

# MAINE STATE LEGISLATURE

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FOURTH REVISION.

THE  
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED AUGUST 29, 1883, AND TAKING EFFECT JANUARY 1, 1884.

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BY THE AUTHORITY OF THE LEGISLATURE.



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# TITLE NINE.

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57. Real estate may be attached on writs from certain municipal or police courts.
58. When right of redemption is attached and encumbrance is removed before sale, attachment holds premises free.
59. No attachment is valid unless claim is specified in writ. No attachment or seizure is valid, unless recorded within five days. Attachments and seizures take effect when filed, but recorded deeds take precedence of unrecorded attachments and seizures.
60. When right of redemption, or to a deed by contract, is attached, creditor may redeem or pay; and then title of mortgagee or contractor vests in him.
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65. If creditors claim that homestead is worth over \$500, appraisers shall first set off that value, and then apply residue to execution.
66. After his death, widow and children may occupy during widowhood and minority; but not exempt from mechanic's lien.

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- SEC. 67. Attachments of real and personal estate continue for thirty days after judgment and no longer, except in certain cases.
68. Attachments are dissolved by judgment for defendant; decree of insolvency before levy or sale on execution; by insolvency proceedings, commenced within four months; reference of all demands; and by increasing the ad damnum.
69. Clerk of court shall give owner certificate of dissolution, to be recorded. Creditor may release attachment on the record, or by certificate recorded.
70. Debtor whose real estate is attached, may petition justice of court for a valuation and release. Justice shall issue notice, to be served ten days before hearing.
71. Justice shall fix the value of such real estate, and release the same on bond of debtor. Conditions of bond.
72. Proceedings and bond must be filed in the clerk's office.
73. Certificate of proceedings from clerk, recorded in registry of deeds, vacates the attachment.
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## FORMS AND REQUISITES OF WRITS.

Forms of writs remain until changed by court.  
R.S., c. 81, § 1.  
62 Me., 165.

SEC. 1. The forms of writs in civil actions remain as established; but the supreme judicial court, by general rules, may make such alterations therein, for all courts, as changes in the law or other causes require.

Actions to be commenced by original writs, issued by clerk, and to be capias and attachment, or original summons.  
R.S., c. 81, § 2.  
See c. 77, § 5.

SEC. 2. All civil actions, except scire facias and other special writs, shall be commenced by original writs; which, in the supreme judicial court, may be issued by the clerk in term time or vacation, and framed to attach the goods and estate of the defendant, and for want thereof to take the body, or as an original summons, with or without an order to attach goods and estate; and in actions against corporations and in other cases where goods or estate are attached, and the defendant is not liable to arrest, the writ and summons may be combined in one. A writ issued by the clerk of any county, may be made returnable in any other county in which the action might be legally brought. (a)

—issued in one county, may be returnable in any other.  
Justice writs.  
R.S., c. 81, § 3.

SEC. 3. Writs issued by a trial justice, or judge of a municipal or police court, shall be signed by him and sealed.

Attachment and arrest on scire facias.  
R.S., c. 81, § 4.  
71 Me., 406.

SEC. 4. All writs of scire facias may contain a direction to the officer serving them, to attach the property of the defendants and to arrest their bodies when liable to arrest, as in writs of attachment.

(a) 12 Me., 196; 34 Me., 10; 39 Me., 142, 503; 60 Me., 352; 63 Me., 30; 66 Me., 251; 71 Me., 28, 406.

SEC. 5. When the name of a defendant is not known to the plaintiff, the writ may issue against him by an assumed name; and if duly served, it shall not be abated for that cause, but may be amended on such terms as the court orders.

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Unknown defendant may be sued by assumed name.  
R.S., c. 81, § 5.

INDORSEMENT OF WRITS.

SEC. 6. Every writ original, of scire facias, of error, of audita querela, petition for writ of certiorari, for review, or for partition, and bill in equity, shall, before entry in court, be indorsed by some sufficient inhabitant of the state, when the plaintiff or petitioner is not an inhabitant thereof; and if, pending such suit, the plaintiff or petitioner removes from the state, such indorser shall be procured on motion of the defendant or other party to the suit; but if one of such plaintiffs or petitioners is an inhabitant of the state, no indorser shall be required except by special order of court. (a)

When writ, petition or bill, must be indorsed.  
R.S., c. 81, § 6.

SEC. 7. In case of avoidance or inability of the plaintiff or petitioner, the indorser is liable, in an action on the case, brought within one year after the original judgment, in the court in which it was rendered, to pay all costs recovered against the plaintiff. A return upon the execution by an officer of the county, where the indorser lives, that he has demanded of the indorser payment thereof, and that he has neglected to pay, or to show the officer personal property sufficient to satisfy the execution, or that he cannot find the indorser within his precinct, is conclusive evidence of his liability in the suit.

Liability of indorser; must be sued within a year.  
R.S., c. 81, § 7.

11 Me., 445,  
467, 492.  
15 Me., 67.  
16 Me., 20.  
20 Me., 388.  
24 Me., 228,  
241, 355.  
26 Me., 42.  
39 Me., 132.  
47 Me., 341.

SEC. 8. If pending such suit or petition, any such indorser becomes insufficient or removes from the state, the court may require a new and sufficient indorser, the defendant consenting that the name of the original indorser shall be struck out; and such new indorser is liable for all costs from the beginning of the suit, as if he had been the original indorser; and if such new indorser is not provided, the action shall be dismissed and the defendant recover his costs.

When new indorser may be required.  
R.S., c. 81, § 8.

ACTIONS, WHERE TO BE BROUGHT.

SEC. 9. Personal and transitory actions, except process of foreign attachment, and except as provided in the seven following sections, shall be brought, when the parties live in the state, in the county where any plaintiff or defendant lives; and when no plaintiff lives in the state, in the county where any defendant lives; and when not so brought, they shall, on motion or inspection by the court, be abated and the defendant allowed double costs. When the plaintiff and defendant live in different counties at the commencement of any such action, except process of foreign attachment, and during its pendency one party moves into the same county with the other, it may on motion of either, be transferred to the county where both then live, if the court thinks that justice will thereby be promoted; and be tried, as if originally commenced and entered therein.

Personal and transitory actions, where to be commenced.  
R.S., c. 81, § 9.  
12 Me., 19.  
46 Me., 507.  
54 Me., 315.  
63 Me., 385.  
65 Me., 169.

—transfer from one county to another.

SEC. 10. Actions on bonds given by sheriffs and coroners to the

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(a) 3 Me., 28, 217; 10 Me., 46; 38 Me., 460; 39 Me., 132; 43 Me., 178; 51 Me., 479; 56 Me., 147; 72 Me., 374.

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to be sued.

R.S., c. 81, § 10.

Judgment

may be sued,

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R.S., c. 81, § 11.

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in the state.

R.S., c. 81, § 12.

Local and

transitory

actions, in

which coun-

ties, towns

and other

corporations

are parties,

where to be

brought.

R.S., c. 81, § 13.

53 Me., 420.

58 Me., 536.

Actions for

forfeitures,

where to be

brought.

R.S., c. 81, § 14.

Certain

actions in

behalf of the

State, may be

brought in

any county.

1881, c. 22.

See c. 6, § 68.

—proviso.

Justice ac-

tions against

one or sever-

al defend-

ants, where

brought and

how served.

treasurer of state, shall be brought in the county for which such sheriff or coroner is commissioned.

SEC. 11. Actions of debt, founded on judgment rendered by any court of record in the state, may be brought in the county where it was rendered, or in the county in which either party thereto, or his executor or administrator, resides at the time of bringing the action.

SEC. 12. In all actions commenced in any court proper to try them, jurisdiction shall be sustained, if goods, estate, effects or credits of any defendant are found within the state and attached on the original writ; and service shall be made as provided in section twenty-one. (a)

SEC. 13. Local and transitory actions shall be commenced and tried as follows: When both parties are counties, in any county adjoining either; when a county is plaintiff, if the defendant lives therein, in an adjoining county; if he does not live therein, in the county in which he does live; when a county is defendant, if the plaintiff lives therein, in that county or in an adjoining county; if he does not live therein, in that county or in that in which he does live; when a corporation is one party and a county the other, in any adjoining county; when both parties are towns, parishes or school districts, in the county in which either is situated; when one party is a town, parish, or school district, and the other some corporation or natural person, in the county in which either of the parties is situated or lives; but all actions against towns, for damages by reason of defects in highways, shall be brought and tried in the county in which the town is situated. All other corporations may sue and be sued in the county in which they have an established place of business, or in which the plaintiff or defendant, if a natural person, lives.

