

MAINE STATE LEGISLATURE

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



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

SEVENTH REVISION

THE
REVISED STATUTES

OF THE
STATE OF MAINE

PASSED AUGUST 5, 1930, AND TAKING
EFFECT NOVEMBER 10, 1930



By the Authority of the Legislature

AUGUSTA
KENNEBEC JOURNAL PRINT

CHAP. 100

is shown to the contrary, he may render judgment for the debt and costs recovered, with interest thereon from the rendition of judgment, against the principal, and issue execution accordingly, notwithstanding the debt and costs on the original judgment exceed twenty dollars.

Sec. 13. Surrender of principal before trial justice, proceedings; effect. R. S. c. 90, § 13. If the bail, at any time before final judgment in the original suit or on scire facias, bring the principal before the justice, and procure the attendance of an officer to receive him, the justice shall make a record of the surrender, and order him into the custody of the officer to be committed to jail, to be proceeded with as mentioned in the preceding sections; and on payment of costs on the scire facias, the bail shall be fully discharged.

Sec. 14. Officer's fees; duty and liability for neglect. R. S. c. 90, § 14. The officer shall attend before a justice for such purpose, when requested; and shall be allowed therefor the same fees as for arresting and committing a defendant on mesne process; and for neglect of official duty in such case, he shall be answerable for all damages to the party injured thereby.

Sec. 15. Surrender in such case, before and after judgment. R. S. c. 90, § 15. If the principal is surrendered before final judgment in the original suit, the bail shall deliver to the officer a copy of the writ, with the return thereon, attested by the justice; but if he is surrendered after such judgment, the bail shall deliver a copy of the entry of surrender, attested by the justice; and in either case the officer shall deliver the copy to the jailer with the prisoner; which shall be a sufficient warrant to the officer for receiving and conveying him to jail, and to the jailer for holding him in custody.

71 Me. 406; 77 Me. 24.

Sec. 16. Remedy of bail against principal. R. S. c. 90, § 16. Bail may have their remedy against their principal, by an action on the case, for all damages sustained by them by reason of their suretyship.

CHAPTER 100.

Trustee Process.

Sections 1-66	General Provisions as to Procedure.
Sections 67-72	Scire Facias.
Sections 73-79	Miscellaneous Provisions.
Sections 80-84	Trustee Process in Inferior Courts.
Section 85	Trustee Action on Judgment may be Abated.
Sections 86-87	Proceedings when Demand Against Trustee has been Assigned.

General Provisions as to Procedure.

Sec. 1. Actions in which trustee process may be used. R. S. c. 91, § 1. All personal actions, except those of detinue, replevin, actions on the case for malicious prosecution, for slander by writing or speaking, and for assault and battery, may be commenced by trustee process in the superior court; or when the amount demanded in damages is not less than five dollars, nor more than twenty dollars, before a municipal or police court, or a trial justice unless otherwise limited in the act establishing such court.

*57 Me. 408; 70 Me. 242; *120 Me. 379.

Sec. 2. Form of writ. R. S. c. 91, § 2. The writ shall be in the form established by law, authorizing an attachment of goods and estate of the principal defendant in his own hands, and in the hands of the trustees.

See 1821, c. 71, § 6; 81 Me. 475; 98 Me. 334.

Sec. 3. Service of writs. R. S. c. 91, § 3. The officer serving it shall attach the goods and estate of the principal and give to him in hand or leave at his last and usual place of abode a summons of the form hereinafter prescribed; which is sufficient service on the principal whether any trustee is held or not. The summons shall be in substance as follows:

“STATE OF MAINE.

_____ ss.

To _____

Greeting:

We command you that you appear at our _____ court, next to be holden at _____ within and for the county of _____ aforesaid, on the _____ day of _____ next, then and there to answer to _____ in a plea of _____ which plea the said plaintiff has commenced, to be heard and tried at said court and your goods or estate are attached to the value of _____ dollars for security to satisfy the judgment which the said plaintiff may recover upon said trial. Fail not of appearance at your peril.

And to _____, trustee of said _____. We command you to appear before our said court to be holden as aforesaid, to show cause if any you have, why execution to be issued upon such judgment as the said plaintiff may recover against the said principal defendant in said action, if any, should not issue against his goods, effects or credits in your hands or possession as trustee of said principal defendant.

Witness _____ Justice of our said court at _____ this _____ day of _____ in the year of our Lord one thousand nine hundred and _____.

Clerk.”

Sec. 4. Effect of service on trustee; service on partnership. R. S. c. 91, § 4. A like service on the trustee binds all goods, effects or credits of the principal defendant entrusted to and deposited in his possession, to respond to the final judgment in the action, as when attached by ordinary process. When a partnership is made a trustee in a trustee suit, service upon one member of the firm shall be a sufficient attachment of the property of the principal defendant in the possession of the firm, provided, that such service be made at any place of business of the firm, or if such service is made elsewhere, that legal service be afterward made upon the other members of the firm.

32 Me. 33; 46 Me. 295; 47 Me. 304; *81 Me. 475; *98 Me. 345; 118 Me. 285.

Sec. 5. County in which action must be brought. R. S. c. 91, § 5. If all the trustees live in the same county, the action shall be brought there; if they reside in different counties, in any county in which one of them resides; and in a trustee process against a corporation, its residence shall be deemed to be in the county in which it has its established or usual place of business, held its last annual meeting, or usually holds its meetings; except in a suit in which a railroad corporation is named and alleged as trustee, the action may be brought in any county in which said railroad corporation runs and operates its road..

6 Me. 406; 33 Me. 576; 54 Me. 315, 380; 57 Me. 409; 79 Me. 245; 101 Me. 413.

Sec. 6. Insertion of names of additional trustees; suit discontinued, trustee not entitled to costs; proviso. R. S. c. 91, § 6. The plaintiff may insert the names of as many persons as trustees, as he deems necessary, at any time before the

process is served on the principal, but not after; and he may have further service made on any trustee, if found expedient, if the service is afterwards made or renewed on the principal; but no costs for services shall be taxed for the plaintiff in such case, except for that last made. When a trustee suit is discontinued or settled by the principal parties thereto, the trustee shall be entitled to no costs, provided the plaintiff or his attorney shall notify the trustee in writing seven days before the return day of the writ, that the suit has been discontinued.

