of the corporation, for the use of the person interested, or to such person himself, shall be discharged, both as to his person and his property, from such warrant or execution.

And from executions in favor of others, who may have been levied upon.
1834, 133, § 3.

SECT. 48. If any such warrant or execution has been, or shall be levied on the property of any person, who at the time has not paid his part or proportion, every person having so paid, or that shall so pay his part, as aforesaid, shall be discharged from all executions that may be issued on any judgment against the inhabitants of such town, on account of said levy, and his person and estate shall forever be discharged.

Manner of ascertaining an individual's proportion.
1834, 133, § 4.

SECT. 49. The certificate of the major part of the assessors of such town, of any person's part or proportion, shall be conclusive evidence thereof; and, being delivered to the officer, he shall, on payment thereof, in manner aforesaid, in his return on the execution or warrant, return the same satisfied for that sum, with the name of the person who paid it.

Purchaser of a right, under a contract, to a conveyance of real estate, may have a bill in equity to compel performance.
1829, 431, § 2.

SECT. 50. The purchaser at auction of the right, which any person has to a deed of lands on certain condition named in a written contract, shall have the same remedy by bill in equity to compel a conveyance of it, as mortgagers have to compel mortgagees to convey to them, on performance of, or offer to perform the condition of a mortgage.

14 Maine, 34.
15 Maine, 157.
Proceedings, if

SECT. 51. Whenever any obligor shall plead, or in his answer disclose an assignment of the bond or contract, prior to the attach-

ment by the obligee, or person entitled to the conveyance, and the validity of such assignment shall be put in issue, the court shall cause the assignee to be made a party to the bill; and, on his appearance or non appearance, may direct the same to be tried by a jury; and, if found fraudulent, it shall be no bar to the conveyance prayed for.

CHAP. 117.

the obligor disclose an assignment of the obligation. * 1829, 431, § 3.

CHAPTER 118.

OF BAIL IN CIVIL ACTIONS.

- SECT. 1. How bail shall be taken.
 2. Names of bail to be entered on executions.
 3. Officer to notify bail. Fees.
 4. Surrender of principal into court.
 5. In case of avoidance, officer's duty, and liability of bail.
 6. Scire facias against bail, in such case.
 7. Form of the scire facias.
 8. Limitation of such action.
 9. Pleadings and defence, by bail.
 10. Surrender of principal on scire facias.

- SECT. 11. Principal to be committed to jail.
 12. When discharged, if not taken in execution.
 13. Proceedings, when bail is taken in a justice action.
 14. Surrender, and commitment of principal in such case.
 15. Officer's duty and fees.
 16. Surrender in such case, after judgment.
 17. Surrender before judgment.
 18. Remedy of bail against principal.

SECTION 1. Bail shall always be taken, and the bail bond be returned and filed with the writ, in the manner mentioned in the one hundred and fourteenth chapter.

How bail shall be taken.

SECT. 2. If judgment be rendered against the principal in the action, in which the bail was taken, the clerk of the court or justice of the peace, issuing the execution on such judgment, shall, on the margin of the execution, insert the names of the persons who became bail, with the place of their abode, and their addition, provided, they are named in the bail bond; and, if the debtor was committed to jail, such clerk or justice shall note, in like manner, the jail, to which he was committed.

Names of bail to be entered on executions. 1821, 67, § 1. 4 Greenl. 10.

SECT. 3. The officer, holding said execution, whether the debtor had given bail to the arresting officer, or to the jailer, shall notify the bail personally, or by leaving a notice, in writing by him signed, at the usual place of abode of the bail, if living in his county, at least fifteen days before the expiration thereof, certifying, that he cannot find the principal debtor, nor property wherewith to satisfy the execution; for which service he shall be entitled to demand and receive, of the bail the usual fee for the service of a writ, and for travel from the dwelling house of the officer, to the dwelling house of the bail; and shall minute in said notice the amount of the fees; which the bail shall pay in twenty days, unless, one day at least, before the execution is returnable, the bail shall produce and deliver to the officer the principal debtor.

Officer to notify bail. Fees. 1821, 67, § 1. 7 Greenl. 80.

SECT. 4. If the bail shall not have committed the principal to

Surrender of

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

dence shall be drawn up in the form of a report, and signed by the presiding judge; and, if the motion shall be founded on any alleged cause, other than the rulings and instructions of the judge to the jury, the evidence, as to the facts stated in the motion, shall be heard, examined and reported by the judge, and, in either case, the action shall be continued, to be heard on the motion before the whole court.

The same chapter shall be further amended, by inserting, at the close of section, one hundred and four, the following words:

In which case, the first execution may be issued in not less than one year, and not more than two years from the time judgment was rendered.

Time of issuing execution, when defendant was out of the state and not notified.

R. S. ch. 117.

SECTION 20. The one hundred and seventeenth chapter shall be amended, in section fifteen, by striking out the words, "in case of goods and chattels," and inserting instead thereof, the following words: "is provided in the nineteenth section"; so that the said fifteenth section, as amended, will be as follows:

Shares in incorporated companies, if attached on the writ, may be sold on execution without further notice to the corporation.

R. S. ch. 120.

Survivorship of applications for review and actions of review. 1821, 59, § 27, 28.

R. S. ch. 123.

Supreme judicial court, on petition, may allow entry of an appeal or complaint which was omitted through mistake or accident. 1821, 57, § 6.

SECT. 15. If the property has been, and then is attached, the officer shall proceed in seizing and selling it on execution, in the same manner, as is provided in the nineteenth section.

SECTION 21. The one hundred and twentieth chapter shall be amended, by inserting, at the end of section, fifteen, the following words:

Applications for review of actions, and actions of review.

SECTION 22. The one hundred and twenty third chapter shall be amended, by inserting, at the end thereof, three new sections, as follows:

SECT. 11. When an appeal shall be claimed from the judgment of a district court, in any civil action, and, by reason of any mistake or accident, the appellant shall not duly enter his appeal, or the appellee shall not duly enter his complaint for affirmation of judgment, in the supreme judicial court, the court may, on the petition of the appellant or of the appellee, as the case may be, allow the appeal or the complaint to be entered at any other term of the court, held for the same county, upon such terms as they may deem just and reasonable; and, if the appeal or the complaint be so entered, the court shall proceed therein, as if it had been entered at the proper term.

District court may allow entry of an appeal or complaint, which was omitted through mistake or accident. 1821, 57, § 7.

SECT. 12. When an appeal shall be claimed from the judgment of a justice of the peace, or a municipal or police court, in any civil action, and, by reason of any mistake or accident, the appellant shall not duly enter his appeal, or the appellee shall not duly enter his complaint for affirmation of judgment in the district court, the court may, on the petition of the appellant, or of the appellee, as the case may be, allow the appeal or the complaint to be entered at any other term of the court, held for the same county, upon such terms as they may deem just and reasonable; and, if the appeal or the complaint be so entered, the court shall proceed therein, as if it had been entered at the proper term.

Petitions therefor limited to one year. Attachments and

SECT. 13. No petition for the entry of any such appeal or complaint shall be sustained, unless it be presented to the court, or filed in the clerk's office, within one year after the term at which the