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

SEC. 15. An action in behalf of the State to enforce the collection of state taxes upon any corporation, or to recover of any person or corporation moneys due the State, public funds or property belonging to the State, or the value thereof, may be brought in any county; *provided*, that on motion of the defendant, any justice of the supreme judicial court, holding the term at which such action is returnable, may, for sufficient reasons shown, remove the same to the docket of said court in any other county for trial, and may upon such removal, award costs to the defendant for one term, to be paid by the treasurer of state on presentation of the certificate of the amount thereof, from the clerk of the court of the county from which said action is transferred.

SEC. 16. An action against two or more defendants residing in different counties, to be tried before a trial justice or municipal or police court, may be brought in the county where either resides; and the writ and execution shall be directed to and executed by the proper officers in

(a) 58 Me., 301; 65 Me., 254; 68 Me., 272.

each of such counties; but if there is only one defendant, such action shall be commenced in the county where he resides.

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R.S., c. 81, § 15.  
12 Me., 18.  
15 Me., 189.

WRITS, HOW SERVED ON RESIDENTS.

SEC. 17. When goods or estate are attached on either of said writs, except in trustee process, a separate summons, in form by law prescribed, shall be delivered to the defendant, or left at his dwelling-house or place of last and usual abode, fourteen days before the sitting of the court to which it is returnable, which is a sufficient service. (a)

Summons shall be left in case of attachment, except in trustee writs. R.S., c. 81, § 16. See c. 86, § 3.

SEC. 18. Where the process is by original summons, wherein the law does not require a separate summons to be left with the defendant, service by reading the writ or original summons to the defendant, or by giving him in hand, or leaving at his dwelling-house or place of last and usual abode, a certified copy thereof, fourteen days before it is returnable, is sufficient.

Original summons may be served by reading or copy. R.S., c. 81, § 17. 47 Me., 304.

SEC. 19. In suits against a county, the summons shall be served by leaving an attested copy thereof with one of the county commissioners or their clerk; against a town, parish, religious society, or school district, with the clerk, or one of the selectmen, or assessors, if there is any such officer; if not, with a member of such corporation; and against any other corporation, however created, with its president, clerk, cashier, treasurer, general agent, or director; if there is no such officer or agent found within the county where such corporation is established, or where its records or papers are by law required to be kept, with any member thereof; and in all suits and proceedings at law or in equity against any foreign or alien company or corporation established by the laws of any other state or country, and having a place of business within this state or doing business herein, service of the writ, bill, petition, or other process is sufficient, if made by leaving an attested copy thereof with the president, clerk, cashier, treasurer, agent, director, or attorney of such company or corporation, or by leaving such copy at the office or place of business of such company or corporation within this state; and in each case, it shall be so served thirty days before the return day thereof.

Service on county, town or other corporation may be made by giving copy to clerk, treasurer, agent or member thereof, thirty days before court. 1877, c. 155. See c. 3, § 58. 16 Me., 372. 47 Me., 304. 67 Me., 496. 71 Me., 360.

—service upon any foreign or alien corporation, how made.

—time of service.

SEC. 20. When no officer, general agent, or member of a domestic corporation, can be found in the county in which the same is located, or in the county in which its last certificate of election of clerk was filed, the officer having in his hands any process for service on such corporation, may file a copy thereof, in the registry of deeds of the county in which such corporation was located, or in which its last certificate of election of clerk was filed, and make return of his doings, which service is sufficient to hold said corporation to answer to such process.

Service on domestic corporation, when no officer can be found. 1880, c. 192, § 1. See c. 7, § 16; c. 116, § 21.

HOW SERVED ON NON-RESIDENTS.

SEC. 21. If any defendant is not an inhabitant of the state, the writ may be served on him by leaving a summons or copy, as the case may be, with his tenant, agent or attorney in the state, fourteen days before the sitting of the court; and if his goods or estate are attached,

Service may be made on defendant out of the state, by leaving summons or copy

(a) 31 Me., 495; 37 Me., 51; 43 Me., 402; 59 Me., 291; 69 Me., 343.

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with his agent or attorney, or as ordered by the judge or trial justice.  
R.S., c. 81, § 19.

In actions against foreign insurance and express companies, service may be made on agent in the state thirty days before court.  
R.S., c. 81, § 20.  
See c. 49, §§ 89, 90.

How want or defect of service may be cured.  
R.S., c. 81, § 21.  
58 Me., 301.

What personal property may be attached.  
R.S., c. 81, § 22.  
See § 62.

Attachment of hay and animals, left in hands of debtor.  
R.S., c. 81, § 23.

Attachment of bulky personal property, how to be recorded in town clerk's office.  
R.S., c. 81, § 24.  
19 Me., 91, 439.

and he has no such tenant, agent or attorney, after entry, the court in the county where the process is returnable, or before entry, the court in any county, may order notice to the defendant, or a justice thereof in vacation may make such order signed by him on the back of the process; and if it is complied with and proved, he shall answer to the suit. A trial justice or judge of a municipal or police court, may in like cases, order like notice on any process returnable or pending before him. (a)

SEC. 22. In actions by inhabitants of this state against insurance companies established by any other state or country, on policies of insurance, signed or countersigned by agents in this state, on property or lives, or against accidents in this state; and in such actions against express companies so established, service is sufficient if made on the person who signed or countersigned such policies, or on any agent or attorney of either such company, or if left at his last and usual place of abode thirty days before the return day of the suit; but the court may, in any case, order further notice.

## HOW WANT OR DEFECT OF SERVICE MAY BE CURED.

SEC. 23. When the property of a defendant is attached on a writ, and no service is made on him before entry, or if service in any case is defective for any cause, without fault of the plaintiff or his attorney, the court may order a new service, which, when made, is as effectual as if proper service had been made in the first instance.

## ATTACHMENT OF PERSONAL PROPERTY.

SEC. 24. All goods and chattels may be attached and held as security to satisfy the judgment for damages and costs which the plaintiff may recover, except such as, from their nature and situation, have been considered as exempt from attachment according to the principles of the common law as adopted and practiced in the state, and such as are hereafter mentioned. Such personal property may be attached on writs issued by a trial justice, or judge of a police or municipal court in any county, when directed to the proper officer.

SEC. 25. When hay in a barn, horses, or neat cattle are attached, and are suffered to remain, by permission of the officer, in the defendant's possession on security given for their safe keeping and delivery to the officer, they are not subject to a second attachment to the prejudice of the first. (b)

SEC. 26. When any personal property is attached, which by reason of its bulk or other special cause cannot be immediately removed, the officer may, within five days thereafter, file in the office of the clerk of the town, in which the attachment is made, an attested copy of so much of his return on the writ, as relates to the attachment, with the value of the defendant's property which he is thereby commanded to attach, the names of the parties, the date of the writ, and the court to which it is

(a) 6 Me., 219; 19 Me., 108; 36 Me., 303; 51 Me., 586; 54 Me., 380; 55 Me., 552; 56 Me., 341; 58 Me., 301; 65 Me., 253; 68 Me., 272.

(b) 7 Me., 179; 18 Me., 276; 19 Me., 94; 37 Me., 328; 62 Me., 82; 65 Me., 491.

returnable; and such attachment is as effectual and valid, as if the property had remained in his possession and custody. The clerk shall receive the copy, noting thereon the time, enter it in a suitable book, and keep it on file for the inspection of those interested therein, for which he is entitled to ten cents. When the attachment is made in an unincorporated place, such copy shall be filed and recorded in the office of the clerk of the oldest adjoining town in the county.

SEC. 27. When the share or interest of any person in an incorporated company is attached on mesne process, an attested copy of the writ with a notice thereon of the attachment, signed by the officer, shall be left with the clerk, cashier or treasurer of the company; and such attachment is a lien on such share or interest, and on all accruing dividends; and if the officer having the writ exhibits it to the officer of the company having custody of the account of shares or interest of the stockholders, and requests a certificate of the number held by the defendant, and such company officer unreasonably refuses to give it, or wilfully gives him a false certificate thereof, he shall pay double the damages occasioned by such refusal or neglect; to be recovered against him in an action on the case by the creditor.