19 Me. 44; 52 Me. 236; 67 Me. 397; 71 Me. 436.

Sec. 7. Notice to principal, if absent from the state; any trustee may appear for him. R. S. c. 91, § 7. When the principal is out of the state at the time of the service, and has no agent therein, notice shall be given as provided in section twenty-one of chapter ninety-five; or proceedings may be had as provided in section four of chapter ninety-six, unless in the meantime he comes into the state before the sitting of the court; and when he does not appear in his own person or by attorney, any one or more of the trustees having goods, effects, or credits in their hands, and being adjudged trustees, may appear in his behalf, and in his name plead and defend the cause.

1 Me. 325; 35 Me. 392; 36 Me. 303; 54 Me. 380; 60 Me. 173; 81 Me. 475.

Sec. 8. Domestic corporations and foreign companies doing business in the state may be summoned as trustees; may answer by attorney or agent and disclose. R. S. c. 91, § 8. All domestic corporations and all foreign or alien companies or corporations established by the laws of any other state or country, and having a place of business, or doing business, within this state may be summoned as trustees, and trustee writs may be served on them as other writs are served on such companies or corporations, except that the service shall be by the summons described in section three of this chapter, and they may answer by attorney or agent, and make disclosures, which shall be signed and sworn to by such attorney or agent or such other person upon whom legal service of the writ may be made; and the same proceedings shall thereupon be had throughout except necessary changes in form, as in other cases of foreign attachment.

34 Me. 590; 37 Me. 321; 47 Me. 304; 51 Me. 371; 52 Me. 593; 55 Me. 350; 62 Me. 256; 67 Me. 496; 81 Me. 473; 111 Me. 83.

Sec. 9. Taxes due corporation from defendant, exempt. R. S. c. 91, § 9. Any corporation summoned as trustee of a defendant, may set off and deduct from any amount found due the defendant from the trustee and attached by trustee process, the amount due from the defendant to the trustee for taxes.

Sec. 10. Trustee about to leave the state, may disclose before a justice; proceedings. R. S. c. 91, § 10. When a person summoned as trustee is about to depart from the state, or go on a voyage, and not return before the term of the court where he is summoned to appear, he may apply to a justice of the peace of the county where he resides, for a notice to the plaintiff to appear before said justice at a place and time appointed, for taking his disclosure. On service made and returned according to the order of the justice, the examination and disclosure shall be taken and sworn to before him; and being certified and returned to the court, the same proceedings may be had thereon as if it had been in court.

See c. 121, § 30.

Sec. 11. Court may appoint commissioner to take disclosure; proceedings. R. S. c. 91, § 11. The court before whom a trustee is summoned may appoint a commissioner to take his examination and disclosure when any reasonable cause appears, and may prescribe the notice to be given to the plaintiff, of the time and place thereof; and upon return of such service, the examination and disclosure shall be taken and sworn to before the commissioner, and being

certified by him and returned to court, the same proceedings may be had thereon as if it had been in court.

Sec. 12. Trustee may so disclose by consent. R. S. c. 91, § 12. The examination and disclosure of any person summoned as trustee may be taken, as provided in section ten, when the plaintiff and trustee consent thereto.

Sec. 13. Non-resident, adjudged trustee. R. S. c. 91, § 13. A person summoned as trustee may be adjudged trustee by the court, although he was not then, and never had been an inhabitant of the state; and the writ may be made returnable in the county in which either the plaintiff or principal defendant resides.

33 Me. 416; 81 Me. 474.

Sec. 14. Trustee, when entitled to costs; payment. R. S. c. 91, § 14. If any supposed trustee comes into court at the first term and submits himself to an examination, on oath, after having in writing declared that at the time of the service of the trustee process upon him, he had no goods, effects, or credits of the principal in his possession, he is entitled to his costs, as in civil actions where issue is joined for trial; and if adjudged a trustee, he may deduct his costs from the goods, effects, and credits in his hands, and he shall be chargeable for the balance only to be paid on the execution. If such goods, effects, and credits are not of sufficient value to discharge the costs taxed in his favor, he shall have judgment and execution against the plaintiff for the balance of such costs, after deducting the sum disclosed, in the same manner as if he had been discharged.

3 Me. 49; 18 Me. 336, 363; 29 Me. 464; 101 Me. 414.

Sec. 15. Disclosure to be sworn to. R. S. c. 91, § 15. The disclosure, when completed and subscribed by the trustee, shall be sworn to by him in open court, or before some justice of the peace.

See c. 121, § 30.

Answers to interrogatories; 18 Me. 188; 33 Me. 32; 34 Me. 589; 38 Me. 134; 41 Me. 325; 45 Me. 218; 46 Me. 229.

Persons, claims and property not subject to trustee process; 17 Me. 30; 24 Me. 450; 27 Me. 298; 32 Me. 33; 33 Me. 416; 34 Me. 125; 39 Me. 165; 42 Me. 136, 366; 46 Me. 295; 48 Me. 82, 322, 367; 49 Me. 82; 53 Me. 550; 71 Me. 127.

Interest; 18 Me. 336.

Costs; 10 Me. 467; 18 Me. 336; 29 Me. 464; 46 Me. 22, 93, 229; 56 Me. 80; 59 Me. 427.

When charged; 4 Me. 494, 543; 6 Me. 80, 383; 7 Me. 396; 11 Me. 197; 12 Me. 120; 13 Me. 263, 421, 429; 15 Me. 87; 17 Me. 255; 19 Me. 44, 57; 20 Me. 370; 34 Me. 204; 37 Me. 286; 38 Me. 134; 42 Me. 134; 68 Me. 445; 69 Me. 271; 73 Me. 291; 75 Me. 41, 397; 76 Me. 33; 77 Me. 195; 79 Me. 572; 80 Me. 329; 81 Me. 467; 83 Me. 396; 92 Me. 102.

