

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED APRIL 17, 1857;

TO WHICH ARE PREFIXED
THE CONSTITUTIONS

OF THE
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN
APPENDIX.

PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

BANGOR:
WHEELER & LYNDEN.

1857.

CHAPTER 82:**PROCEEDINGS IN CIVIL ACTIONS IN COURT.**

- Sbc. 1. Actions to be entered first day. Further service may be ordered.
2. When default may be recorded; when taken off.
3. Defendant out of state, proceedings.
4. Execution stayed one year, unless bond is given; review.
5. Bond left with clerk; may petition for a review.
6. Court may permit an action on a claim against an insolvent estate.
7. May allow appeals and complaints to be entered after first term.
8. On petition within one year; attachment or bail not revived.
9. On appeals, original papers to be sent up, except writ and pleadings.
10. Proceedings not abated, arrested, or reversed for want of form.
11. Writ or process lost, leave granted to file a new one.
12. Defendants may be struck out or new ones inserted, on payment of costs.
13. Distinction between trespass and trespass on the case, abolished.
14. Treasurers may sue on contracts in their own names.
15. Penalties recoverable by action of debt.
16. Assignee of a grantee may sue on covenants of first grantor.
17. Several breaches may be assigned and general performance pleaded.
18. General issue may be pleaded, and brief statements filed. Specifications of defence to be filed fourteen days before second term. Proceedings.
19. Demurrers, when filed, to be joined and not to be withdrawn; amendments after decision on them. If demurrer is overruled, defendant may plead anew, on payment of costs, unless judged frivolous. When judgment shall be entered on the demurrer.
20. Involuntary trespasses, tender may be made, or money brought into court.
21. Offer to be defaulted and its effect.
22. Tender may be made before entry of action. Towns may tender or offer default in actions for injuries.
23. Property of a deceased debtor on joint contract, liable.
24. Libel, actions for, truth a justification; exception.
25. Counts, misjoinder, and wrong joinder not cause for reversal.
26. Motions in arrest of judgment not to be entertained in civil actions.
27. Damages to be assessed by a jury on certain bonds and contracts.
28. Interest on judgments allowed.
29. Judge not disqualified by residence in a town interested when there is a waiver.
30. Death of a party, administrator may appear or be summoned, heirs also in equity.
31. Husband may appear in action brought by an unmarried woman.
32. Insane parties, guardians may be appointed ad litem.
33. Motions to set aside verdicts, proceedings on them. Costs.
34. Willful trespasses, proceedings respecting them.
35. Damages on protest of bills.
36. Ten hours of actual labor a legal day's work; exceptions.
37. Subsequent attaching creditors may petition to defend prior suits.
38. Subsequent attaching creditors admitted, on leave, and bond filed.
39. Judgment how entered, if defence fails.
40. Judgment how entered, if defence prevails.
41. Judgment at first term, may be petition for review; proceedings.
42. Attachments made to delay or defraud creditors, void.
43. Action by a public officer not abated by his ceasing to be in office.
44. Action not maintainable on demands discharged by payment of part.
45. Bankrupt may maintain action in his own name, unless abated.

SET-OFF.

46. Set-off; defendant files first day of term; clerk enters date and notice on docket.

CHAP. 82.

SEC. 47. Set-off, kind of demands.

48. Set-off must be between all of plaintiffs and all of defendants.

49. Set-off of demand assigned, when made.

50. Set-off of demand subsequently acquired, not to be made.

51. Set-off of demand in suits in name of one for benefit of another.

52. Set-off of sums equitably due only.

53. Set-off of demands due from one deceased.

54. Set-off in actions brought in a representative capacity.

55. Set-off, pleadings and issue how made.

56. Set-off actions not discontinued, statute of limitations.

57. Set-off no balance against a plaintiff suing on a demand assigned.

58. Set-off proceedings before inferior tribunals.

AUDITORS.

59. Auditors appointed in certain cases, parties notified, witnesses attend.

60. Auditors all hear, majority report, may be discharged, report recommitted.

61. Auditors report evidence, may be disproved.

62. Auditors, neglect to appear before them in actions of account, effect.

JURIES.

63. Juries how impaneled and sworn.

64. Juries, supernumeraries, transfers, excuses.

65. Juries, form of their oath.

66. Juries, their foreman how chosen.

67. Juries, talesmen for, when and how returned.

68. Juries, new may be summoned during term time.

69. Juries, challenges how tried.

70. Juries may find special or general verdicts for cases of law.

71. Juries when not agreed, proceedings.

72. Juries not disqualified by residence.

73. Juries, objections known and not stated before trial.

74. Juries, their verdicts not affected by irregularities not injurious

75. Juries, verdict set aside for improper practices with them.

WITNESSES AND EVIDENCE.

76. Witnesses may be summoned by clerks and justices of the peace.

77. Witnesses, religious belief affects credibility only.

78. Witnesses, parties to suits and others interested may be.

79. Witnesses, except where cause of action implies an offence.

80. Witnesses, attestations not affected.

81. Witnesses, testimony of a party out of the state, how taken.

82. Witnesses, testimony of a party may be contradicted.

83. Witnesses, provisions not applicable to suits in representative character.

84. Witnesses, same rules respecting them in all tribunals.

85. Witnesses, duly summoned and neglecting to appear; attachment.

86. Witnesses, refusing to answer, may be fined.

87. Witnesses, oaths how administered to them.

88. Witnesses, scrupulous of oath, affirm.

89. Witnesses, incompetency on conviction of crime.

90. Witnesses, fees for travel and attendance first paid or tendered.

91. Records of other courts evidence.

92. Printed copy of statutes evidence.

93. Foreign and unwritten law, how proved.

Costs.

94. Party prevailing, recovers costs.

95. Costs when plaintiff appeals from judgment in his favor.

96. Costs in actions of replevin regulated.

97. Costs in actions that should have been brought before a justice.

98. Costs when damages reduced by set-off.

99. Costs of evidence not doubled or trebled.

- SEC. 100. Costs discretionary, on petitions for review and the like.
 101. Costs of first suit paid before second suit for same cause.
 102. Costs, a person liable for, who sues in name of the state.
 103. Costs, state liable for, in a civil suit.
 104. Costs not taxable for travel of attorney for the state.
 105. Assignee's name and residence to be indorsed on writ in name of assignor.
 106. Assignee, if not known, liable for costs.
 107. Costs in one action only, when more that should have been joined.
 108. Costs not allowed in actions on judgments, on which executions might have issued.
 109. Costs for travel in actions by corporations, how computed.
 110. Costs, power of the court over not affected.
 111. Costs of a bankrupt limited.