SEC. 28. The franchise and all right to demand and take toll, and all other property of a corporation, may be attached on mesne process, and the attaching officer shall leave an attested copy of the writ with a notice of the attachment thereon, signed by him, with the clerk, treasurer, or some officer or member of the corporation, as provided in section nineteen.

SEC. 29. Different attachments in one or more counties may be made successively upon the same writ, and by different officers, before service of the summons upon the person whose property is attached; but none after such service. 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 the coroner and furnishing him with a copy of the precept within a reasonable time, and so property attached by the last named officers may be again attached by a coroner in like manner; and personal property attached by a constable may be again attached by a coroner or by a deputy in the same manner.

#### WHEN PERSONAL PROPERTY ATTACHED MAY BE SOLD ON WRIT.

SEC. 30. When personal property is attached, the officer, by consent of the debtor and creditor, may sell it on the writ before or after entry, observing the directions for selling on execution; and if it is attached by different officers, it may be so sold by the first attaching officer; or in case of his death, if he was a deputy sheriff, by the sheriff or another deputy by written consent of the debtor and all attaching creditors; and the proceeds, after deducting necessary expenses, shall be held by the first attaching officer or the sheriff, subject to the successive attachments, as if sold on execution.

SEC. 31. When personal property liable to perish, be wasted, greatly

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45 Me., 62.  
65 Me., 491.  
74 Me., 49, 551.  
—clerk's fees.

How shares in a corporation may be attached.  
R.S., c. 81, § 25.  
63 Me., 514.

—officer of corporation must furnish certificate of number of defendant's shares; penalty if he refuses.

How franchise and other property of corporation may be attached.  
R.S., c. 81, § 26  
42 Me., 425.

Attachments on same writ may be made in different counties and by different officers.  
R.S., c. 81, § 27.

Personal property attached, may be sold on writ by consent.  
R.S., c. 81, § 28.  
39 Me., 32,  
387.  
48 Me., 535.  
54 Me., 169.

Perishable goods may be

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reduced in value by keeping, or kept at great expense, is attached, and the parties do not consent to a sale thereof, the same may be examined and appraised before or after entry of the action, as follows. (a)

On request, officer shall give notice of time and place of appraisal, and how; and cause appraisers to be chosen, and how.

R.S., c. 81, § 30.

36 Me., 166.

61 Me., 531.

Appraisers shall be sworn, and appraise the property at its cash value.

R.S., c. 81, § 31.

36 Me., 166.

To be delivered to debtor on depositing money or giving bond to satisfy judgments.

R.S., c. 81, § 32.

31 Me., 155.

36 Me., 166.

—bond to be returned with officer's doings.

Bond may be sued by any creditor.

R.S., c. 81, § 33.

—nature of judgment thereon.

—money recovered, how applied.

How an attaching creditor, not a party to the suit on the bond, may avail himself thereof, or of the judgment therein.

R.S., c. 81, § 34.

**SEC. 32.** At the request of either party interested, the officer shall give notice of the time and place of appraisal, with the names of the parties to the action, and of the supposed owner of the property, by posting notices thereof in two or more public places in the town where it was attached, or by giving personal notice thereof to all parties to the suit in which it is attached, four days at least before the appraisal. He shall prepare a schedule of the property, and cause three disinterested appraisers, acquainted with the nature and value of such goods, to be appointed, one by the creditor, one by the debtor, and one by himself; and if the creditor or debtor neglects to appoint, he shall appoint one in his behalf.

**SEC. 33.** The appraisers shall be sworn by the officer without fee, or by a justice of the peace or trial justice, and shall examine such property; and if in their opinion, any part of it is liable to perish, be wasted, be greatly reduced in value by keeping, or kept at great expense, they shall appraise it at its value in money.

**SEC. 34.** Thereupon, at the request of the debtor, the property shall be delivered to him, on his depositing with the officer the appraised value, thereof in money, or giving bond to him with two sufficient sureties, conditioned to pay him said value, or satisfy all judgments recovered in the suits in which the property is attached, if demanded before the attachments expire, or within thirty days after the time when the creditors might demand payment out of the proceeds of the property if sold as hereinafter provided; and he shall return such bond with the writ on which the first attachment is made, with a return of his doings in relation thereto.

**SEC. 35.** If the bond is forfeited, any one or more of the creditors may bring an action of debt thereon in the name of the officer, and shall indorse their names on the writ. If judgment is for the defendants, execution for costs shall be issued against them jointly, or one against each for his proportion, as the court thinks just. If judgment is for the plaintiffs, the money recovered shall be applied to pay their necessary expenses in prosecuting the suit, not re-imbursed by costs recovered of the defendants; and the residue belongs to the attaching creditors according to their priorities; but no execution shall be awarded for the use of any creditor, without reserving what may be due on any prior attachment, whether the creditor therein is a party to the suit on the bond or not.

**SEC. 36.** An attaching creditor not a party to such suit, on his motion before final judgment therein, may become a party on such terms as the court orders, as if he had been a party originally; and his name shall then be indorsed on the writ; or he may bring scire facias on the judgment and recover the sum due him on the bond. But no creditor whose cause of action on the bond accrued more than a year prior to the suit thereon, shall have judgment or execution therein; nor

(a) 31 Me., 154; 39 Me., 32; 48 Me., 535; 49 Me., 62; 69 Me., 388.

bring such scire facias unless within a year after the cause of action accrued.

SEC. 37. If such property, after its appraisal, is not delivered to the debtor as aforesaid, the officer shall sell it, make return of all his doings relating thereto, and hold and dispose of the proceeds as in a sale by consent.

SEC. 38. The proceeds of such property sold by consent or after an appraisal, may be further attached by the officer as property of the defendant while remaining in his hands, and held and disposed of as if the property itself had been attached; but after retaining enough to satisfy all attachments existing thereon at any time, nothing herein shall prevent his paying the surplus to the debtor.

SEC. 39. When goods, which are sold, or appraised and delivered to the debtor in the manner before provided, have been attached by several creditors, any one of them may demand and receive satisfaction of his judgment, notwithstanding any prior attachments, if he is otherwise entitled to demand the money, and a sufficient sum is left, of the proceeds of the goods, or of their appraised value, to satisfy all prior attachments.

SEC. 40. When personal property, attached on mesne process, is claimed by a person not a party to the suit, he may replevy it within ten days after notice given him therefor by the attaching creditor, and not afterwards; and after that, the attaching officer, without impairing the rights of such person, at the request and on the responsibility of the plaintiff, and with consent of other attaching creditors, if any, may sell it at auction as on execution, unless the debtor claims it as his, and forbids the sale.

HOW PROPERTY OF PART OWNERS, WHEN ATTACHED, MAY BE  
DISPOSED OF.

SEC. 41. When personal property is attached in a suit against one or more part owners thereof, at the request of another part owner, it shall be appraised as hereinbefore provided, one appraiser to be chosen by the creditor, one by the officer and the other by the requesting part owner; and thereupon it shall be delivered to such part owner on his giving bond to the officer with two sufficient sureties, conditioned to restore it in like good order, pay the appraised value of the defendant's share therein, or satisfy all judgments recovered in the attaching suits, if demanded within the time during which it would be held by the attachments. Such bond shall be returned with the writ, with the doings of the officer thereon, and if forfeited, like proceedings may be had as are provided in section thirty-five.

SEC. 42. If any part of such appraised value is so paid, the defendant's share of the property is thereby pledged to the party paying; and if not redeemed, he may sell it, and account to the defendant for the balance, if any; but if the attachment is dissolved, he shall restore such share to the defendant or to the attaching officer for him.

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—proviso.

Property not delivered to debtor, how disposed of.  
R. S., c. 81, § 35.  
48 Me., 535.  
61 Me., 531.

Proceeds may be further attached in hands of the officer.  
R. S., c. 81, § 36.  
48 Me., 538.  
69 Me., 388.

Right by priority in case of sale, preserved.  
R. S., c. 81, § 37.