When discharged; 6 Me. 263; 17 Me. 30, 94; 18 Me. 336; 22 Me. 29; 24 Me. 450; 26 Me. 135, 450, 542; 27 Me. 299; 28 Me. 390; 32 Me. 33; 33 Me. 32; 34 Me. 125; 35 Me. 59, 148, 157, 232; 36 Me. 137, 209, 303; 37 Me. 316; 39 Me. 165, 404; 42 Me. 136, 297, 366, 382; 45 Me. 208; 46 Me. 167, 295; 48 Me. 367; 49 Me. 82, 284; 51 Me. 371; 52 Me. 593; 53 Me. 106; 54 Me. 104; 72 Me. 450; 75 Me. 100, 385; 76 Me. 468; 78 Me. 158, 244; 87 Me. 203; 89 Me. 65; 101 Me. 414.

Sec. 16. Lien for costs on articles in his hands; payment by officer. R. S. c. 91, § 16. Where any person is adjudged trustee for specific articles in his hands, he has a lien thereon for his costs; and the officer, who disposes thereof on execution, shall pay the trustee the amount due him for costs, and deduct it from the amount of sale, and account to the creditor for the balance; the amount of such fees shall be indorsed on the execution by the clerk, and be evidence of the lien.

Sec. 17. Discharge of trustees; effect upon principal. R. S. c. 91, § 17. If all the persons summoned as trustees are discharged, or the suit against them is discontinued, the plaintiff shall not proceed against the principal defendant,

unless there was sufficient personal service of the writ on him; but he may assume the defense of the suit.

58 Me. 301.

Sec. 18. Compensation, if trustee lives in another county. R. S. c. 91, § 18. When the trustee, at the time when the writ was served on him, did not live in the county where the writ is returnable, the court shall, in case of his discharge, allow him, in addition to his legal fee, a reasonable compensation for his time and expenses in appearing and defending.

Sec. 19. Liability of trustee for not appearing at first term. R. S. c. 91, § 19. If a person resident in the county in which the writ is returnable, is summoned, and neglects to appear and submit to examination at the return term, without reasonable excuse, he is liable for all costs afterwards arising in the suit, to be paid out of his own goods or estate, if judgment is rendered for the plaintiff; unless paid out of the goods or effects in his hands belonging to the principal.

See § 62; 29 Me. 464; 54 Me. 380; 100 Me. 429.

Sec. 20. Trustees, when jointly liable for costs. R. S. c. 91, § 20. When several trustees, resident in the county where the action is pending, are summoned and neglect to appear, the judgment for costs shall be rendered against them jointly.

Sec. 21. Exception in favor of trustees out of their county, and those residing out of state. R. S. c. 91, § 21. Persons summoned as trustees, residing out of the county where the suit is pending, are not liable for any costs arising on the original process; and if the person summoned as trustee is out of the state at the time the writ is served on him, and appears at the first term after his return, he shall be allowed for his costs and charges as if he had appeared at the return term.

Sec. 22. If the action fails, costs for defendant and trustee. R. S. c. 91, § 22. When the plaintiff does not support his action, the court shall award costs against him in favor of the principal, and in favor of the persons summoned as trustees severally who appeared and submitted to examination on oath; and several executions shall issue accordingly.

Sec. 23. No costs for trustee, unless he appears. R. S. c. 91, § 23. When a person summoned as trustee does not come into court, and declare that he had no property or credits of the principal in his hands when the writ was served, and submit himself to examination on oath, the court shall not award costs in his favor, although the suit is discontinued.

29 Me. 464; 65 Me. 302.

Sec. 24. Trustee, living out of county, may appear by attorney. R. S. c. 91, § 24. A person summoned as trustee, and not then living in the county where the writ is returnable, need not appear in person in the original suit, or in a suit on scire facias; but he may appear by attorney, and declare whether he had any goods or effects of the principal in his hands, when the writ was served; and thereupon offer to submit himself to examination on oath.

35 Me. 158; 65 Me. 302.

Sec. 25. Proceedings. R. S. c. 91, § 25. If the plaintiff proceeds no further, the declaration shall be considered true.

Sec. 26. Examination of trustee. R. S. c. 91, § 26. But if he thinks proper to examine such supposed trustee on oath, the answers may be taken in the county in which the trustee resides, before a justice of the superior court, or a justice of the peace.

Sec. 27. Disclosure, how sworn to. R. S. c. 91, § 27. When a trustee has submitted himself to examination on oath in court, his disclosure may be sworn

to before a justice of the court, or a justice of the peace; and being filed in court, shall have the same effect as if sworn to in open court.

70 Me. 163.

Sec. 28. Trustee not appearing, defaulted. R. S. c. 91, § 28. When a person summoned as trustee, neglects to appear and answer to the suit, he shall be defaulted, and adjudged trustee as alleged.

Sec. 29. Trustee may submit a statement of facts. R. S. c. 91, § 29. If a person summoned admits that he has in his hands goods, effects, or credits, of the principal, or wishes to refer that question to the court upon the facts, he may make a declaration of such facts as he deems material, and submit himself thereupon to a further examination on oath; and such declaration and further examination, if any, shall be sworn to as before provided.

21 Me. 24; 33 Me. 32; 35 Me. 232; 75 Me. 387.

Sec. 30. Disclosure true, prima facie. R. S. c. 91, § 30. The answers and statements sworn to by a trustee, shall be deemed true, in deciding how far he is chargeable, until the contrary is proved, but the plaintiff, defendant, and trustee, may allege and prove any facts material in deciding that question.

17 Me. 95; 18 Me. 188; 25 Me. 75, 264; 42 Me. 139; 57 Me. 588; 58 Me. 319; 65 Me. 364; 66 Me. 394; 68 Me. 199; 71 Me. 69; 79 Me. 562; 86 Me. 137; 89 Me. 67; 92 Me. 132; 93 Me. 459; 99 Me. 464; 100 Me. 426; 123 Me. 512.