EXECUTION.

112. Execution, when issued and returnable.
 113. Execution not to be issued after one year; exception.
 114. Execution may be renewed within three years.
 115. Execution, if cannot be renewed, scire facias may issue.
 116. Execution framed to collect interest on judgments.
 117. Execution lost or destroyed, new may be issued.

SEC. 1. No action can be entered after the first day of the session of the supreme judicial court without special permission. When it appears that the defendant has not had sufficient notice, the court may order such further notice as it deems proper.

Actions entered first day, &c.
 R. S., c. 115, § 1, 2.

SEC. 2. When a legal service of the writ has been made, and the defendant does not appear by himself or attorney within the three first days of the term, his default may be recorded, and the charge in the declaration taken to be true. If the defendant, before the jury are dismissed for the term, enters his appearance and pays to the plaintiff such costs as the court orders, the default shall be taken off. The court may permit it to be taken off for sufficient cause.

When default may be recorded; when taken off.
 14 Maine, 20.
 21 Maine, 38.
 R. S., c. 115, § 2.
 R. S., c. 151, § 13.

SEC. 3. When the defendant was an inhabitant of the state and absent from it at the time of service, and it does not appear that he has returned, or has actual notice of the suit, the court may continue the action, not exceeding twice unless for special cause, or enter judgment on default. If the defendant was not an inhabitant of the state or within it, and had actual notice of the suit, the court may order a continuance if he does not appear at the first term.

Defendant out of state, &c.
 R. S., c. 115, § 3, 4.

SEC. 4. When judgment is rendered on default of an absent defendant in a personal action as provided in the preceding section, execution cannot be issued thereon within one year thereafter, unless the plaintiff first gives bond to the defendant, with one or more sureties, in double the amount of damages and costs, conditioned to repay the amount to the defendant, if the judgment is reversed on review, to which he is entitled of right, brought within one year, or so much of the amount recovered as is recovered back on such review.

Execution stayed one year, unless bond is given, &c.
 R. S., c. 115, § 5, 7.

SEC. 5. The bond shall be deposited with the clerk, who shall decide upon the sufficiency of the sureties, subject to an appeal to a justice of the court, and if the review is not so prosecuted, the defendant may, within one year after he first has notice of

Bond left with clerk, if review not prosecuted, &c.
 R. S., c. 115, § 6, 8.

CHAP. 82.

Court may permit an action on a claim, &c.
R. S., c. 123, § 9.

May allow an appealed action, &c.
R. S., c. 123, § 12.

Petition for it within one year, attachment or bail not revived.
R. S., c. 123, § 13.

On appeals, original papers to be sent up, except writ and pleadings.
R. S., c. 151, § 24.

Proceedings not abated, &c.
6 Greenl. 307.
16 Maine, 263, 266, 282.
22 Maine, 311.
R. S., c. 115, § 9, 10.

Writ of process lost, new one may be filed, &c.
1848, c. 57, § 1.

Defendants may be struck out on payment of costs, &c.
37 Maine, 563.
R. S., c. 115, § 11, 12.

Trespass and trespass on the case.
R. S., c. 115, § 13.

the judgment, petition the court for a review, and the court may grant it on such terms as it deems reasonable.

SEC. 6. When a person, whose claim on an insolvent estate has been wholly or partially disallowed, has, by accident or mistake, omitted to give notice within the time allowed of his intention to have it determined at law, the court, on application within two years after the return of the commissioners, may, after notice to the executor or administrator of the estate, give him leave to institute a suit upon it at the next term of the court, but not after four years from the time when administration was granted; and no distribution can be disturbed by a recovery in such an action.

SEC. 7. When an appeal is taken from a judgment of a justice of the peace or municipal or police court, and the action by mistake or accident is not duly entered, and the judgment has not been affirmed, the court may, on petition of either party, allow the action or complaint to be entered at another term of the court, upon such terms as are deemed reasonable, and if entered the court shall proceed thereon as if entered at the proper term.

SEC. 8. Such petition must be presented to the court, or filed in the clerk's office within one year after the term at which the action ought to have been entered; and no attachment or bail shall be revived or continued by such proceedings.

SEC. 9. In cases carried from a justice of the peace, municipal or police court, to a higher court, depositions and original papers, except the process by which the suit was commenced, the return of service thereon, and the pleadings, shall be certified by the proper officer, and carried up without leaving copies, unless otherwise ordered by the court having original cognizance.

SEC. 10. No process or proceeding in courts of justice shall be abated, arrested, or reversed, for want of form only, or for circumstantial errors or mistakes which by law are amendable, when the person and case can be rightly understood. Such errors and defects may be amended, on motion of either party, on such terms as the court orders.

SEC. 11. When in an action pending, the loss or destruction of a writ or process after service is proved by affidavit or otherwise, the court may allow a new one to be filed, corresponding thereto as nearly as may be, to have the same effect as the one lost or destroyed.

SEC. 12. When there are two or more defendants, the writ may be amended by striking out one or more of them, on payment of costs to him to that time. A writ founded on contract, express or implied, may be amended by inserting additional defendants; and the court may order service to be made on them, and their property to be attached as in case of original writs; and on return of service duly made, they shall be deemed parties to the suit, but not liable to costs before such service.

SEC. 13. The distinction between actions of trespass and trespass on the case is abolished. A declaration in either form is good.

SEC. 14. The treasurers of state, counties, towns, and corporations, may maintain suits in their own names as treasurers on contracts given to them or their predecessors, and prosecute suits pending in the name of their predecessors.

SEC. 15. Penalties may be recovered by an action of debt, when no other form or mode of recovery is provided by the statute imposing them.

SEC. 16. The assignee of a grantee, or his executor or administrator, after eviction by an older and better title, may maintain an action on a covenant of seizin or freedom from incumbrance contained in absolute deeds of the premises between the parties, and recover such damages as the first grantee might upon eviction, upon filing, at the first term, in court for the use of his grantor, a release of the covenants of his deed and of all causes of action thereon. The prior grautee shall not, in such case, have power to release the covenants of the first grantor to the prejudice of his grantee.

