

# 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.

## ERRATA.

PAGE 65, section 27, line 18, after "not," read "to."

92,	46,	1, for "She," read "The."
119,	5,	3, after "fife," for "a," read "or."
138,	62,	6, for "offier," read "officer."
405,	13,	1, for "28," read "13."
414,	3,	3, for "couaty," read "county."
440,	31,	4, in a few copies, for "on," read "or."
453,	28,	2, _____ for "necessay," read "necessary."
500,	23,	2, of the margin, for "dease," read "cease."
619,	24,	2, for "administrator of any contractors," read "administrators of any contractor."

## INDEX.

837, 2d column,	1, dele "MILITIA," so as to read OFFICERS of the state prison.
842, 2d	46, for "527," read "537."
851, 1st	62, for "610," read "616."
857, 2d	14, for "163," read "162."
867, 2d	49, for "568," read "508."
875, 1st	14, for "wrunq," read "rung."
880, 1st	54, for "775," read "475."

## CHAP. 145.

defendant may impeach the plaintiff's title deeds. 1840, 73.

any title deed, offered in evidence, may be impeached by the defendant, as obtained by fraud, where the grantor, if a party, could so impeach it; provided, the defendant has been in the open, peaceable and adverse possession of the premises for the term of twenty years.

## CHAPTER 146.

## OF LIMITATION OF PERSONAL ACTIONS.

- |   |  |
|---|--|
| <p>SECT. 1. Certain actions must be commenced within six years.</p> <p>2. Actions against sheriffs.</p> <p>3. Actions of assault and battery, and slander.</p> <p>4. Actions for escapes.</p> <p>5. Scire facias against bail.</p> <p>6. Actions against indorsers of writs.</p> <p>7. Exception of bank notes and witnessed notes.</p> <p>8. Exception of cases where a specific limitation is provided.</p> <p>9. Case of open and mutual account.</p> <p>10. Saving of rights of infants, and certain others.</p> <p>11. General limitation to twenty years.</p> <p>12. Saving, in certain cases of failure of suits.</p> <p>13. Provision, in case of the death of either party before the suit is commenced.</p> <p>14. Saving, of rights of alien enemies, during a war.</p> <p>15. Limitation of suits by individuals, for penalties.</p> <p>16. Limitation of suits by the state, or indictments on penal statutes.</p> <p>17. What is a commencement of an action.</p> | <p>SECT. 18. Limitation extended, in cases of fraud.</p> <p>19. Renewal of promise must be in writing.</p> <p>20. New promise by one, not to deprive another joint promiser of the benefit of the limitation.</p> <p>21. Judgment, when the action is barred as to one defendant, and not the others.</p> <p>22. Non joinder of defendants shall not abate a suit, if the action be barred against the one not sued.</p> <p>23. Effect of indorsements of partial payments.</p> <p>24. No promiser affected thereby, except those making the payments.</p> <p>25. Presumption of payment, after twenty years.</p> <p>26. Application of this chapter to set offs.</p> <p>27. This chapter not to affect promises heretofore made.</p> <p>28. Provision, if defendant be out of the state.</p> <p>29. Limitation of actions against executors and administrators.</p> |
|---|--|

Certain actions must be commenced within six years. 1821, 62, § 7. 17 Mass. 61. 9 Greenl. 74. 15 Maine, 167. 4 Pick. 78. 9 Pick. 488. 21 Pick. 404. 22 Pick. 450.

SECTION 1. The following actions shall be commenced, within six years next after the cause of action shall accrue, and not afterwards, namely:

*First.* All actions of debt, founded upon any contract or liability not under seal, except such, as are brought upon the judgment or decree of some court of record of the United States, or of this, or some other of the United States, or of some justice of the peace in this state;

*Second.* All actions upon judgments, rendered in any court, not being a court of record, except justices of the peace in this state;

*Third.* All actions for arrears of rent;

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

*Fifth.* All actions for waste and all actions of trespass on land,

and all actions of trespass, except those of trespass for assault, battery and false imprisonment;

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

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

SECT. 2. All actions against a sheriff, except for escape of prisoners committed on execution, for the negligence or misconduct of his deputies, shall be commenced within four years next after the cause of the action shall accrue.

Actions against sheriffs.  
1821, 62, § 16.  
16 Maine, 408.