Sec. 31. Questions of fact submitted to court or jury. R. S. c. 91, § 31. Any question of fact, arising upon such additional allegations, may, by consent, be decided by the court, or submitted to a jury in such manner as the court directs.

58 Me. 319; 68 Me. 199; 70 Me. 507; 100 Me. 426.

Sec. 32. Proceedings, if trustee discloses an assignment of the principal's claim. R. S. c. 91, § 32. When it appears by the answers of a trustee, that any goods, effects, or credits in his hands are claimed by a third person by virtue of an assignment from the principal debtor, or in some other way, the court may permit such claimant to appear, if he see cause. If he does not appear voluntarily, notice may be issued and served on him, as the court directs; if he appears, he may be admitted as a party to the suit so far as respects his title to the goods, effects, or credits in question; and he may allege and prove any facts not stated or denied in the disclosure of the trustee; but if he does not appear in person or by attorney, the assignment shall have no effect to defeat plaintiff's attachment.

1 Me. 328; 3 Me. 348; 5 Me. 411; 11 Me. 448; 16 Me. 254; 17 Me. 255, 328; 22 Me. 82; 26 Me. 135; 29 Me. 487; 33 Me. 441; 35 Me. 232; 37 Me. 410; 40 Me. 91; 42 Me. 383; 46 Me. 20; 48 Me. 43; 59 Me. 425; 66 Me. 394; 69 Me. 321; 73 Me. 261, 498; 74 Me. 348; 77 Me. 423; 78 Me. 324; 79 Me. 262; 80 Me. 128; 85 Me. 440; 87 Me. 307; 88 Me. 421; 91 Me. 578; 92 Me. 102; 94 Me. 367; 96 Me. 413.

Sec. 33. Principal defendant may testify. R. S. c. 91, § 33. On the trial between the attaching creditor and such claimant, the principal defendant may be examined as a witness for either party, if there is no other objection to his competency except his being a party to the original suit.

Sec. 34. Form of judgment against principal and trustee. R. S. c. 91, § 34. When the plaintiff recovers judgment against the principal, and there is any supposed trustee who has not appeared and been discharged by disclosure or discontinuance of the suit against him, the court shall award judgment and execution against the goods, effects, and credits in his hands, as well as against the principal, in the usual form.

Sec. 35. Trustee may appear by consent at another term, as of the first. R. S. c. 91, § 35. If an agreement is entered on the docket between the plaintiff and supposed trustee, that he may appear at a subsequent term of the court, with

CHAP. 100

all the advantages that he would have on appearing and answering at the first term, the same shall be allowed him by the court.

29 Me. 464.

Sec. 36. Executor or administrator is liable as trustee; also stockholders of corporations. R. S. c. 91, § 36. Any debt or legacy due from an executor or administrator, and any goods, effects, and credits in his hands, as such, may be attached by trustee process. The amount, which a stockholder of a corporation is liable to pay to a judgment creditor thereof, may be attached by a creditor of such judgment creditor, by trustee process served on such stockholder at any time after the commencement of the judgment creditor's action against him, and before the rendition of judgment therein.

19 Me. 203; 39 Me. 404; *65 Me. 301; *74 Me. 485; 78 Me. 158; *80 Me. 329;
127 Me. 425.

Sec. 37. Death of trustee after service, goods to be held in hands of administrator. R. S. c. 91, § 37. If a person, summoned as a trustee in his own right, dies before the judgment recovered by the plaintiff is satisfied, the goods, effects, and credits in his hands at the time of attachment remain bound thereby; and his executors or administrators are liable therefor as if the writ had been originally served on them.

11 Me. 38.

Sec. 38. Death of trustee before judgment, administrator may be cited. R. S. c. 91, § 38. If he dies before judgment in the original suit, his executor or administrator may appear voluntarily, or may be cited to appear as in case of the death of a defendant in an ordinary action; and further proceedings shall then be conducted as if the executor or administrator had been originally summoned as trustee; except that the examination of the deceased, if any had been taken and filed, shall have the same effect as if he were living.

21 Me. 24; 39 Me. 404; 47 Me. 563.

Sec. 39. If administrator does not appear, judgment may be rendered. R. S. c. 91, § 39. If in such case the executor or administrator does not appear, the plaintiff, instead of suggesting the death of the deceased, may take judgment against him by default, or otherwise, as if he were living; and the executor or administrator shall pay, on the execution, the amount which he would have been liable to pay to the principal defendant; and he shall be thereby discharged from all demands on the part of the principal defendant in the suit for the amount so paid, as if he had himself been adjudged trustee.

Sec. 40. If he does not pay, scire facias to issue. R. S. c. 91, § 40. If the executor or administrator in the case last mentioned does not voluntarily pay the amount in his hands, the plaintiff may proceed by writ of scire facias, as if the judgment in the first suit had been against him as trustee; but if he is discharged, he may recover costs or not at the discretion of the court.

Sec. 41. If trustee dies within thirty days after judgment, proceedings to preserve the attachment. R. S. c. 91, § 41. If any person, against whom execution issues as trustee, is not living at the expiration of thirty days after final judgment in the trustee suit, the demand, to be made by force of the execution for continuing the attachment as provided in section seventy-three, may be made on his executor or administrator at any time within thirty days after his appointment, with the same effect as if made within thirty days after the judgment.

Sec. 42. Manner of issuing execution, if administrator is adjudged trustee. R. S. c. 91, § 42. When an executor or administrator is adjudged trustee on account of goods, effects, or credits in his hands or possession merely as executor or administrator, in a suit originally commenced against him as a trustee, or against the deceased, or in the original suit, or on a writ of scire facias, the

execution shall not be served on his own goods or estate or on his person; but he is liable for the amount in his hands, in like manner and to the same extent only, as he would have been to the principal defendant if there had been no trustee process.