SEC. 17. In actions on contract in a penal sum for performance of covenants or agreements, and in actions of covenant, several breaches may be assigned, and in defence, performance generally, both in affirmative and negative covenants, may be alleged.

SEC. 18. The general issue may be pleaded in all cases, and a brief statement of special matter of defence filed, or a special plea, or on leave double pleas in bar, may be filed. The plaintiff must join a general issue, and may file a counter brief statement; and in all civil actions if the defendant appears, he shall, at least fourteen days before the next term after his appearance, file with the clerk a brief specification of the grounds of his defence, with a declaration, signed by him or his attorney, that he believes there is a good defence to all or a part of the plaintiff's claim, and that he intends to make it. The clerk shall mark for trial on the docket only cases in which specifications are so filed; and the court shall dispose of all other cases as justice requires; and may allow specifications to be amended, or to be filed, and the actions entered on the trial docket after the time aforesaid. When no issue is joined, or no actual trial had in any mode in actions so entered on the trial docket, and judgment is rendered for the plaintiff, the defendant shall pay treble costs, unless the judge certifies or enters on record that the defendant had reasonable grounds for filing his specifications, and that they were not filed for delay. The plaintiff may demur to such specifications, and the demurrer shall be disposed of as in other cases.

SEC. 19. A general demurrer to the declaration may be filed; and in any stage of the pleadings either party may demur, and the demurrer must be joined, and it shall not be withdrawn without leave of the court, and of the opposite party; but the judge shall rule on it, and his ruling shall be final unless the party aggrieved excepts to it; and if the law court deems such exceptions frivolous, it shall award treble costs against the party excepting from the time the exceptions were filed. If the declaration is adjudged defective and is amendable, the plain-

CHAP. 82.

Treasurers may sue in their own names, &c.
R. S., c. 115, § 14.
Penalties recoverable by action of debt.
R. S., c. 115, § 21.

When assignee of a grantee may sue, &c.
R. S., c. 115, § 16, 17.

Several breaches may be assigned, &c.
R. S., c. 115, § 15.

General issue may be pleaded, brief statements filed. Specifications of defence to be filed fourteen days before second term.
Proceedings.
10 Maine, 250.
11 Maine, 157, 213.
13 Maine, 36.
16 Maine, 84, 422.
29 Maine, 471.
R. S., c. 115, § 18.
1857, c. 55, § 4.

Demurrers, when filed, to be joined, and not to be withdrawn; if overruled defendant may plead again, on payment of costs, unless judged frivolous; when judgment is to be entered.

CHAP. 82.

R. S., c. 115,
§ 20.
1856, c. 211, § 1.
1857, c. 55, § 3.

tiff may amend upon payment of costs from the time when the demurrer was filed. If the demurrer is filed at the first term and overruled, the defendant may plead anew on payment of costs from the time when it was filed, unless it is adjudged frivolous and intended for delay, in which case judgment shall be entered. At the next term of the court in the county where the action is pending, after a decision on the demurrer has been certified by the clerk of the district to the clerk of such county, and not before, judgment shall be entered on the demurrer, unless the costs are paid, and the amendment or new pleadings filed on the second day of the term.

Tender may be made or money brought into court, &c.
36 Maine, 407.
1841, c. 1, § 19.

SEC. 20. In actions of trespass on lands, the defendant may file a brief statement disclaiming all title to the land described, and alleging that the trespass was involuntary, or by negligence or mistake, or in the prosecution of a legal right, and that before action brought he tendered sufficient amends therefor, or that he brings money into court to satisfy the damages with costs to that time; and if on trial he establishes the truth of his allegations, he shall recover costs.

Offer to be defaulted and its effect.

20 Maine, 37,
312.
21 Maine, 529.
30 Maine, 458.
33 Maine, 216.
31 Maine, 409.
39 Maine, 71,
474.
R. S., c. 115,
§ 22.
1847, c. 31,
§ 1, 2.

SEC. 21. In an action founded on judgment or contract, the defendant may, in writing entered of record with its date, offer to be defaulted for a specified sum. If not accepted within such time as the court orders, it shall not be offered in evidence or have any effect upon the rights of the parties, or the judgment to be rendered, except the costs. If the plaintiff fails to recover a sum as due at the time of the offer greater than the sum offered, he recovers for costs such only as accrued before the offer, and the defendant recovers costs accrued since that time; and his judgment for costs may be set off against the plaintiff's judgment for debt and costs.

Tender may be made before entry of action. Towns may tender, &c.
1841, c. 1, § 19.

SEC. 22. A tender, with the costs then accrued, may be made after action brought and before its entry, to the plaintiff or his attorney, with the same effect as if made before action brought. In actions against towns founded on the sixty-first section of chapter eighteen, a town may make a tender before the commencement or entry of the action, or offer to be defaulted for a specified sum, with the same effect as in actions on contract.

Property of a deceased debtor or on joint contract liable for payment.
R. S., c. 115,
§ 23.

SEC. 23. The goods and estate of a deceased debtor in a joint contract, express or implied, or in a judgment on contract, are as liable, and the creditor has his remedy, as in case of a joint and several contract.

In actions for a libel the truth a justification; exception.
30 Maine, 466.
R. S., c. 115,
§ 19.

SEC. 24. In a suit for writing and publishing a libel, evidence shall be received to establish the truth of the matter charged as libellous. If the truth of it is established, it shall be a justification, unless the publication is found to have originated in corrupt or malicious motives.

Joinder of good and bad counts, &c.
R. S., c. 115,
§ 84.

SEC. 25. When in a civil action, the declaration contains a good count and bad ones, or a wrong joinder of counts, and no written objection is made till after the cause is committed to the jury, and a general verdict has been recorded, the judgment cannot for such cause be reversed on writ of error.

SEC. 26. No motion in arrest of judgment in a civil action can be entertained.

SEC. 27. In actions on bond or contract in a penal sum, for the performance of covenants or agreements, or on a recognition to prosecute an appeal, when a jury finds the condition broken, they shall estimate the plaintiff's damages, and judgment shall be entered for the penal sum, and execution shall issue for such damages and costs. (a)

SEC. 28. Interest is to be allowed on amount found due for damages and costs, in actions on judgments of a court of record.