SECT. 3. All actions of assault and battery and for false imprisonment, and all actions for slanderous words and for libels, shall be commenced within two years, next after the cause of action shall accrue.

Actions of assault and battery, and slander.  
1821, 62, § 7.  
Actions for escapes.  
1834, 91, § 2.

SECT. 4. All actions, for the escape of prisoners committed on execution, shall be actions on the case, and shall be commenced within one year after the cause of action shall accrue.

SECT. 5. No scire facias shall be served on bail, unless within one year next after judgment rendered against the principal.

Scire facias against bail.  
1821, 67, § 8.

SECT. 6. All actions against an indorser of a writ must be commenced within one year, next after judgment entered in the original action.

Actions against indorsers of writs.

SECT. 7. None of the foregoing provisions shall apply to any action brought upon a promissory note, which is signed in the presence of an attesting witness, nor to an action brought upon any bills, notes or other evidences of debt, issued by any bank.

Exception, of bank notes and witnessed notes.  
1821, 62, § 10.  
1838, 343.

7 Greenl. 25. 4 Pick. 382. 8 Pick. 246. 1 Metc. 21. 16 Maine, 470.

SECT. 8. Nor shall any of the provisions in this chapter be construed to apply to any case or suit, which by any particular statute is limited to be commenced within a different specified time, but such suits may be commenced within such time.

Exception, in cases where a specific limitation is provided.  
1821, 62, § 14.

SECT. 9. In all actions of debt or assumpsit, brought to recover the balance due upon a mutual and open account current, the cause of action shall be deemed, to have accrued at the time of the last item proved in such account.

Case of open and mutual account.  
2 Mass. 217.  
4 Greenl. 337.  
6 Pick. 362.

SECT. 10. If any person, entitled to bring any of the before mentioned actions, shall, at the time when the cause of action accrues, be within the age of twenty one years, a married woman, insane, imprisoned, or without the limits of the United States, such person may bring the actions within the times in this chapter respectively limited, after the disability shall be removed.

Saving, of rights of infants, and certain others.  
1821, 62, § 9.  
10 Mass. 29.  
14 Mass. 203.  
13 Maine, 397.  
11 Pick. 36.

SECT. 11. All personal actions on any contract, not limited by any of the foregoing sections, or any other law of the state, shall be brought, within twenty years after the accruing of the cause of action.

General limitation to twenty years.

SECT. 12. When a writ shall fail of a sufficient service or return by any unavoidable accident, or by the default or negligence of any officer, to whom it was delivered or directed; or when such writ shall be abated, or the action otherwise avoided and defeated, for any matter of form, or by the death of either party; or, if a judgment for the plaintiff shall be reversed on a writ of error; in such cases, the plaintiff may commence a new action, on the same demand, within six months after the abatement or determination of

Saving, in certain cases of failure of suits.  
1821, 62, § 11.  
8 Greenl. 447.  
1 Fairf. 399.  
2 Pick. 605.  
16 Pick. 383.

**CHAP. 146.** the original suit, or reversal of the judgment in the same; and, if the cause of action by law survives, his executor or administrator, in case of his death, may commence such new action, within said six months.

Provision, in case of the death of either party, before the suit is commenced.

1821, 62, § 12.  
15 Mass. 455.  
10 Pick. 112.  
17 Pick. 383.

Saving, of rights of alien enemies during a war.

Limitation of suits by individuals, for penalties.

1821, 62, § 14.  
5 Greenl. 490.  
22 Pick. 495.

Limitation of suits by the state, or indictments on penal statutes.

1821, 62, § 14.

What is a commencement of an action.

1821, 62, § 10.

Limitation extended, in cases of fraud.

3 Mass. 201.  
3 Greenl. 405.  
7 Greenl. 370.  
9 Greenl. 131.

Renewal of promise must be in writing.

14 Mass. 425.  
15 Maine, 360, 443.

13 Pick. 206.  
22 Pick. 291.

New promise by one, not to deprive another joint promiser of the benefit of the limitation.

16 Mass. 429.

Judgment, when the action is barred as to one defendant, and not the others.

7 Greenl. 26.  
15 Maine, 390.

**SECT. 13.** If any person, entitled to bring any of the actions before mentioned, or liable to any such action, shall die before the expiration of the time herein limited therefor, or within thirty days after the expiration of said term, and, if the cause of action survives by law, the action may be commenced by or against the executor or administrator of the deceased person, as the case may be, at any time within two years after administration, or letters testamentary granted, and not afterwards, if barred by this chapter.