74 Me. 485.

Sec. 43. Remedy on his bond, if he neglects to pay. R. S. c. 91, § 43. If after final judgment against an executor or administrator for any certain sum due from him as trustee he neglects to pay it, the original plaintiff in the foreign attachment has the same remedy for recovering the amount, either upon a suggestion of waste or by a suit on the administration bond, as the principal defendant in the foreign attachment would have had upon a judgment recovered by himself for the same demand against the executor or administrator.

Sec. 44. Articles in trustee's hands, to be delivered to the officer, to be sold. R. S. c. 91, § 44. When a person summoned as trustee is bound to deliver to the principal defendant any specific articles, he shall deliver them, or so much thereof as may be necessary, to the officer holding the execution; and they shall be sold by the officer, and the proceeds applied and accounted for, as if they had been taken on execution in common form.

Sec. 45. Remedy, if trustee refuses. R. S. c. 91, § 45. If the trustee neglects or refuses to deliver them, or sufficient to satisfy the execution, the judgment creditor has his remedy on a scire facias, as provided in sections sixty-seven to seventy-two, inclusive; and the debtor has his remedy for an overplus belonging to him as at common law.

Sec. 46. Mode of settling the value, as between the principal and trustee. R. S. c. 91, § 46. When by the terms of the contract between the trustee and the principal debtor, any mode of ascertaining the value of the property to be delivered to the officer is pointed out, the officer shall, on application of the trustee, notify the principal debtor previous to the delivery, that the value may be thus ascertained, so far as it may affect the performance of the contract; and in other cases, the value of the property, as between the principal and the trustee, shall be estimated and ascertained by the appraisal of three disinterested men, chosen, one by the trustee, one by the officer, and one by the principal, if he sees cause; and if he neglects or refuses, by the officer; they shall all be duly sworn to appraise the same, and the officer, justice, and appraisers, shall certify their doings on the execution.

65 Me. 302.

Sec. 47. If part only is taken, proceedings. R. S. c. 91, § 47. When a part of such goods and articles is taken in execution as aforesaid, the trustee may deliver the residue to the principal, or tender it to him within thirty days after satisfaction of the execution, as he might have delivered the whole.

Sec. 48. Surplus. R. S. c. 91, § 48. Any surplus money, remaining in the hands of the officer, after satisfying the execution and fees, shall be paid to the principal, if within his precinct, if not, to the trustee.

Sec. 49. Trustee process, after commitment of the debtor; effect. R. S. c. 91, § 49. When a judgment creditor has caused the debtor to be committed on execution and afterwards discovers goods, effects, or credits of the debtor, not attachable by ordinary process of law, he may have the benefit of the trustee process like any other creditor, if, within seven days after service of the process, he discharges the debtor from prison by a written direction to the jailer, stating the reason therefor; but such discharge shall not annul or affect the judgment.

1 Me. 162; 13 Me. 421.

Sec. 50. Proceedings, if trustee discloses property mortgaged to him. R. S. c. 91, § 50. When a trustee states in his disclosure that he had, at the time when

the process was served on him, in his possession, property not exempted by law from attachment, mortgaged, pledged, or delivered to him by the principal defendant to secure the payment of money due to him, and that the principal defendant has an existing right to redeem it by payment thereof, the court or justice, before which the action is pending, shall order, that, on payment or tender of such money by the plaintiff to said trustee within such time as the court orders, and while the right of redemption exists, he shall deliver the property to the officer serving the process, to be held and disposed of as if it had been attached on mesne process; and in default thereof, that he shall be charged as the trustee of the principal debtor. This order shall be entered on the records of the court or justice.

See c. 64, § 101; c. 123, § 8; 13 Me. 429; 32 Me. 174; 35 Me. 59, 148; 36 Me. 137; 37 Me. 316; 42 Me. 136, 366; 46 Me. 295; 49 Me. 83; 56 Me. 334; 58 Me. 285; 67 Me. 161; 75 Me. 399.

Sec. 51. On return of scire facias, excess to be determined by court or jury. R. S. c. 91, § 51. On return of the scire facias against such trustee, if it appears that the plaintiff has complied with the order of the court or justice, and that the trustee has refused or neglected to comply therewith, the court or justice shall enter up judgment against him for the amount due and returned unsatisfied on the execution, if there appears to be in his hands such an amount of the property mortgaged, over and above the sum due him; but if not, then for the amount of said property exceeding that sum, if any; and the amount of this excess shall, on the trial of the scire facias, be determined by the court or jury.

Sec. 52. On disclosure, trustee to deliver property to officer. R. S. c. 91, § 52. If, by the disclosure, it appears that the property in the hands of the supposed trustee was mortgaged, pledged or subject to a lien to indemnify him against any liability, or to secure the performance of any contract or condition, and that the principal defendant has an existing right to redeem it, the court may order, that, upon the discharge of such liability or the performance of such contract or condition by the plaintiff, within such time as the court or justice orders, and while the right of redeeming exists, such trustee shall deliver the property to the officer, to be by him held and disposed of as if it had been attached.

60 Me. 175.

Sec. 53. Officer having sold property on execution, proceedings. R. S. c. 91, § 53. The officer, having sold on execution any personal property delivered to him by virtue of this chapter, after deducting the fees and charges of sale, shall pay to the plaintiff the sum by him paid or tendered to the trustee, or applied in the performance of such contract or condition, or discharge of such liability, and the interest from the time of such payment, tender or application, to the time of sale; and so much of the residue, as is required therefor, he shall apply in satisfaction of the plaintiff's judgment, and pay the balance, if any, to the debtor, first paying the trustee his costs accruing before the service of the scire facias, as provided in section fourteen.

Sec. 54. Trustee not prevented from selling property mortgaged. R. S. c. 91, § 54. Nothing contained in this chapter shall prevent the trustee from selling the goods in his hands for the payment of the sum for which they were mortgaged, pledged, or otherwise liable, at any time before the amount due to him is paid or tendered as aforesaid, if the sale would have been authorized by the terms of the contract between him and the principal defendant.