Property attached and claimed by one not a party to suit, may be replevied in ten days after notice; if not, how disposed of.  
R. S., c. 81, § 38.  
59 Me., 112.

Property of part owner attached, shall be appraised and delivered to another owner, on giving a bond.  
R. S., c. 81, § 39.  
50 Me., 397.

—bond shall be returned with writ, and sued, if forfeited.  
Part owner so paying, has lien on property, and may sell; but if attachment is dissolved, must restore it.  
R. S., c. 81, § 40.

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## ATTACHMENT OF PROPERTY MORTGAGED OR PLEDGED.

Personal property mortgaged, pledged, or under lien, may be attached by creditor redeeming it. R.S., c. 81, § 41.

When mortgaged property is attached, no action against officer until after two days' notice; officer or creditor may redeem in that time. R.S., c. 81, § 42.

Mortgagee not accounting within ten days after notice, waives mortgage. R.S., c. 81, § 43. —penalty.

If creditor redeems, and officer sells, proceedings. R.S., c. 81, § 44.

Goods attached by an officer, are not assets of his estate. R.S., c. 81, § 45.

If replevied, are liable to further attachments; bond liable for whole value. R.S., c. 81, § 46.

If officer dies or is removed, property attached by him is liable to further attachments by other officers. R.S., c. 81, § 47.

—how such attachments may be made.

SEC. 43. Personal property not exempt from attachment, mortgaged, pledged, or subject to any lien created by law, and of which the debtor has the right of redemption, may be attached, held, and sold as if unencumbered, if the attaching creditor first tenders or pays to the mortgagee, pledgee, or holder, the full amount unpaid on the demand so secured thereon. (a)

SEC. 44. When personal property, attached on a writ or seized on execution, is claimed by virtue of such mortgage, pledge or lien, the claimant shall not bring an action against the attaching officer therefor, until he has given him at least forty-eight hours' written notice of his claim and the true amount thereof; and the officer or creditor may, within that time, discharge the claim by paying or tendering the amount due thereon, or he may restore the property. (b)

SEC. 45. The officer may give the claimant written notice of his attachment; and if he does not, within ten days thereafter, deliver to the officer a true account of the amount due on his claim, he thereby waives the right to hold the property thereon; and if his account is false, he forfeits to the creditor double the amount of the excess, to be recovered in an action on the case. (c)

SEC. 46. If the creditor redeems such property, and it is subsequently sold by the officer, he shall, from the proceeds, first pay to the creditor the amount with interest paid by him to redeem, and apply the balance, if any, to the debt on which it was attached or seized on execution.

WHEN ATTACHING OFFICER DIES, OR IS REMOVED, OR PROPERTY IS REPLEVIED.

SEC. 47. Personal property attached by an officer and in his possession, and his claim for damages when it is taken from him, remain subject to such attachment in case of his death, as if he were alive, and are not assets belonging to his estate.

SEC. 48. Such property replevied from the officer, is liable to further attachments, as if in his possession; and if there is judgment for a return in the replevin suit, the plaintiff and his sureties are liable for the whole property or its value, although some attachments were made after the replevin.

SEC. 49. If an attaching officer dies or is removed from office while the attachment is in force, whether the property was in his possession or not, it and its proceeds may be further attached by any other officer, the same as it might have been by the first officer. Such further attachments shall be made by a return setting forth an attachment in common form and by whom the property was previously attached; and if the goods have not been replevied, by leaving a certified copy of the writ, omitting the declaration, and of the return of that attachment,

(a) 50 Me., 125, 397; 58 Me., 419; 60 Me., 378.

(b) 58 Me., 31; 59 Me., 114; 60 Me., 378; 63 Me., 465; 72 Me., 71; 73 Me., 199.

(c) 58 Me., 31, 419; 59 Me., 114; 60 Me., 378.

with the former officer, if living, or if dead, with his executor or administrator, or if none has been appointed, with the person having possession of the goods; or if the goods have been replevied, and the officer who made the original attachment is dead, such copy shall be left with the plaintiff in replevin, or his executors or administrators; and the attachment shall be considered as made, when such copy is delivered in either of the modes before described.

SEC. 50. Goods, taken by replevin from an attaching officer, shall not be further attached as property of the original defendant in any other manner, than that provided in the two preceding sections, so long as they are held by the person who replevied them, or by any one holding under him, unless the original defendant has acquired a new title to the goods.

Limitation of right to attach goods replevied.  
R.S., c. 81, § 48.

## ATTACHMENTS AND ACTIONS WHEN A PARTY DIES.

SEC. 51. The attachment of personal property continues in force after the death of the debtor as if living, unless before a sale thereof on execution, his estate is decreed insolvent; but it is dissolved by such decree, and the officer, on demand thereafter, shall restore such property to the executor or administrator on payment of his legal fees and charges of keeping. (a)

Attachments, when dissolved by death of insolvent.  
R.S., c. 81, § 49.  
See §§ 67, 68.  
—duty of officer.

SEC. 52. If, after such decree and before such demand, the officer has sold the property on execution, he is liable to the executor or administrator in an action, not of trespass, but for money had and received, for the proceeds, if in his hands; but if paid over to the judgment creditor, such creditor is so liable; and he shall not set off any demand which he has against the executor or the administrator, or against the estate of the deceased.

If property is sold before demand, officer is liable: if paid over, creditor is liable, and cannot set off his demands against estate.  
R.S., c. 81, § 50.

SEC. 53. After the death of a defendant and before a decree of insolvency on his estate, the executor or administrator may demand of the attaching officer a certified copy of his return on the writ, with a description of the property attached, so that it may be described in the inventory of the estate subject to the attachment, and the appraisers may demand a view thereof so as to appraise it; and if the officer fails to comply with either demand, he forfeits to the executor or administrator not less than ten nor more than thirty dollars.

After debtor's death and before decree of insolvency, officer to give copy of return to administrator, and allow view by appraisers.  
R.S., c. 81, § 51.

SEC. 54. An action, brought by an officer for taking from him personal property attached by him, does not abate by the death of either party; but may be prosecuted by or against his executor or administrator. If the officer is dead and his representative recovers the property or money, it shall be held and applied as if he were alive; but if he fails to recover, he shall return the property or pay the damages awarded in full, although the estate of the deceased is insolvent.

Actions by officers for goods attached and taken from them, do not abate by party's death, but go on, as if he were alive.  
R.S., c. 81, § 52.

SEC. 55. If an officer authorized to serve precepts, dies pending a suit for or against him for official neglect or misconduct, and no administration is granted on his estate within three months thereafter, the

If officer dies pending suit; and no administrator is appointed,

(a) 1 Me., 333; 46 Me., 353; 73 Me., 421.

**CHAP. 81.** party for whose benefit the suit is so prosecuted or defended, may carry it on in his own name by entering his appearance and giving security for costs, as the court directs.

party in interest may carry on suit.  
R.S., c. 81, § 53.

## ATTACHMENT OF REAL ESTATE.

What real estate and interests are attachable.  
R.S., c. 81, § 54.  
See c. 54, § 6, c. 76, §§ 1, 42.  
—officer need not view it.

**SEC. 56.** All real estate liable to be taken in execution as provided in chapter seventy-six; the right to cut and carry away grass and timber from land sold by this State or Massachusetts, the soil of which is not sold; and all other rights and interests in real estate, may be attached on mesne process, and held to satisfy the judgment recovered by the plaintiff; but the officers need not enter on or view the estate to make such attachment. (a)

Real estate may be attached on writs from certain municipal or police courts.  
1877, c. 179.

**SEC. 57.** If a municipal or police court has a regular seal, and a recorder, and has jurisdiction in any action where the amount of damage claimed exceeds twenty dollars, real estate and interests in real estate attachable on writs from the supreme judicial court, may be attached on writs, or taken on executions from such court, where the amount of the debt or damage, exclusive of costs, exceeds twenty dollars.

When attachment of right of redemption, holds premises free.  
R.S., c. 81, § 55.  
39 Me., 24.  
43 Me., 249.

**SEC. 58.** When a right of redeeming real estate mortgaged or taken on execution, is attached; and such estate is redeemed or the encumbrance removed before the levy of the execution, the attachment holds the premises discharged of the mortgage or levy, as if they had not existed.