SEC. 29. A judge shall sit in the trial or disposition of an action, in which the county or town where he resides is a party or interested, if the party adverse to such county or town enters on the docket a waiver of all objections.

SEC. 30. When a party in a pending suit dies, and his death is suggested on the record, and the cause of action survives, his executor or administrator may become a party, or at the request of the other party, be summoned to appear and become a party. Service of the summons shall be made on him fourteen days before the term to which it is returnable. If he neglects to appear, judgment may be entered by nonsuit or default according to the provisions of chapter eighty-seven. If the suit is in equity, his executor, administrator, or heirs at law, may in like manner appear or be summoned without a bill of revivor.

SEC. 31. When an unmarried woman, a party to a pending suit, is married, her husband, on his request, may be admitted as a party as if originally joined in the suit.

SEC. 32. When a party to a suit becomes insane, it may be prosecuted or defended by his guardian, who, on application of his friend, or of the other party, may be appointed for that purpose by a justice of the court in term time or in vacation. He shall be entitled to a reasonable compensation, and not be liable for costs.

SEC. 33. When a motion is made in the supreme judicial court to have a verdict set aside as being against law or evidence, a report of the whole evidence, drawn up, shall be signed by the presiding judge. When the motion is founded on any alleged cause not shown by the evidence reported, the testimony, respecting the allegations of the motion, shall be heard, and reported by the judge, and the case is then to be marked law. When the court of law is of opinion that the motion was for frivolous causes, or intended for delay, it may award double or treble costs.

SEC. 34. In actions of trespass on property, the court and jury, or magistrate, shall determine whether it was committed willfully; if so found, a record thereof shall be made, and a memorandum of it on the margin of the execution.

SEC. 35. Damages on protest of bills of exchange of a hundred dollars or more payable by the acceptor, drawer, or indorser of one in this state, are, if payable at a place seventy-five

CHAP. 82.

Motions in arrest, &c.
R. S., c. 115, § 80.

In bonds &c., jury to assess damages.
R. S., c. 115, § 78.
1842, c. 31, § 9.

Interest on judgments allowed.
R. S., c. 115, § 79.

Judge not disqualified by residence, &c.
1853, c. 2.

Death of a party being suggested, his executor or administrator may appear, &c.
R. S., c. 115, § 81.
1850, c. 155.

Husband become party to a suit by an unmarried woman.
R. S., c. 115, § 82.

Guardians ad litem may be appointed to insane parties.
R. S., c. 115, § 80.
1849, c. 104, § 1, 2.

Motions to set aside verdicts, proceedings, costs.
R. S., c. 115, § 101.
1852, c. 246, § 8.

Willful trespasses, proceedings, &c.
R. S., c. 115, § 109.

Damages on protest of bills.
R. S., c. 115, § 110, 111.

(a) 21 Maine, 206; 22 Maine, 483, 486; 24 Maine, 163; 39 Maine, 413.

CHAP. 82. miles distant, one per cent.; if payable in the state of New York or in any state northerly of it, and not in this state, three per cent.; if payable in any Atlantic state or territory southerly of New York and northerly of Florida, six per cent.; and in any other state or territory, nine per cent.

Ten hours labor a legal day's work; exceptions. 1848, c. 83, § 1.

Subsequent attaching creditor may petition, &c. R. S., c. 115, § 113, 114.

If leave is granted he gives bond and is admitted to defend. R. S., c. 115, § 115, 116.

Judgment to be entered when defence fails. R. S., c. 115, § 117.

How entered when defence prevails. 12 Maine, 502. R. S., c. 115, § 118.

When judgment in such prior suit at the first term, &c. 1856, c. 262, § 1, 2, 3.

A first attachment made to delay or defraud creditors is void. R. S., c. 115, § 119.

Action by a public officer not abated, &c. R. S., c. 115, § 120.

No action on demands discharged by a partial payment. 1851, c. 213.

SEC. 36. In all contracts for labor ten hours of actual labor shall be a legal day's work, unless the contract stipulates for a longer time; but this rule does not apply to monthly labor or to agricultural employments.

SEC. 37. When property has been attached, a plaintiff, who has caused it to be attached in a subsequent suit, may, by himself or attorney, petition the court for leave to defend the prior suit, and set forth therein the facts, as he believes them to be, under oath; and the court may grant or refuse such leave.

SEC. 38. If leave is granted, he shall give bond, or enter into recognizance with sufficient surety, in such sum as the court orders, to pay the plaintiff in the prior suit all damages and costs occasioned by such defence; and an entry of record shall be made that he is admitted to defend such suit.

SEC. 39. When the petitioner enters into recognizance, and fails in his defence, execution on his recognizance shall be issued against him for the damages found by the court, and costs; and judgment rendered between the original parties as if no such defence had been made.

SEC. 40. When the petitioner prevails, judgment shall be rendered against the plaintiff and in favor of the petitioner, and execution issued thereon for his costs; and costs may or may not be awarded to the original defendant.

SEC. 41. When judgment in such prior suit has been rendered, since April 9, 1856, at the first term of the court, the plaintiff in such subsequent suit, within one year thereafter, first giving bonds to each party as provided in section thirty-eight, may petition as provided in section thirty-seven for leave to sue out a writ of review of such action; and such leave may or may not be granted. If granted, and on final judgment the sum originally recovered is reduced, judgment shall be entered and execution issued for the difference, not exceeding the amount due from the original defendant to the petitioner, with costs for his sole use; and it shall operate as a payment of his debt to the amount of damages recovered.

SEC. 42. When it appears by the verdict, or otherwise, that such prior attachment was made with intent to delay or defraud creditors, or that there was collusion between the plaintiff and defendant for that purpose, such attachment shall be void.

SEC. 43. No action, commenced in his official capacity by a public officer, is abated by his ceasing to hold the office; it may be prosecuted by his successors to the same uses; and the necessary amendments may be made and notices given.

SEC. 44. No action shall be maintained on a demand settled by a creditor, or his attorney entrusted to collect it, in full discharge of it by the receipt of money or other valuable consideration, however small.