Sec. 55. When not to be adjudged trustee. R. S. c. 91, § 55. 1919, c. 109. 1923, c. 125. No person shall be adjudged trustee:

126 Me. 51.

I. By reason of any negotiable bill, draft, note, or other security drawn, accepted, made, or indorsed by him, except in the cases provided in section sixty-three;

71 Me. 442; 90 Me. 306.

II. By reason of any money or other thing received or collected by him as an officer, by force of a legal process in favor of the principal defendant in the trustee process, although it has been previously demanded of him by the defendant;

III. By reason of any money in his hands as a public officer, for which he is accountable to the principal defendant;

IV. By reason of any money or other thing due from him to the principal defendant, unless at the time of the service of the writ upon him, it is due absolutely and not on any contingency;

3 Me. 49; 30 Me. 388; 35 Me. 232; 47 Me. 563; 49 Me. 284; 50 Me. 298; 63 Me. 67; 65 Me. 535; 70 Me. 141; 71 Me. 441; 73 Me. 572; 75 Me. 103, 386; *80 Me. 104; 89 Me. 383; *95 Me. 235; 122 Me. 241; 127 Me. 425.

V. By reason of any debt due from him on a judgment, while he is liable to an execution thereon;

62 Me. 256; 72 Me. 454.

VI. By reason of any amount due from him to the principal defendant, as wages for his personal labor, or that of his wife or minor children, for a time not exceeding one month next preceding the service of the process, and not exceeding twenty dollars of the amount due and payable to him as wages for his personal labor; and ten dollars shall be exempt in all cases; moreover, wages of minor children and of women, are not, in any case, subject to trustee process on account of any debt of parent or husband; if after wages for personal labor or services have been attached and before entry of the writ, the defendant tenders to the plaintiff or to his attorney the whole amount due and recoverable in the action and the fees of the officer for serving the writ, the plaintiff shall recover no costs, except the fees of the officer; and if the defendant is defaulted without an appearance or if he files an offer of judgment on the return day of the writ, and the plaintiff accepts such offer or fails to secure more than the amount thereof and of the interest thereon from its date, the plaintiff shall recover no costs, except the entry fee and the officers' fees. The trustee shall pay to the defendant the amount exempt from attachment at the same time and in the same manner as if no process had been served.

22 Me. 494; 36 Me. 465; 37 Me. 202; 60 Me. 344; 61 Me. 524; 71 Me. 435; 72 Me. 449; 73 Me. 24; 80 Me. 129; 82 Me. 416; 92 Me. 132; 93 Me. 460; 96 Me. 414; *97 Me. 374; *110 Me. 161; *115 Me. 124; *116 Me. 115.

VII. Where service was made on him by leaving a copy or a summons, and before actual notice of such service or reasonable ground of belief that it was made, he paid the debt due to the principal defendant, or gave his negotiable security therefor;

72 Me. 520.

VIII. By reason of any amount due for board furnished a member of the legislature, while in attendance thereon.

Claims under "Workmen's Compensation Act," c. 55, § 23; additional exemptions; life and accident policies and money due thereon, c. 60, §§ 144, 173; policies in fraternal beneficiary associations, c. 61, § 17.

Sec. 56. Effect, if defendant is summoned as trustee of plaintiff. R. S. c. 91, § 56. When an action is brought for the recovery of a demand, and the defendant is summoned as a trustee of the plaintiff, the action shall be continued to await the disclosure of the trustee, unless the court otherwise orders, and if the

CHAP. 100

defendant is adjudged trustee, the disclosure and the proceedings thereon may be given in evidence on the trial of the action between the trustee and his creditor.

17 Me. 255; 36 Me. 308; 58 Me. 319; 72 Me. 452.

Sec. 57. Costs in such case. R. S. c. 91, § 57. If the amount disclosed is as large as the sum recovered in the action, the trustee is liable to no costs after service of the trustee process upon him; otherwise, he is liable to legal costs.

17 Me. 255; 36 Me. 308; 58 Me. 319; 72 Me. 452.

Sec. 58. Proceedings if defendant in action pending, is summoned as trustee of plaintiff. R. S. c. 91, § 58. If, during the pendency of an action, the defendant is summoned as trustee of the plaintiff, the first suit may nevertheless proceed so far as to ascertain by a verdict or otherwise, what sum, if any, is due from the defendant; but the court may, on motion of the plaintiff in the trustee suit, continue it for judgment, until the termination of the trustee suit, or until the attachment therein is dissolved by the discharge of the trustee, or satisfaction of the judgment otherwise.

17 Me. 255; 36 Me. 308; 58 Me. 319; 72 Me. 452.

Sec. 59. Defendant not adjudged trustee after judgment in first suit. R. S. c. 91, § 59. If the first suit is not continued, and judgment is rendered therein, the defendant shall not afterwards be adjudged a trustee on account of the demand thus recovered against him, while he is liable to an execution thereon.

72 Me. 453.

Sec. 60. Effect if, before final judgment, defendant is adjudged trustee on the other suit. R. S. c. 91, § 60. If, before final judgment is rendered in the first suit, the defendant in that suit is adjudged trustee in the other and pays thereon the money demanded in the first suit, or any part of it, the fact shall be stated on the record of the first suit, and judgment therein shall be rendered for the costs due to the plaintiff and for such part of the debt or damages, if any, as remains due and unpaid.

72 Me. 453.

Sec. 61. Money, etc., may be trustee before it is payable; effect. R. S. c. 91, § 61. Any money or other thing due absolutely, to the principal defendant, may be attached before it has become payable; but the trustee is not required to pay or deliver it before the time appointed therefor by the contract.

4 Me. 532; 22 Me. 182; 65 Me. 535; 74 Me. 485; 89 Me. 383.

Sec. 62. Proceedings, if trustee does not pay costs, when liable. R. S. c. 91, § 62. If the person summoned as trustee, and liable for costs as provided in section nineteen, does not voluntarily pay them when demanded by the officer serving the execution, the officer shall state the fact in his return thereon; and if it appear thereby that the costs have not been paid by any one, the court shall award execution against such trustee for the amount thereof.