No attachment of real estate is valid, unless it is recorded in registry of deeds within five days, and claim is specified in writ.  
1880, c. 241, § 1.

**SEC. 59.** No attachment of real estate on mesne process creates any lien thereon, unless the nature and amount of plaintiff's demand is set forth in proper counts, or a specification thereof is annexed to the writ, nor unless the officer making it, within five days thereafter, files in the office of register of deeds in the county or district in which some part of said estate is situated, an attested copy of so much of his return on the writ, as relates to the attachment, with the value of the defendant's property which he is thereby commanded to attach, the names of the parties, the date of the writ, and the court to which it is returnable. If the copy is not so filed within five days, the attachment takes effect from the time it is filed, if before the entry of the action, although it is after service on the defendant. No seizure of real estate on execution where there is no subsisting attachment thereof made in the suit in which such execution issues, creates any lien thereon, unless the officer making it, within five days thereafter files in the office of the register of deeds in the county or district in which some part of said estate is situated, an attested copy of so much of his return on said execution as relates to the seizure, with the names of the parties, the date of the execution, the amount of the debt and costs named therein, and the court by which it was issued. If the copy is not so filed the seizure takes effect from the time it is filed. And such proceedings shall be had in such office, by the register of deeds, as are prescribed in chapter seven.

—seizure on execution creates no lien on real estate, unless filed in registry of deeds within five days.

—seizure takes effect from the time of filing.

(a) 10 Me., 119; 14 Me., 34; 19 Me., 52; 23 Me., 166, 172; 27 Me., 451; 28 Me., 414; 35 Me., 523; 39 Me., 344; 42 Me., 286, 325; 46 Me., 437, 481; 52 Me., 357; 55 Me., 571.

*Provided, however,* that all recorded deeds take precedence over unrecorded attachments and seizures. (a)

SEC. 60. When a right to redeem real estate under mortgage, levy, sale on execution or for taxes, or a right to a conveyance by contract, is attached, the plaintiff in the suit; before or after sale on execution, may pay or tender to the person entitled thereto, the amount required to discharge such encumbrance or fulfil such contract; and thereby the title and interest of such person vest in the plaintiff, subject to the defendant's right to redeem; but such redemption by the defendant or any person claiming under him by a title subsequent to the attachment, shall not affect such attachment, but it shall continue in force, and the prior encumbrance as against it, shall be deemed discharged.

SEC. 61. Such person, on written demand, shall give the plaintiff a true written statement of the amount due him; and on payment or tender thereof, shall release all his interest in the premises; and if he refuses, he may be compelled to do so by a bill in equity. But such release shall recite that under authority of this and the preceding section, the plaintiff had attached the premises and paid or tendered the amount due the grantor; the plaintiff shall thereupon hold such title in trust for the defendant, and subject to his right of redemption, without power of alienation until after one year from the termination of said suit, or from the sale of the equity on any execution recovered therein.

PROPERTY EXEMPT FROM ATTACHMENT AND EXECUTION.

SEC. 62. The following personal property is exempt from attachment and execution:

I.—The debtor's apparel; household furniture necessary for himself, wife and children, not exceeding fifty dollars in value, and one bed, bedstead, and necessary bedding for every two such persons.

II.—All family portraits, Bibles, and school books in actual use in the family; one copy of the statutes of the State, and a library not exceeding one hundred and fifty dollars in value.

III.—All his interest in one pew in a meeting-house where he and his family stately worship.

IV.—One cooking stove; all iron stoves used exclusively for warming buildings; charcoal, and not exceeding twelve cords of wood conveyed to his house for the use of himself and family; all anthracite coal, not exceeding five tons; all bituminous coal, not exceeding fifty bushels; and ten dollars' worth of lumber, wood or bark.

V.—All produce of farms until harvested; one barrel of flour; corn and grain necessary for himself and family, not exceeding thirty bushels; all potatoes raised or bought for himself and family; and all flax raised on a half acre of land, and all articles manufactured therefrom for the use of himself and family.

VI.—The tools necessary for his trade or occupation, and one sewing

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—proviso.  
1880, c. 241, § 3.  
When right of redemption or to a deed by contract, is attached, the creditor may redeem or pay; thereupon the title of mortgage or contractor vests in him.  
R.S., c. 81, § 57.  
72 Me., 515.

The mortgagee or contractor shall state, on demand, the sum due him; and on payment, shall release his interest in premises, or be compelled to do so by bill in equity.  
R.S., c. 81, § 58.  
72 Me., 515.

Personal property.  
R.S., c. 81, § 59.  
See c. 47, § 117;  
c. 64, § 48;  
c. 75, § 10.

Apparel, furniture, beds.  
16 Me., 265.

Portraits, Bibles, school books, statutes and library.

One pew.

Stoves for cooking and warming, wood, coal, bark and lumber.  
74 Me., 100.

Produce growing, flour, corn, grain, potatoes, flax.  
41 Me., 80.

Tools of trade and a sewing

(a) 18 Me., 302; 29 Me., 271; 39 Me., 344; 42 Me., 341; 48 Me., 413, 567; 51 Me., 168, 322; 52 Me., 410; 54 Me., 420; 55 Me., 451, 571; 59 Me., 438; 60 Me., 249; 65 Me., 536; 69 Me., 502, 543; 72 Me., 222; 73 Me., 218, 405; 74 Me., 293.

CHAP. 81. machine not exceeding one hundred dollars in value for actual use by  
 SEC. 62. himself or family. (a)

machine.  
 Oxen, mules,  
 horses, har-  
 nesses, horse-  
 sled and hay.  
 45 Me., 72.  
 46 Me., 360.  
 55 Me., 107.  
 58 Me., 418.

VII.—One pair of working cattle, or instead thereof one pair of mules or one or two horses not exceeding in value three hundred dollars, and a sufficient quantity of hay to keep them through the winter season. If he has more than one pair of working cattle, or mules, or if the two horses exceed in value three hundred dollars, he may elect which pair of cattle or mules or which horse shall be exempt. If he has a pair of mules or one or two horses so exempt, he may also have exempt for each of said horses or mules, one harness not exceeding twenty dollars in value; and one horse sled not exceeding the same value; but if he has at the same time an ox sled, he may elect which sled shall be exempt.

Fowl, swine,  
 cows, sheep,  
 lambs, wool  
 and hay.  
 1879, c. 99.  
 R.S., c. 81, § 59.  
 14 Me., 315.  
 17 Me., 70.  
 38 Me., 136.

VIII.—Domestic fowl, not exceeding fifty dollars in value, two swine, one cow, and one heifer under three years old, or if he has no oxen, horse or mule, two cows, and he may elect the cow or cows and heifer, if he has more than are exempt, ten sheep and the wool from them, and the lambs raised from them until they are one year old, and a sufficient quantity of hay to keep said cattle, sheep and lambs through the winter season.

Farming  
 implements.  
 71 Me., 164.

IX.—One plough, one cart or truck wagon, one harrow, one yoke with bows, ring and staple, two chains, one ox sled, and one mowing machine.

Boat.

X.—One boat not exceeding two tons burden, usually employed in fishing business, belonging wholly to an inhabitant of the state.

#### HOMESTEADS EXEMPT.

Homestead.  
 R.S., c. 81, § 60.  
 See c. 5,  
 §§ 38, 39;  
 c. 15, §§ 6, 7.  
 73 Me., 238.

SEC. 63. A lot of land and dwelling-house and out-buildings thereon, the property of a householder in actual possession thereof and not the owner of an exempted lot purchased from the State, is exempt from attachment and levy on execution as provided in the following sections.

Householder  
 to have his  
 claim for  
 exemption  
 recorded in  
 registry, with  
 description of  
 homestead;  
 and then \$500  
 worth is  
 exempt from  
 debts  
 subsequently  
 contracted.  
 R.S., c. 81, § 61.  
 Sec. c. 116, § 21.

SEC. 64. Such person may file in the registry of deeds in the county or district where the land lies, a certificate signed by him, declaring his wish for such exemption and describing the land and buildings; and the register, for fifty cents, shall record it in a suitable book; and so much of such property as does not exceed five hundred dollars in value, is exempt from attachment or levy on execution issued on a judgment recovered for any debt, contracted jointly or severally by such person after the date of the recording thereof; and the record in the register's office is prima facie evidence that the certificate purporting to be there recorded, was made, signed, and filed as there appears.