SEC. 45. A person, who has been declared a bankrupt, may maintain an action respecting his former property in his own name, unless objection is made by plea in abatement, if before final judgment the assent of his assignee is filed in the office of the clerk of the court in which the action is pending.

CHAP. 82.

A bankrupt may sue in his own name, unless suit is abated.
1855, c. 170.

SET-OFF.

SEC. 46. Demands between plaintiffs and defendants may be set off against each other as follows:

Defendant must file set-off on first day of term, &c.

The defendant, on the first day of the term to which the writ is returnable, must file a brief statement of his demand in substance as certain as in a declaration, which, by leave of court, may be amended. The clerk shall enter on it and on the docket the date, and on the docket under the action, notice of its filing, before the new entries are called. (a)

R. S., c. 115, § 24, 25, 26, 32, 1847, c. 20.

SEC. 47. A demand originally payable to the defendant in his own right, founded on a judgment or contract, express or implied, for the price of real or personal estate sold, for money paid or had and received, for services done, for a liquidated sum, or for one ascertainable by calculation, may be set off.

Demands that may be set off.
24 Maine, 36.
39 Maine, 420, 445.
R. S., c. 115, § 27, 28, 29.

SEC. 48. The demand must be due from all the plaintiffs to all the defendants jointly. When there is a dormant partner, claims due from the ostensible one may be set off as if there was no dormant partner.

Must be due from all plaintiffs, &c.
15 Maine, 268.
R. S., c. 115, § 33, 34.

SEC. 49. When a plaintiff has received notice that a demand against him has been assigned to the defendant, and has agreed to pay it to him, or to receive it as payment towards his demand, before his suit was commenced, it may be set off.

Demand assigned, &c.
R. S., c. 115, § 30.

SEC. 50. When a defendant had notice of the assignment of a demand, he cannot have any demand set off that accrued or was acquired after such notice.

After notice of assignment.
R. S., c. 115, § 35.

SEC. 51. When an action is brought by one person for the use of another, a demand against the latter may be set off.

In suits by one for another, &c.
R. S., c. 115, § 36.

SEC. 52. When the demand to be set off is a bond or contract with a penalty, the sum equitably due only can be set off.

Sum equitably due, set off.
R. S., c. 115, § 31.

SEC. 53. Demands against a person belonging to a defendant at the time of the death of such person, may be set off against claims prosecuted by his executor or administrator; and if a balance is found due to defendant, judgment shall be in like form and of like effect as if he had commenced a suit therefor; but if the estate is insolvent, it must be presented to the commissioners or added to the list of claims, as other judgments are.

Demands due from a deceased person, how to be set off.
R. S., c. 115, § 37, 38, 39.

SEC. 54. In actions against executors, administrators, trustees, or others in a representative character, they may set off such demands as those whom they represent might have set off in actions against them; but no demands, due to or from them in their own right, can be set off in such actions.

In actions against persons in a representative character, &c.
R. S., c. 115, § 40, 41.

SEC. 55. The trial may proceed in cases of set-off on issue joined without a plea of set-off; and if an issue is not otherwise

Pleadings and issue.

(a) 6 Greenl., 240; 15 Maine, 268; 20 Maine, 121; 31 Maine, 131; 32 Maine, 283; 35 Maine, 78; 38 Maine, 114.

CHAP. 82.

37 Maine, 72.
R. S., c. 115,
§ 42, 43.

Actions cannot
be discontin-
ued without
consent, &c.
31 Maine, 158.
R. S., c. 115,
§ 44, 48.

No judgment
for a balance
against a
plaintiff, &c.
30 Maine, 27.
R. S., c. 115,
§ 45, 46.

Similar pro-
ceedings
before inferior
tribunals.
R. S., c. 115,
§ 47.

Auditors may
be appointed
in certain
cases.
Parties noti-
fied; witnesses
attend.
R. S., c. 115,
§ 49, 50, 52.

All hear, a
majority may
report; they
may be dis-
charged;
report recom-
mitted.
R. S., c. 115,
§ 51, 53, 55.

Report, evi-
dence, &c.
R. S., c. 115,
§ 54.

If defendant in
an action of
account neg-
lects, &c.
R. S., c. 115,
§ 57.

Jurors, how
impaneled
and sworn.
R. S., c. 115,
§ 58.

formed, the defendant may, except in actions of assumpsit, plead that he does not owe the sum demanded; and the plaintiff will be entitled to every defence, that he might have, by any form of pleading, to an action against him on the same demand.

SEC. 56. When a demand is filed in set-off, the action cannot be discontinued without consent of the defendant. The statute of limitations is applicable to demands filed in set-off, as if actions were commenced on them at the date of the plaintiff's action.

SEC. 57. When no balance is found due to either party, no costs are recoverable. The party recovering a balance recovers costs. No judgment for debt can be entered against a plaintiff, when the demand sued was assigned to him before the suit was commenced, or for a balance due from another person.

SEC. 58. Similar proceedings in set-off may take place before municipal and police courts and justices of the peace, the demand in set-off being filed on the return day of the writ; but judgment cannot be rendered for a defendant for more than twenty dollars, exclusive of costs.

AUDITORS.

SEC. 59. When an investigation of accounts, or an examination of vouchers is required, the court may appoint one or more auditors to hear the parties and their testimony, state the accounts, and make a report to the court. They shall notify the parties of the time and place of hearing, and have power to adjourn. Witnesses may be summoned and compelled to attend, and may be sworn by the auditor.

SEC. 60. When there is more than one auditor, all must hear, but a majority may report, stating whether all did hear. Their report may be recommitted. They may be discharged and others appointed. They shall be allowed a reasonable compensation, fixed by the court, paid by the plaintiff, and taxed in the costs if he prevails.

SEC. 61. Their report may be used as evidence by either party, and it may be disproved by other evidence.

SEC. 62. When in an action of account, judgment has been entered that the defendant do account, and he shall unreasonably neglect to appear, or appearing, to render an account before auditors appointed to take it, they shall certify the fact, and the court may enter a default and judgment thereon, or cause the damages to be assessed by a jury.

JURIES.