Sec. 63. Goods fraudulently conveyed, may be trustee. R. S. c. 91, § 63. If an alleged trustee has in his possession goods, effects, or credits of the principal defendant, which he holds under a conveyance fraudulent and void as to the defendant's creditors, he may be adjudged a trustee on account thereof, although the principal defendant could not have maintained an action therefor against him.

25 Me. 264; 29 Me. 487; 35 Me. 332; 46 Me. 296; 48 Me. 325; 57 Me. 419; 66 Me. 247; 67 Me. 162; 75 Me. 54; 104 Me. 90; 123 Me. 514.

Sec. 64. Trustee may retain pay due him, but not for unliquidated damages. R. S. c. 91, § 64. Every trustee may retain or deduct out of the goods, effects, and credits in his hands, all his demands against the principal defendant, of which he could have availed himself, if he had not been summoned as trustee, by way of set-off on trial, or by a set-off of judgments or executions between

himself and the principal defendant, except unliquidated damages for wrongs and injuries; and he is liable for the balance only, after their mutual demands are adjusted.

7 Me. 361; 54 Me. 539; 62 Me. 125; 65 Me. 302; 74 Me. 485; 76 Me. 37; 85 Me. 166; *123 Me. 509, 513.

Sec. 65. Form of judgment against trustee. R. S. c. 91, § 65. When a person is adjudged trustee on disclosure in the original suit, the amount for which he is chargeable shall be fixed by the court, subject to exceptions, and be conclusive on scire facias, unless, for cause shown, an additional disclosure is allowed; but on default, the amount need not be expressed in the judgment; and in all cases on scire facias, if he is adjudged trustee, the amount for which he is chargeable shall be expressed in the judgment.

25 Me. 262; 28 Me. 455; 34 Me. 124, 589; 42 Me. 134; 70 Me. 113, 164.

Sec. 66. Discharge no bar to claim of principal. R. S. c. 91, § 66. If an alleged trustee is discharged, the judgment shall be no bar to an action brought by the principal defendant against him for the same demand.

58 Me. 319.

Scire Facias.

Sec. 67. Scire facias against trustee. R. S. c. 91, § 67. When a person adjudged a trustee in the original action does not, on demand of the officer holding the execution, pay over and deliver to him the goods, effects, and credits in his hands, and the execution is returned unsatisfied, the plaintiff may sue out a writ of scire facias against such trustee, from the court or justice that rendered the judgment, to show cause why judgment and execution should not be awarded against him and his own goods and estate, for the sum remaining due on the judgment against the principal defendant.

23 Me. 63; 40 Me. 260; 48 Me. 171; 58 Me. 113; 65 Me. 302; 66 Me. 164; 93 Me. 96; 100 Me. 64; 113 Me. 445; 127 Me. 424.

Sec. 68. Judgment on scire facias. R. S. c. 91, § 68. After such writ has been served on him, if he neglects to appear and answer thereto, he shall be defaulted; and if he was not examined in the original suit, judgment shall be rendered against him for the whole sum remaining due on the judgment against the principal defendant.

88 Me. 501.

Sec. 69. Judgment when all defendants are defaulted. R. S. c. 91, § 69. When all the defendants in a writ of scire facias are defaulted, not having been examined in the original suit, the court may enter up joint or several judgments, as the case requires, and issue execution in common form.

Sec. 70. If trustee, defaulted on scire facias, was examined in first suit, proceedings. R. S. c. 91, § 70. If a trustee, defaulted on the scire facias, was examined in the original suit, judgment shall be rendered on the facts stated in his disclosure or proved at the trial, for such part of the goods, effects, and credits, for which he is chargeable as trustee, as remain in his hands, if any, or so much thereof as is then due and unsatisfied on the judgment against the principal defendant; but if it appears that such person paid and delivered the whole amount thereof on the execution issued on the original judgment, he is not liable for costs on the scire facias.

40 Me. 259; 46 Me. 92, 350.

Sec. 71. Liability for costs, if discharged on scire facias, not having been before examined. R. S. c. 91, § 71. If the trustee appears and answers to the scire facias, and was not examined in the original suit, he may be examined as he might have been in the original suit; and if, on such examination, he appears

CHAP. 100

not chargeable, the court shall render judgment against him for costs only, if resident in the county where the original process was returnable; but if not resident in such county, he shall not pay or recover costs.

7 Me. 130; 36 Me. 303; 40 Me. 260; 48 Me. 82; 60 Me. 173; 127 Me. 424.

Sec. 72. If examined in original suit, trustee may be examined again. R. S. c. 91, § 72. If he had been examined in the original suit, the court may permit or require him to be examined anew in the suit of scire facias; and he may then prove any matter proper for his defense; and the court may enter such judgment as law and justice require, upon the whole matter appearing on such examination and trial.

15 Me. 345; 25 Me. 266; 41 Me. 131; 60 Me. 173.

Miscellaneous Provisions.

Sec. 73. Goods and effects are liable to another attachment, if not demanded within thirty days; exceptions. R. S. c. 91, § 73. When a person is adjudged trustee, if the goods, effects, and credits in his hands, are not demanded of him by virtue of the execution within thirty days after final judgment, their attachment by the original process is dissolved; and they are liable to another attachment as though the prior attachment had not been made; but when the debt due from the trustee to the principal defendant is payable at a future day, or specific property is in his hands which he is bound to deliver at a future day, the attachment continues until the expiration of thirty days after such debt is payable in money, or the property aforesaid is demanded of the trustee.

34 Me. 73; 36 Me. 308; 58 Me. 286; 64 Me. 349; 65 Me. 302; 113 Me. 445.

Sec. 74. If no second attachment, principal may recover. R. S. c. 91, § 74. If there is no second attachment, the principal defendant may recover the goods, effects, and credits, if not so demanded, as if they had not been attached.