When cred-  
 itor claims  
 that home-  
 stead is  
 worth more  
 than \$500,  
 appraisers  
 shall first set  
 off that value,  
 and apply  
 residue to  
 execution.  
 R.S., c. 81, § 62.

SEC. 65. When such property is claimed by a creditor to be of greater value than five hundred dollars, it may be seized on execution, and the appraisers shall first set off such part thereof as the debtor may select, and if he neglects so to do, the officer may select for him, to such value, by metes and bounds; and they shall then appraise and set off to the creditor, so much of the remainder as may be necessary to satisfy the execution; the appraisers shall be sworn accordingly and the officer shall make return of his doings thereon.

His widow  
 and children

SEC. 66. After his death, the exempted premises shall not be sold

(a) 10 Me., 136; 28 Me., 178.

for payment of his debts during the widowhood of his widow, or the minority of any of his children; but may be occupied by his widow during her widowhood and by his children during minority, free from claim by any creditor of his estate. But this and the three preceding sections do not exempt such property from the lien of mechanics or material men.

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may occupy during widowhood and minority: not exempt from mechanic's liens.  
R.S., c. 81, § 63.

#### HOW AND WHEN ATTACHMENTS ARE DISSOLVED.

SEC. 67. An attachment of real or personal estates continues for thirty days, and no longer, after final judgment in the original suit, and not in review or error; except attachments of equities of redeeming real estate mortgaged or taken on execution; or equities of redemption sold on execution; or an obligee's conditional right to a conveyance of real estate on execution; or property attached and replevied; or property attached belonging to a person dying thereafter, or specially provided for in any other case.

Attachment continues for thirty days after judgment and no longer, except in certain cases.  
R.S., c. 81, § 64.  
Sec. c. 76, § 49.  
12 Me., 242.  
14 Me., 431.  
22 Me., 382.  
57 Me., 88.

SEC. 68. All attachments of real or personal estate are dissolved by final judgment for the defendant; by a decree of insolvency on his estate before a levy or sale on execution; by insolvency proceedings commenced within four months, as provided in section thirty-three of chapter seventy; by a reference of the suit and all demands between the parties thereto, by a rule of court, and judgment on the report of the referees; and by an amendment of the declaration, by consent of parties, so as to embrace a larger demand than it originally did, and judgment for the plaintiff thereon, unless the record shows that no claims were allowed the plaintiff not originally stated in the writ. (a)

Dissolved by judgment for defendant; insolvency of estate before sale or levy on execution by proceedings under insolvent law; reference of all demands; and by increasing ad damnum.  
R.S., c. 81, § 65.

SEC. 69. When an attachment is dissolved by judgment for the defendant, the clerk of the court, on payment of twenty-five cents, shall give any person applying therefor a certificate of that fact, which the register of deeds shall note on the margin of the record of the attachment; and before or after judgment, the plaintiff in such suit may cause a discharge of such attachment, signed by him, to be entered on the margin of the record thereof; or he may give a certificate, signed, sealed and acknowledged by him, that such attachment is, in whole or in part, discharged; which the register of deeds shall record, with a reference thereto on the margin of the record of the attachment, for which he is entitled to twenty-five cents, and for entering such discharges, twelve cents each.

Clerk of court shall give owner a certificate of dissolution of attachment, to be recorded in registry.  
R.S., c. 81, § 66.  
73 Me., 79.

—creditor may release attachment on the record, or by a certificate to be recorded.

SEC. 70. Any defendant, whose interest in real estate is attached on mesne process, may petition in writing to a justice of the supreme judicial court, in term time or vacation, setting forth the names of the parties to the suit, the court and county in which it is returnable or pending, the fact of the attachment, the particular real estate, and his interest therein, its value, and his desire to have it released from the attachment. Such justice shall issue a written notice, which shall be served on all parties to the suit living in the state, including trustees mentioned in

Debtor, whose land is attached, may petition a justice of supreme court for a valuation and release.  
R.S., c. 81, § 67.  
—justice shall issue notice to be served ten days before

(a) See c. 76, § 44; 4 Me., 278; 7 Me., 351; 14 Me., 431; 19 Me., 422; 43 Me., 472; 49 Me., 241, 310; 53 Me., 415; 55 Me., 527; 57 Me., 88, 89; 58 Me., 331; 59 Me., 101; 65 Me., 129; 73 Me., 421.

**CHAP. 81.**  
hearing.

Justice shall fix the value of such real estate, and release same, on bond of debtor.  
R.S., c. 81, § 68.

—conditions of bond.

Proceedings and bond to be filed in clerk's office.  
R.S., c. 81, § 69.

Certificate of proceedings from clerk recorded in registry of deeds, vacates attachment.  
R.S., c. 81, § 70.

Same proceedings vacate attachment of personal property.  
R.S., c. 81, § 71.

—if stocks; certificate and copy must be recorded where attachment is.

Foreign attachments are vacated by same proceedings; but bonds must be given to trustees also, and certificate filed with them.  
R.S., c. 81, § 72.

Fees of clerk and register; all costs of proceedings to be recovered by prevailing party.

section seventy-five, and on the plaintiff's attorney, ten days at least before the time fixed therein for a hearing.

SEC. 71. If, at the hearing, such justice finds that such interest is worth as much as the amount ordered in the writ to be attached, he shall order such defendant to give bonds to the plaintiff, with sufficient sureties, conditioned to pay the judgment recovered by the plaintiff, with his costs on the petition, within thirty days after judgment. If he finds that it is worth less, the bond shall be conditioned to pay the value of such interest so found and costs on the petition, within said time.

SEC. 72. The petition and proceedings thereon shall be filed in the clerk's office in the county where the action is pending or returnable, and recorded as a part of the case; and the bond, when approved by such justice, shall also be filed therein for the use of the plaintiff.

SEC. 73. The clerk shall give the petitioner an attested copy of the petition and proceedings, with a certificate, under seal of the court, attached thereto, that such bond has been duly filed in his office; and the recording of such copy and certificate in the registry of deeds in the county where such real estate or interest therein lies, vacates the attachment.

SEC. 74. When personal property is attached and actual possession is taken by the attaching officer, the same proceedings may be had, as provided in the four preceding sections, and the officer shall also be notified of the hearing; and the delivery to him of the copy and certificate mentioned in the preceding section, vacates the attachment, and he shall return the property to the petitioner on demand. When the property attached is stock in a banking or other corporation, or is such that the attachment must be recorded in the town clerk's office, such copy and certificate shall be filed with the officer of such corporation or with the town clerk with whom the attachment is filed; and thereby the attachment is vacated.

SEC. 75. In cases of foreign attachment, the same proceedings originated by any principal defendant may be had, except that the bond to the plaintiff shall be conditioned to pay the amount, if any, which he may finally recover against the trustees, with costs on the petition, within thirty days after judgment, not exceeding the amount of the judgment against the principal defendant. The justice shall also require the petitioner to give bond to each trustee named in the petition, with sureties, in a sum sufficient to protect him against any judgment recovered by the plaintiff and paid by him, and his legal costs in the suit, and the costs allowed him by such justice at the hearing on the petition, if he appears. Such bonds, when approved by such justice, shall be filed in the clerk's office for the use of the trustees. The delivery of the copy and certificate, hereinbefore mentioned, to the trustees, vacates the attachment of any goods, effects or credits in their hands belonging to the petitioner.

SEC. 76. The clerk is entitled to two dollars for recording the petition and proceedings, and making the copy and certificate; the register of deeds, seventy-five cents for recording the same; and the officer or clerk, twenty cents for each filing and necessary certificate thereof; and

the party finally prevailing in the suit shall recover the costs of these proceedings, taxed as costs of court in other cases, and certified by such justice, and execution shall issue therefor. CHAP. 81.  
R.S., c. 81, § 73.