SEC. 63. When venires for jurors are returned to court, the clerk shall prepare, at the commencement of each term of the court, separate alphabetical lists of the names of the several persons returned as traverse jurors; and the court, in impanelling the traverse jurors, shall cause the names of the first two persons who attend, to be called, who shall be first sworn, and then the others in succession, as they are named on the list, and

in such divisions as the court directs, or all at the same time; and the first twelve shall compose the first jury; and the next twelve, on the same list, shall be impaneled and sworn in like manner, and shall compose the second jury. CHAP. 82.

SEC. 64. Supernumerary jurors may be excused, from time to time, till wanted, and they may be placed on either jury, as occasion requires; and jurors may be transferred from one jury to the other when convenience of business requires it; and for good reason, any juror may be excused. Supernumeraries, transfers, excuses.
R. S., c. 115,
§ 59.

SEC. 65. The following shall be the form of the oath, administered to traverse jurors in civil causes: "You and each of you swear, that in all causes betwixt party and party, committed to you, you will give a true verdict therein according to the law and the evidence given you. So help you God." When a juror is conscientiously scrupulous of taking an oath, the word "affirm," shall be used instead of "swear," and the words "this you do under the pains and penalties of perjury," instead of the words "so help you God." Form of jurors' oath.
R. S., c. 115,
§ 60.

SEC. 66. Each jury shall retire, after being thus impaneled and sworn, and choose their foreman by ballot, or make the choice upon retiring with the first cause with which they are charged; and when a foreman is absent or excused from service, a new foreman shall be chosen as aforesaid. Foreman, how chosen.
R. S., c. 115,
§ 61.

SEC. 67. When, by reason of challenge or other cause, a sufficient number of jurors duly drawn and summoned cannot be obtained for the trial of any cause, the court shall cause jurors to be returned from the by-standers, or from the county at large, to complete the panel; if there are on the jury not less than seven jurors drawn and returned as before provided. Such jurors shall be returned by the sheriff or his deputy, a coroner, or such other disinterested person as the court appoints. Talesmen, when and how returned.
R. S., c. 115,
§ 62, 63.

SEC. 68. The court may, in term time, issue venires for as many jurors as are wanted; to be drawn, notified, and returned forthwith, or on a day appointed; and when in any county, the business requires a protracted session, the court may, during the term, excuse all or any of the jurors originally returned, and issue venires for new jurors to supply their places; who shall be drawn and notified to attend at such time as the court directs. New jurors may be summoned during term.
R. S., c. 115,
§ 64.

SEC. 69. The court, on motion of either party in a suit, may examine, on oath, any person called as a juror therein, whether he is related to either party, has given or formed any opinion, or is sensible of any bias, prejudice, or particular interest in the cause; and if it appears from his answers, or from any competent evidence introduced by the party objecting to the juror, that he does not stand indifferent in the cause, another juror shall be called and placed in his stead for the trial thereof. Challenge of juror, how tried.
6 Greenl. 307.
30 Maine, 484
32 Maine, 310
R. S., c. 115,
§ 65.

SEC. 70. The traverse jury may, in all cases, find a special or general verdict, subject to the opinion of the court on a case agreed by the parties and reserved, or on the facts as reported by the judge presiding at the trial. May find special verdicts for cases of law.
R. S., c. 115,
§ 66.

SEC. 71. When a jury, not having agreed, return into court stating the fact, the judge may, in his discretion, explain any When not agreed, proceedings.

CHAP. 82.

24 Maine, 509.
R. S., c. 115,
§ 67.

Not disquali-
fied by resi-
dence.

R. S., c. 115,
§ 68.

Objections
known and not
stated before
trial.

R. S., c. 115,
§ 69.

Verdict not
affected by
irregularities,
if not injuri-
ous.

8 Greenl. 42.
R. S., c. 115,
§ 70.

Verdict set
aside for im-
proper prac-
tices with
jurors.

6 Greenl. 141.
R. S., c. 115,
§ 76.

questions of law, if proposed to him, or re-state any particular testimony, and send them out again for further consideration; but they shall not be sent out a third time in consequence of their disagreement, unless on account of some difficulties not stated when they first came into court.

SEC. 72. In prosecutions for the recovery of a sum of money, or other thing forfeited, it shall not be a cause of challenge to a juror that he is liable to pay taxes in a county, town, or plantation, which may be benefited by the recovery.

SEC. 73. If a party knows any objection to a juror in season to propose it before trial, and omits so to do, he shall not afterwards be allowed to make it; unless by leave of court for special reasons.

SEC. 74. No irregularity in the venires, or drawing, summoning, returning, or impanneling jurors, shall be sufficient to set aside a verdict, unless the party making the objection was injured by the irregularity; or unless the objection was made before the return of the verdict.

SEC. 75. If either party, in a cause in which a verdict is returned, shall, during the same term of the court, before or after the trial, give to any of the jurors who try the cause, any thing by way of treat or gratuity, or purposely introduce among the papers in the case which are delivered to the jury when they retire with the cause, any papers which have any connection with it, but were not offered in evidence, the court, on motion of the adverse party, may set aside the verdict and order a new trial.

WITNESSES AND EVIDENCE.

Witnesses may
be summoned.
R. S., c. 115,
§ 71.

Religious
belief affects
credibility
only.

R. S., c. 115,
§ 72.
1847, c. 34.

Parties and
others inter-
ested may be
witnesses.
1856, c. 266.

Exception
where cause of
action implies
an offence.
1856, c. 266.

Attestation of
wills, &c., not
affected.
1856, c. 266.

SEC. 76. The clerks of the several courts, and any justice of the peace, may issue summonses for witnesses to attend before courts, to give evidence concerning any matters there depending.

SEC. 77. No person shall be deemed an incompetent witness on account of his religious belief, but shall be subject to the test of credibility; and any person, who does not believe in the existence of a Supreme Being, shall be permitted to testify under solemn affirmation, and shall be subject to all the pains and penalties of perjury.

SEC. 78. No person shall be excused or excluded from being a witness in any civil suit or proceeding at law, or in equity, by reason of his interest in the event thereof as party or otherwise, except as is hereinafter provided, but such interest may be shown for the purpose of affecting his credibility.

SEC. 79. Parties shall not be witnesses in suits where the cause of action implies an offence against the criminal law on the part of the defendant, unless the defendant offers himself as a witness, and in that case, the plaintiff may be a witness, and such defendant shall be held to waive his privilege of not testifying where his testimony might criminate himself.