**SECT. 14.** If any person shall be disabled to prosecute an action in this state, by reason of his being an alien, subject or citizen of any country at war with the United States, the time of continuance of such war shall not be deemed any part of the respective periods, herein limited for the commencement of any of the before mentioned actions.

**SECT. 15.** All actions and suits for any penalty or forfeiture on any penal statute, brought by any person, to whom the penalty or forfeiture is given in whole or in part, shall be commenced within one year next after the offence was committed, and not afterwards.

**SECT. 16.** If not so prosecuted by any individual, a prosecution by suit, indictment or information may be commenced therefor, in the name and for the use of the state, at any time within two years next after the offence was committed, and not afterwards.

**SECT. 17.** The time, when a writ is actually made, with an intention of service, shall be deemed the commencement of a suit in respect to the limitations of this chapter.

**SECT. 18.** If any person, liable to any of the actions mentioned in this chapter, shall fraudulently conceal the cause of such action from the knowledge of the person entitled thereto, or, if a fraud shall be committed, which entitles any person to an action, in either case, the action may be commenced at any time within six years after the person, entitled thereto, shall discover that he has just cause of action, but not afterwards.

**SECT. 19.** In actions of debt or upon the case, founded upon any contract, no acknowledgment or promise shall be allowed, as evidence of a new or continuing contract, whereby to take any case out of the operation of the provisions of this chapter, or to deprive any party of the benefit thereof, unless such acknowledgment or promise be an express one, and made or contained in some writing, signed by the party chargeable thereby.

**SECT. 20.** If there are two or more joint contractors, no such contractor, executor or administrator, shall lose the benefit of the provisions of this chapter, so as to be chargeable by reason only of any acknowledgment or promise, made or signed by any other or others of them.

**SECT. 21.** In actions, commenced against two or more joint contractors, if it shall appear on trial, or otherwise, that the plaintiff is barred by the provisions of this chapter, as to one or more of the defendants, but is entitled to recover against any other or others

## CHAP. 146.

of them, by virtue of a new acknowledgment or promise or otherwise, judgment shall be rendered for the plaintiff, as to any of the defendants against whom he has a right to recover, and for the other defendant or defendants against the plaintiff.

3 Pick. 291.

SECT. 22. If, in any action on contract, the defendant shall plead in abatement, that any other person ought to have been jointly sued, and issue be joined on that plea, and if it shall appear, on the trial, that the action was, by reason of the provisions of this chapter, barred against the person so named in the plea, the said issue shall be found for the plaintiff.

Non joinder of defendants shall not abate a suit, if the action be barred against the one not sued.

SECT. 23. Nothing, contained in the preceding four sections, shall alter, take away, or lessen the effect of payment of any principal or interest, made by any person; but no indorsement or memorandum of any such payment, written or made on any promissory note, bill of exchange, or other writing, by or on behalf of the party, to whom such payment shall be made, or purport to be made, shall be deemed sufficient proof of payment, so as to take the case out of the operation of the provisions of this chapter.

Effect of indorsements of partial payments.

SECT. 24. If there are two or more joint contractors, or joint executors or administrator of any contractors, no one of them shall lose the benefit of the provisions of this chapter, so as to be chargeable by reason only of any payment, made by any other or others of them.

No promiser affected thereby, except those making the payments.

SECT. 25. Every judgment and decree of any court of record of the United States, or of this or any other state, or of a justice of the peace in this state, shall be presumed to be paid and satisfied, at the expiration of twenty years after any duty or obligation accrued by virtue of such judgment or decree, to do or perform the matter or thing, therein required.

Presumption of payment after twenty years. 22 Pick. 533.

SECT. 26. All the provisions of this chapter shall apply to the case of debt or contract, alleged or filed by way of set off, on the part of the defendant; and the time of such limitation of such debt or contract shall be computed in like manner, as if an action had been commenced therefor, at the time when the plaintiff's action was commenced, unless the defendant be deprived of the benefit of the set off, by the nonsuit or other act of the plaintiff; and, when the party so filing the set off, is thus defeated of a judgment on the merits of such debt or contract, he may commence a new action thereon within the time limited, as provided in the twelfth section of this chapter, for bringing a new action for the reasons therein mentioned.