## CROSS ACTIONS AGAINST NON-RESIDENTS.

SEC. 77. When an action is brought by a person not an inhabitant of the state, nor to be found therein to be served with process, he shall be held to answer to any action brought against him here by the defendant in the first action, if the demands in the two cases are of such a nature that the judgment or execution in one can be set off against the judgment or execution in the other; and if there are several defendants, each may bring such cross action, and set off his judgment against the judgment recovered against him and his co-defendants, as if against him alone; and the service of the writs in such cross actions, made on the attorney of the plaintiff in the original suit, is as valid as if made on the party himself within the state.

In cross actions and set-offs against parties out of the state, service may be made on their attorneys.  
R.S., c. 81, § 74.  
46 Me., 420.  
62 Me., 496.

SEC. 78. The court in which either of such actions is pending, may grant continuance, to enable the absent party to defend, or either party to set off his judgment or execution against the other; but they shall not be delayed by the neglect or default of either party. (a)

May be continued actions for absent party to defend, or for either party to set off judgment or execution.  
R.S., c. 81, § 75.

## DAYS ON WHICH NO ARREST CAN BE MADE OR PROCESS SERVED.

SEC. 79. No person shall be arrested in a civil action, on mesne process, or execution, or on a warrant for taxes, on the day of annual fast, or thanksgiving, the thirtieth day of May, the fourth day of July, or Christmas; and, on the day of any military training, inspection, review or election, no officer or soldier required by law to attend the same, shall be arrested on any such processes.

Exemption from arrest on certain holidays.  
1874, c. 202, § 3.  
16 Me., 136.

SEC. 80. No elector shall be arrested, except for treason, felony, or breach of the peace, on the days of election of United States, state, or town officers.

Voters shall not be arrested on election days.  
R.S., c. 81, § 77.

SEC. 81. No person shall serve or execute any civil process on the Lord's day; but such service is void, and the person executing it is liable in damages to the party aggrieved, as if he had no process. (b)

Civil process served on Lord's day, void; officer liable.  
R.S., c. 81, § 78.

## LIMITATION OF PERSONAL ACTIONS.

SEC. 82. The following actions shall be commenced within six years after the cause of action accrues and not afterwards.

What actions must be commenced within six years.  
R.S., c. 81, § 79.

I.—Actions of debt founded upon a contract or liability not under seal, except such as are brought upon a judgment or decree of some court of record of the United States or of a state, or of some municipal or police court, trial justice, or justice of the peace in this state. (c)

(a) 46 Me., 421; 62 Me., 496.

(b) See c. 82, § 116; c. 124, §§ 17-24.

(c) 9 Me., 77; 15 Me., 168; 17 Me., 299; 23 Me., 562; 36 Me., 363; 37 Me., 392; 38 Me., 151; 53 Me., 206; 58 Me., 281, 321, 430; 60 Me., 423; 63 Me., 11; 66 Me., 444; 69 Me., 519; 70 Me., 20; 71 Me., 314, 504; 73 Me., 347.

CHAP. 81,  
SEC. 82.

II.—Actions upon judgments of any court not a court of record, except municipal and police courts, trial justices, and justices of the peace in this state.

III.—Actions for arrears of rent.

IV.—Actions of assumpsit or upon the case, founded on any contract or liability, express or implied.

V.—Actions for waste, of trespass on land, and of trespass, except those for assault and battery and false imprisonment.

VI.—Actions of replevin, and other actions for taking, detaining, or injuring goods or chattels.

VII.—All other actions on the case, except for slanderous words and for libel.

SEC. 83. Actions for escape of prisoners committed on execution, shall be actions on the case, and be commenced within one year after the cause of action accrues; but actions against a sheriff, for negligence or misconduct of himself or his deputies, shall be commenced within four years after the cause of action accrues.

SEC. 84. Actions of assault and battery, and for false imprisonment, slander, and libel, shall be commenced within two years after the cause of action accrues.

SEC. 85. No scire facias shall be served on bail unless within one year after judgment was rendered against the principal; nor on sureties in recognizances in criminal cases unless within one year after default of the principal; nor against any person adjudged trustee, unless within one year from the expiration of the first execution against the principal and his goods, effects and credits in the hands of the trustee.

SEC. 86. The foregoing limitations do not apply to actions on promissory notes signed in the presence of an attesting witness, or on the bills, notes or other evidences of debt issued by a bank; nor to any case or suit limited by statute to be commenced within a different time. (a)

SEC. 87. In actions of debt or assumpsit to recover the balance due, where there have been mutual dealings between the parties, the items of which are unsettled, whether kept or proved by one party or both, the cause of action shall be deemed to accrue at the time of the last item proved in such account. (b)

SEC. 88. If a person entitled to bring any of the aforesaid actions is a minor or married woman, insane, imprisoned, or without the limits of the United States when the cause of action accrues, the action may be brought within the times limited herein, after the disability is removed. (c)

SEC. 89. Actions to recover upon bonds, obligations, or coupons thereof, issued by any city or town in the state, and stolen or obtained by robbery from the owner thereof, prior to February twelve, eighteen hundred

(a) 7 Me., 25; 16 Me., 473; 19 Me., 73; 21 Me., 173; 23 Me., 497; 26 Me., 332; 30 Me., 120, 164; 31 Me., 161; 33 Me., 182, 352; 49 Me., 334; 51 Me., 303; 60 Me., 408; 63 Me., 79; 64 Me., 225; 66 Me., 444.

(b) 4 Me., 339; 38 Me., 151; 51 Me., 106; 59 Me., 224; 63 Me., 507; 65 Me., 171; 72 Me., 35.

(c) 13 Me., 401; 29 Me., 218; 37 Me., 307; 54 Me., 92; 66 Me., 444.

63 Me., 79.  
70 Me., 18.  
74 Me., 358,  
400.  
9 Me., 77.

Against  
sheriff for  
escape, in one  
year; for  
misconduct,  
in four years.  
R.S., c. 81, § 80.  
74 Me., 262.

Assault,  
libel, &c., in  
two years.  
R.S., c. 81, § 81.  
61 Me., 235.

Scire facias  
against bail,  
sureties in  
criminal  
recognizances  
and trustees,  
in one year.  
R.S., c. 81, § 82.  
See § 7.

Not applica-  
ble to wit-  
nessed notes,  
bank bills or  
cases other-  
wise limited.  
R.S., c. 81, § 83.  
Mutual and  
open  
accounts  
current.  
R.S., c. 81, § 84.

Minors, &c.,  
may sue after  
disability is  
removed.  
R.S., c. 81, § 85.

Actions to  
recover  
stolen bonds,  
when to be  
commenced.  
1875, c. 5.

and seventy-five, shall be commenced within eighteen months from the time when they become due or payable, and not afterwards; but this limitation does not apply to any action commenced by the person from whom such bonds, obligations or coupons were stolen or obtained by robbery. CHAP. 81.  
—exception.

SEC. 90. Personal actions on any contract, not otherwise limited, shall be brought within twenty years after the cause of action accrues. (a) General  
limitation of  
twenty years.  
R.S., c. 81, § 86.

SEC. 91. When a writ fails of sufficient service or return by unavoidable accident, or default, or negligence of the officer to whom it was delivered or directed, or is abated, or the action is otherwise defeated for any matter of form, or by the death of either party; or if a judgment for the plaintiff is reversed on a writ of error, the plaintiff may commence a new action on the same demand within six months after the abatement or determination of the original suit, or reversal of the judgment; and if he dies and the cause of action survives, his executor or administrator may commence such new action within said six months. When writ  
fails of  
service, or is  
defeated, or  
judgment is  
reversed, new  
suit in six  
months, and  
cause of  
action  
survives.  
R.S., c. 81, § 87.  
8 Me., 450.  
10 Me., 402.  
38 Me., 218.  
67 Me., 204.

SEC. 92. If a person entitled to bring or liable to any action before mentioned, dies before, or within thirty days after the expiration of the time herein limited therefor, and the cause of action survives, the action may be commenced by or against the executor or administrator at any time within two years after his appointment, and not afterwards, if barred by the other provisions hereof. Provision, in  
case of death  
of either  
party before  
suit is  
commenced.  
R.S., c. 81, § 88.  
68 Me., 30, 418.

SEC. 93. If a person is disabled from prosecuting an action in this state by reason of being an alien subject or citizen of a country at war with the United States, the time during which such war continues shall not be a part of the period herein limited for the commencement of any of said actions. Saving of  
rights of  
alien  
enemies in  
time of war.  
R.S., c. 81, § 89.