SEC. 80. Nothing in section seventy-eight shall in any manner affect the law relating to the attestation of the execution of last wills and testaments, or of any other instrument, which by law is required to be attested.

SEC. 81. When a party to a suit resides without the state, or is absent from the state during the pendency of the suit, and the opposite party desires his testimony, a commission, under the rules of court, may issue to take his deposition; and such non-resident or absent party, upon such notice to him or his attorney of record in the suit of the time and place appointed for the taking his deposition, as the court orders, shall appear and give his deposition. If he refuses or unreasonably delays to do so, he may be non-suited or defaulted by order of court, unless his attorney will admit the affidavit of the party desiring his testimony, as to what the absent party would say if present, to be used as testimony in the case.

SEC. 82. When one of the plaintiffs or defendants is used as a witness by the opposite party, testimony may be introduced by his co-plaintiffs or co-defendants to contradict or discredit him, as if he was not a party to the suit.

SEC. 83. The provisions of the five preceding sections shall not be applied to any cases, where, at the time of taking testimony, or the time of trial, the party prosecuting, or the party defending, or any one of them, is an executor or an administrator, or made a party as heir of a deceased party; but the deposition of a party may be used at the trial after his death if the opposite party is then alive; and in that case he may also testify.

SEC. 84. The rules of evidence in special proceedings of a civil nature, such as before referees, auditors, county commissioners, courts of probate, shall be the same as herein provided for civil actions.

SEC. 85. When a person, duly summoned and obliged to attend before any judicial tribunal, fails to do so without a reasonable excuse, he shall be liable to the party aggrieved for all damages sustained thereby. The judge of such tribunal may issue a *capias* to apprehend and bring him before him; and he may be fined not exceeding twenty dollars and the costs of the attachment, and committed until the same and the costs of commitment are paid.

SEC. 86. When a witness in court refuses to answer such questions as the court allows to be put, he may be fined not exceeding twenty dollars, and committed until the fine and costs of commitment are paid.

SEC. 87. A person, to whom an oath is administered, shall hold up his hand, unless he believes that an oath administered in that form is not binding, and then it may be administered in a form believed by him to be binding. One not believing the christian religion may be sworn according to the ceremonies of his religion.

SEC. 88. Persons conscientiously scrupulous of taking an oath may make affirmation as follows: "I do affirm under the pains and penalties of perjury," which shall be deemed of the same force and effect as an oath.

SEC. 89. Persons convicted of an infamous crime, and sentenced in this state, are not competent witnesses unless restored

CHAP. 82.

Testimony of a party out of the state, how taken.

1856, c. 266.

Testimony of a party may be contradicted.

1856, c. 226.

Not applicable to executors, administrators or heirs.

1856, c. 266.

1857, c. 21.

Same rules before all tribunals.

1856, c. 266.

Witnesses duly summoned, neglecting to attend, may be attached and fined.

R. S., c. 133,

§ 51.

1847, c. 9, § 1.

Refusing in court to answer, may be fined.

1847, c. 9, § 2.

Oaths, how administered.

R. S., c. 115,

§ 73.

R. S., c. 133,

§ 52, 53.

Witnesses scrupulous of swearing, may affirm.

R. S., c. 115,

§ 74.

R. S. c. 133,

§ 38.

Not competent

CHAP. 82.

when convicted of an infamous crime. R. S., c. 133, § 44, 54.

Fees must first be paid. R. S., c. 133, § 50.

Records of other courts admitted as evidence. R. S., c. 133, § 45.

Printed copy of statutes admitted as evidence. R. S., c. 133, § 46, 47.

Foreign laws and unwritten laws of the states, how proved. R. S., c. 133, § 48, 49.

by a pardon; and a conviction out of the state, of such crime, may be given in evidence to affect his credibility.

SEC. 90. No person is obliged to attend in any court as a witness in a civil suit, or at any place to have his deposition taken, unless his legal fees for travel to and from the place, and for one day's attendance are first paid or tendered; and his fees for each subsequent day's attendance must be paid at the close of the preceding day when he requests it.

SEC. 91. The records and proceedings of any court of the United States, or of any state, authenticated by the attestation of the clerk, or officer having charge thereof, and by the seal of such court, shall be admitted in evidence.

SEC. 92. Printed copies, purporting to be published under the authority of government, of statutes, acts, and resolves of the United States, or of this, or any other state or territory of the United States, may be admitted as evidence; those of this state as sufficient, those of other states as *prima facie*.

SEC. 93. Foreign laws may be proved by parol evidence, but when such law appears to be existing in a written statute or code, it may be rejected unless accompanied by a copy thereof. The unwritten law of any other state or territory of the United States may be proved by parol evidence, and by books of reports of cases adjudged in their courts.

COSTS.

Who recover costs. R. S., c. 115, § 56.

13 Maine, 255.
21 Maine, 400.
37 Maine, 548.

When plaintiff appeals, &c. 4 Greenl. 66.
R. S., c. 115, § 85.

In certain actions of replevin, &c. R. S., c. 115, § 77.

In actions which should have been commenced, &c. 28 Maine, 204.
32 Maine, 100.
R. S., c. 151, § 13.
1842, c. 31, § 20.

Damages reduced, &c., full costs. 5 Greenl. 74.
31 Maine, 130.
R. S., c. 115, § 99.

SEC. 94. In all actions, the party prevailing, shall recover costs, unless otherwise specially provided.

SEC. 95. When a plaintiff appeals from a judgment of a municipal or police court, or justice of the peace in his favor, and does not recover, in the appellate court, a greater sum as damages, he shall recover a quarter of the sum last recovered, for costs.

SEC. 96. In actions of replevin, when the jury find that each party owned a part of the property, they shall find and state in their verdict the value of the part owned by the plaintiff when replevied, without regard to the value as estimated in the replevin bond; and if such value does not exceed twenty dollars, the plaintiff shall recover for costs only one quarter part of such value.

SEC. 97. In actions commenced in the supreme judicial court, except those by or against towns for the support of paupers, if it appears on the rendition of judgment, that the action should have been commenced before a municipal or police court, or a justice of the peace, the plaintiff shall not recover for costs more than one quarter part of his debt or damages. On reports of referees, full costs may be allowed, unless the report otherwise provides.