Application of this chapter to set offs. 1821, 62, § 13. 18 Pick. 521.

SECT. 27. None of the provisions of this chapter, respecting the acknowledgment of a debt, or a new promise to pay it, shall apply to any such acknowledgment or promise, made before this chapter shall take effect as law; but every such last mentioned acknowledgment or promise, though not in writing, shall have the same effect, as if no provision, relating thereto, had been made, as contained in this chapter.

This chapter not to affect promises, heretofore made.

SECT. 28. If, at the time when any cause of action, mentioned in this chapter, shall accrue against any person, he shall be out of the state, the action may be commenced within the time herein limited therefor, after such person shall come into the state, and if,

Provision, if defendant be out of the state. 1821, 62, § 9. 10 Mass. 29. 16 Pick. 359. 18 Pick. 532.

**CHAP. 146.** after any cause of action shall have accrued, the person against whom it shall have accrued, shall be absent from, and reside without the state, the time of his absence shall not be taken, as any part of the time limited for the commencement of the action.

Limitation of actions against executors and administrators.  
 13 Mass. 201.  
 15 Mass. 6.  
 16 Mass. 429.  
 1 Greenl. 156.  
 3 Greenl. 17.  
 5 Greenl. 108.  
 14 Maine, 254, 320.  
 4 Pick. 283.  
 5 Pick. 140, 321.  
 6 Pick. 276.  
 8 Pick. 108, 394.

**SECT. 29.** No executor or administrator, after having given bond and notice of his appointment, as provided in chapter, one hundred and twenty, shall be held to answer to the suit of any creditor of the deceased, unless it shall be commenced within four years from the time of his giving bond, as aforesaid; excepting in the cases mentioned in said one hundred and twentieth chapter, where the provisions are distinctly stated.

## CHAPTER 147.

### OF LIMITATIONS OF REAL ACTIONS AND OF RIGHTS OF ENTRY.

- |  |  |
|--|--|
| <p><b>SECT. 1.</b> Rights of entry and of action, barred in twenty years.</p> <p>2. From what time computation is to be made.</p> <p>3, 4, 5. When such right shall be deemed to have accrued.</p> <p>6. When action may be brought by a minister or other sole corporation.</p> <p>7. Saving, in favor of infants, and certain other disabled persons.</p> <p>8. Further saving, if the person, first entitled, die during such disability.</p> <p>9. Consequence, if tenant in tail, or remainder man die before the expiration of the limitation.</p> | <p><b>SECT. 10.</b> Time, when the foregoing limitations shall take effect. Saving, as to minors, and certain others.</p> <p>11. What shall constitute such a disseizin as to bar the right of recovery.</p> <p>12. Limitation of actions by the state.</p> <p>13. Limitations not to take effect, in certain cases, where first suit fails.</p> <p>14. Right of way, or other easement, when acquired by adverse user.</p> <p>15. Notice, to prevent such acquisition.</p> <p>16. Such notice, how given.</p> |
|--|--|

Rights of entry and of action, barred in twenty years.  
 1821, G2, § 3.  
 10 Pick. 297.

**SECTION 1.** No person shall commence any real or mixed action for the recovery of lands, or make an entry thereon, unless within twenty years after the right to make such entry, or bring such action, first accrued; or within twenty years after he, or those, under or from whom he claims, shall have been seized or possessed of the premises; except as hereinafter provided.

From what time computation is to be made.  
 14 Maine, 163.

**SECT. 2.** If such right or title first accrued to an ancestor or predecessor of the person, who brings the action or makes the entry, or to any other person from, by or under whom he claims, the said twenty years shall be computed from the time, when the right or title so first accrued to such ancestor, predecessor or other person.

When such right shall be deemed to have accrued.

**SECT. 3.** In the construction of this chapter, the right of entry, or of action to recover land, shall be deemed to have first accrued at the respective times hereinafter mentioned:

*First.* When a person shall be disseized, his right of entry shall be deemed to have accrued at the time of such disseizin;

*Second.* When he claims, as heir or devisee of one who died seized, his right shall be deemed to have accrued at the time of such death, unless there is a tenancy by the curtesy or other estate, intervening after the death of such ancestor or devisor; in which