SEC. 94. Actions and suits for any penalty or forfeiture on a penal statute, brought by a person to whom the penalty or forfeiture is given in whole or in part, shall be commenced within one year after the commission of the offence; and if no person so prosecutes, it may be recovered by suit, indictment, or information, in the name and for the use of the State, at any time within two years after the commission of the offence, and not afterwards. (b) Limitation of  
suits for  
penalties.  
R.S., c. 81, § 90.

SEC. 95. A suit is commenced when the writ is actually made, with intention of service. (c) Making writ  
begins suit.  
R.S., c. 81, § 91.

SEC. 96. If a person liable to any action mentioned herein, fraudulently conceals the cause thereof from the person entitled thereto, or if a fraud is committed which entitles any person to an action, the action may be commenced at any time within six years after the person entitled thereto discovers that he has just cause of action. (d) Limitation  
extended, in  
cases of  
fraud.  
R.S., c. 81, § 92.

(a) 28 Me., 83; 30 Me., 164; 66 Me., 444; 70 Me., 20.

(b) 5 Me., 495; 31 Me., 532; 39 Me., 214, 353; 57 Me., 147, 338; 59 Me., 209; 63 Me., 11; 69 Me., 121; 70 Me., 496.

(c) 38 Me., 585; 69 Me., 338.

(d) 3 Me., 407; 7 Me., 374; 9 Me., 132; 31 Me., 450; 37 Me., 319; 39 Me., 406; 40 Me., 203; 57 Me., 338; 58 Me., 439; 65 Me., 568; 67 Me., 473; 73 Me., 375.

## CHAP. 81.

Renewal of  
promise must  
be in writing.  
R.S., c. 81, § 93.

SEC. 97. In actions of debt or on the case founded on any contract, no acknowledgment or promise takes the case out of the operation hereof, unless the acknowledgment or promise is express, in writing, and signed by the party chargeable thereby. No such acknowledgment or promise made by one joint contractor affects the liability of the others. (a)

If action is  
barred  
against some  
and not  
others, plain-  
tiff may re-  
cover against  
the others.  
R.S., c. 81, § 94.

SEC. 98. In actions against two or more joint contractors, if it appears on trial or otherwise, that the plaintiff is barred by the provisions hereof as to one or more of the defendants, but is entitled to recover against any other by virtue of a new acknowledgment, promise, or otherwise, judgment shall be rendered for the plaintiff against such other, and for the other defendants against the plaintiff. (b)

When non-  
joinder of  
defendants  
does not  
abate writ.  
R.S., c. 81, § 95.

SEC. 99. In an action on contract, if the defendant pleads in abatement that another person ought to have been jointly sued, and issue is joined thereon, and it appears on the trial, that the action was barred by the provisions hereof against such person, the issue shall be found for the plaintiff.

Effect of  
partial  
payment and  
of indorse-  
ment thereof.  
R.S., c. 81, § 96.

SEC. 100. Nothing herein contained alters, takes away, or lessens the effect of payment of any principal or interest made by any person; but no indorsement or memorandum of such payment made on a promissory note, bill of exchange, or other writing, by or on behalf of the party to whom such payment is made or purports to be made, is sufficient proof of payment to take the case out of the statute of limitations; and no such payment made by one joint contractor, or his executor or administrator, affects the liability of another. (c)

Presumption  
of payment  
after twenty  
years.  
R.S., c. 81, § 97.  
28 Me., 83.  
55 Me., 134.  
66 Me., 444.

SEC. 101. Every judgment and decree of any court of record of the United States, or of any state, or of a trial justice or justice of the peace in this state, shall be presumed to be paid and satisfied at the end of twenty years after any duty or obligations accrued by virtue of such judgment or decree.

Application  
of the  
statutes of  
limitation  
to set-offs.  
R.S., c. 81, § 98.

SEC. 102. All the provisions hereof respecting limitations, apply to any debt or contract filed in set-off by the defendant; and the time of such limitation of such debt or contract shall be computed, as if an action had been commenced therefor at the time when the plaintiff's action was commenced, unless the defendant is deprived of the benefit of the set-off by the non-suit or other act of the plaintiff; and when he is thus defeated of a judgment on the merits of such debt or contract, he may commence an action thereon within six months after the final determination of the suit aforesaid.

If defendant  
is out of the  
state.  
R.S., c. 81, § 99.

SEC. 103. If a person is out of the state when a cause of action accrues against him, the action may be commenced within the time limited therefor after he comes into the state; and if a person is absent

(a) 15 Me., 362, 445; 17 Me., 146, 186; 21 Me., 434; 22 Me., 103; 23 Me., 457; 24 Me., 535; 29 Me., 49; 35 Me., 367; 38 Me., 351; 60 Me., 440; 71 Me., 314; 73 Me., 120; 74 Me., 519.

(b) 7 Me., 27; 15 Me., 392.

(c) 20 Me., 347; 21 Me., 178, 435; 22 Me., 499; 23 Me., 163; 28 Me., 423; 30 Me., 255, 427; 32 Me., 169, 268; 33 Me., 185; 35 Me., 184, 367; 38 Me., 182; 51 Me., 35, 202; 53 Me., 392; 54 Me., 22; 65 Me., 172, 513; 66 Me., 444.

from and resides out of the state after a cause of action has accrued against him, the time of his absence shall not be taken as a part of the time limited for the commencement of the action. (a) CHAP. 81.

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## CHAPTER 82.

### PROCEEDINGS IN CIVIL ACTIONS IN COURT.

#### MISCELLANEOUS PROVISIONS.

- SEC. 1. Actions must be entered on the first day. Further service may be ordered. Notice in civil proceedings may be ordered in term time or vacation.
2. When default may be recorded; and when taken off.
  3. Defendant out of the state, proceedings.
  4. Execution against absent defendant shall be stayed for one year, unless bond is given to repay, if reversed on review. Attachment continued.
  5. Bond shall be left with clerk; defendant may petition for review, if review of right is not prosecuted.
  6. Executions inadvertently issued upon judgments rendered on default, without deposit of bond, are valid, unless petition for review is filed within one year, or if judgment is not reversed on review.
  7. Court may allow appeals and complaints to be entered after the first term.
  8. Petition must be filed within one year; attachment or bail is not revived.
  9. On appeals, original papers must be sent up, except writ and pleadings.
  10. Proceedings shall not be abated, arrested, or reversed for want of form.
  11. How writs may be amended.
  12. If writ or process is lost, leave may be granted to file a new one.
  13. Defendants may be struck out or new ones inserted, on payment of costs.
  14. Venue of civil or criminal case may be changed by presiding justice.
  15. Distinction between trespass and trespass on the case, is abolished.
  16. Treasurers may sue in their own names, on contracts given to them or their predecessors.
  17. Penalties are recoverable by action of debt.
  18. Assignee of a grantee may sue on real covenants of first grantor.
  19. Grantees may defend in suits against grantors, if real estate is attached.
  20. Several breaches may be assigned in actions of covenant, and general performance pleaded.
  21. In actions of covenant, if the encumbrance is a right of dower, it may be assigned and be the measure of damages.
  22. General issue may be pleaded with brief statement, and must be joined.
  23. Demurrer, when filed, must be joined and not withdrawn; amendment may be allowed after decision on demurrer, and before exceptions are filed. If demurrer is overruled, defendant may plead anew, on payment of costs, unless plea is adjudged frivolous, on which call judgment shall be entered on demurrer.
  24. In involuntary trespasses on lands, tender may be made, or money brought into court.
  25. Defendant's offer to be defaulted, and its effect.
  26. Plaintiff's offer of judgment against him and its effect.
  27. Tender may be made before entry of action. Towns may tender or offer default, in actions for injuries by defective ways.
  28. Property of deceased debtor on joint contract, is liable as if several.
  29. Libel, in actions for, truth is a justification; except in case of malice.
  30. Counts, misjoinder of, and wrong joinder, is not cause for reversal.

(a) 20 Me., 273; 23 Me., 164, 415; 37 Me., 307, 392; 38 Me., 172; 48 Me., 320; 54 Me., 400; 55 Me., 234; 57 Me., 551; 65 Me., 513.