SEC. 98. When an account is filed in set-off and plaintiff recovers not exceeding twenty dollars, he is entitled to full costs, if the jury certify in their verdict that the damages were reduced as low as that sum by reason of the amount allowed in set-off.

SEC. 99. When a party recovers double or treble costs, the fees of witnesses, depositions, copies, and other evidence are not to be doubled or trebled. CHAP. 82.

SEC. 100. On application of a private person for a writ of review, certiorari, mandamus, or quo warranto, or like process, the court may or not allow costs to a person appearing on notice as respondent.

SEC. 101. When costs have been allowed against a plaintiff on nonsuit or discontinuance, and a second suit is brought for the same cause, before the costs of the former suit are paid, further proceedings shall be stayed, till such costs are paid, and the suit may be dismissed, unless they are paid at such time as the court appoints.

SEC. 102. When a suit is brought in the name of the state for the benefit of a private person, his name and place of residence shall be indorsed on the writ; and if the defendant prevails, judgment for his costs shall be rendered against such person, and execution issued, as if he were plaintiff.

SEC. 103. When a defendant prevails against the state in a civil suit, judgment for his costs shall be rendered against it, and the treasurer of the county shall pay the amount on a certified copy of the judgment; and the amount shall be allowed to him in his account with the state.

SEC. 104. When the state recovers costs in a civil suit no fees shall be taxed for the travel of an attorney.

SEC. 105. The name and place of residence, if known, of an assignee shall, at any time during the pendency of the suit, be indorsed by the request of the defendant on the back of a writ or process commenced in the name of his assignor, or further proceedings thereon shall be stayed; and if the defendant prevails, judgment for his costs shall be rendered against the plaintiff and such assignee, as if both had been originally joined in the action.

SEC. 106. If the name of such assignee is not known to the defendant until after he has recovered judgment against the plaintiff for costs, he may maintain an action on the case against such assignee for his costs, within six years from the time of judgment; and such judgment for costs may be set off between such assignee and the defendant, as if the assignee had been plaintiff in the suit.

SEC. 107. When a plaintiff brings divers actions at the same term of a court against the same party, which might have been joined in one, or brings more than one suit on a joint and several contract, he shall recover costs in only one of them, unless the court certifies that there was good cause for commencing them.

SEC. 108. A plaintiff shall not be allowed costs in an action on a judgment of any tribunal, on which an execution could issue when such suit was commenced, except in trustee process.

SEC. 109. In actions of a corporation, its travel is to be computed from the place where situated, if local, otherwise from the place where its business is usually transacted, not exceeding

Costs of evidence, &c.
R. S., c. 115, § 87.

Costs may or not be allowed.
21 Maine, 400.
R. S., c. 115, § 88.

Costs of first suit to be paid, &c.
R. S., c. 115, § 89.

A person suing in the name of the state is liable for costs.
R. S., c. 115, § 90.

State liable for costs in a civil suit.
26 Maine, 74.
R. S., c. 115, § 91.

No fees taxed for attorney.
R. S., c. 115, § 92.

In suit in name of assignor for assignee, &c.
1846, c. 223, § 1.

If such assignee is not known, defendant may in action on the case recover, &c.
1846, c. 223, § 2, 3.

Divers actions against the same party at same term, &c.
R. S., c. 115, § 93.

Costs not allowed in actions on judgments, &c.
33 Maine, 211.
R. S., c. 115, § 96.
Travel in actions by a cor-

CHAP. 82. forty miles, unless its agent actually travels a greater distance to attend court.

poration.
R. S., c. 115,
§ 97.
Power of the
court, &c.
R. S., c. 115,
§ 98.
Costs of a
bankrupt
limited.
1848, c. 60.

SEC. 110. The power of the court to require payment of costs, or to refuse them as condition of amendment or continuance, is not affected by the provisions of this chapter.

SEC. 111. When a defendant pleads a discharge in bankruptcy, obtained after the commencement of the suit, he can recover no costs before the time when the certificate was produced in court.

EXECUTIONS.

Execution,
when issued.
8 Greenl. 207.
R. S., c. 115,
§ 102.
Not after one
year; excep-
tion.
R. S., c. 115,
§ 104.

May be re-
newed, &c.
R. S., c. 115,
§ 105.

When it can-
not be re-
newed, &c.
R. S., c. 115,
§ 106.

Interest on
judgments.
R. S., c. 115,
§ 107.

New execution
may be issued
on proof of
loss.
1848, c. 57, § 2.

SEC. 112. Executions may be issued on a judgment of the supreme judicial court after twenty-four hours from its rendition, returnable within three months.

SEC. 113. No first execution can be issued after one year from the time of judgment, except in cases provided for by section four; in which the first execution may be issued not less than one, nor more than two years from the time of judgment.

SEC. 114. An alias or pluries execution may be issued within three years after the day of the return of the preceding execution and not afterward.

SEC. 115. When execution is not issued within the times prescribed by the two preceding sections, a writ of scire facias against the debtor may be issued to show cause why execution on the judgment should not be issued, and if no sufficient cause be shown, execution may be issued thereon.

SEC. 116. On executions, issued on judgments or acknowledgments of debt, interest shall be collected from the time of judgment, or payment, and the form of the execution be varied accordingly.

SEC. 117. A justice of the court in which the judgment was rendered, upon proof by affidavit or otherwise of the loss or destruction of an execution unsatisfied in whole or in part, may order a new execution to be issued for what remains unsatisfied.

CHAPTER 83.

JUSTICES OF THE PEACE, THEIR JURISDICTION AND PROCEEDINGS IN CIVIL ACTIONS.

SEC. 1. Jurisdictions in civil actions; not to exceed twenty dollars.

2. Title to real estate pleaded, case to be removed to supreme judicial court. Recognizance in such case; if not given, to be tried.

3. Copy, &c., to be produced at appellate court; proceedings, if not entered.

4. Writs, form and service of.

5. Judgments on default, nonsuit or trial.

6. Costs for defendant.

7. Appeal, when and how claimed; effect of.

8. Appeal, recognizance for, when and how given.

9. Appeal, papers to be produced at appellate court; failure to enter, &c., effect of.