64 Me. 349.

Sec. 75. Demand, how to be made if trustee is out of state, or has no dwelling in the state. R. S. c. 91, § 75. When the officer holding an execution cannot find the trustee in the state, a copy of the execution may be left at his dwelling-house, or last and usual place of abode, with notice to the trustee indorsed thereon, and signed by the officer, signifying that he is required to pay and deliver, towards satisfying such execution, the goods, effects, and credits, for which he is liable. When such trustee has no dwelling-house or place of abode in the state, such copy and notice may be left at his dwelling-house or place of abode without the state, or be delivered to him personally by the officer, or other person by his direction; and such notice in either case is a sufficient demand for the purposes mentioned in the two preceding sections.

113 Me. 446.

Sec. 76. Effect of judgment against trustee. R. S. c. 91, § 76. A judgment against any person as trustee discharges him from all demands by the principal defendant or his executors or administrators, for all goods, effects, and credits, paid, delivered, or accounted for by the trustee thereon; and if he is afterwards sued for the same by the defendant or his executors or administrators, such judgments and disposal of the goods, effects, and credits as above stated, being proved, shall be a bar to the action for the amount so paid or delivered by him. Such payment, delivery, or accounting for may be made either to the officer holding the execution or to the plaintiff or his attorney of record, and may be proved by the officer's return upon the execution, by indorsement made thereon by the plaintiff or his attorney of record, or by any other competent evidence.

18 Me. 335; 34 Me. 73; 48 Me. 143; 65 Me. 302; 93 Me. 460; *122 Me. 239, 245.

Sec. 77. Penalty for false disclosure. R. S. c. 91, § 77. Whoever summoned as trustee, upon his examination wilfully and knowingly answers falsely, shall be deemed guilty of perjury; and shall pay to the plaintiff in the suit so much of the judgment recovered against the principal defendant as remains unsatisfied, with interest and costs, to be recovered in an action on the case.

16 Me. 435; 57 Me. 338, 419; 122 Me. 245.

Sec. 78. Trustee is exempt from costs on scire facias, in certain cases. R. S. c. 91, § 78. If a person summoned as trustee is prevented from appearing in the original suit by absence from the state, or any other reason deemed sufficient by the court, and a default is entered against him, he is not liable for costs on the scire facias; but, on his disclosure, the court may allow him his reasonable costs and charges, to be retained or recovered as if he had appeared in the original suit.

60 Me. 346.

Sec. 79. On exceptions, whole case may be reexamined by law court. R. S. c. 91, § 79. Whenever exceptions are taken to the ruling and decision of a justice as to the liability of a trustee, the whole case may be reexamined and determined by the law court, and remanded for further disclosure or other proceedings, as justice requires.

29 Me. 489; 34 Me. 124; 35 Me. 146; 42 Me. 134; 59 Me. 198; 60 Me. 346; 75 Me. 54; 89 Me. 67; 92 Me. 107; 94 Me. 370; 96 Me. 413; 104 Me. 95, 421; 123 Me. 513.

Trustee Process in Inferior Courts.

Sec. 80. Form and service of trustee process for inferior courts. R. S. c. 91, § 80. When a trustee process is issued by a municipal or police court or a trial justice, the writ shall be in the form now in use, and may contain a direction to attach property of the principal in his own hands, as well as in the hands of the person named as trustee, and be served as a trustee process issued by the superior court, seven days before the return day; and shall be brought in the county where either of the supposed trustees resides; and if not so brought, it shall be dismissed and the trustees shall recover their costs.

See 1821, c. 63, § 6; 12 Me. 18.

Sec. 81. Default, if trustee does not appear; costs. R. S. c. 91, § 81. When the person summoned does not appear and answer to the suit, he shall be defaulted, adjudged trustee, and be liable to costs on scire facias; if he appears at the return day and submits to an examination on oath and is discharged, he shall be allowed his legal costs; but if he is charged, he may retain the amount of his costs; and when the plaintiff discontinues his suit against him or the principal, the trustee shall be allowed his costs.

Sec. 82. Subsequent proceedings; discharge of trustee if judgment is less than five dollars, save in set-off. R. S. c. 91, § 82. All subsequent proceedings in such causes shall be the same as in the superior court, varying the forms as circumstances require; but when, in a trustee process before such municipal or police court or trial justice, the debt recovered against the principal is less than five dollars, the trustee shall be discharged, unless the judgment is so reduced by means of a set-off filed.

Sec. 83. How execution shall issue, if principal or trustee removes. R. S. c. 91, § 83. If after a judgment is rendered in such trustee process, the principal defendant or trustee removes from the county in which it was rendered, such court or justice may issue execution against either, directed to the proper officer of any other county where he is supposed to reside.

Sec. 84. Proceedings, if trustee, living in another county, is discharged. R. S. c. 91, § 84. When an action is brought against a trustee in a county where he resides, but where neither the plaintiff nor defendant resides, and the trustee is discharged, or the action is discontinued as to him, the action shall still proceed if there was legal service on the principal defendant, unless it appears, by plea in abatement, that the trustee was collusively included in the writ for the purpose of giving the court in such county jurisdiction.

Trustee Action on Judgment may be Abated.

Sec. 85. Trustee suit on judgment, when abated; costs. R. S. c. 91, § 85. When an action is commenced by trustee process on a judgment on which execution might legally issue, and it appears to the court or justice that, at the time of bringing it, the defendant openly had visible property liable to attachment, sufficient to satisfy such judgment; or that it was brought for the purpose of vexation; or to accumulate costs, it shall, at any time, on motion, be abated, with costs to the defendant.

See c. 96, § 156.

Proceedings When Demand Against Trustee has been Assigned.

Sec. 86. Demands assigned as security, may be trustee and redeemed. R. S. c. 91, § 86. When it appears that a person summoned as trustee is indebted to the principal defendant on any demand on which he might be held as trustee, but that it has been conditionally assigned as security, and the principal defendant has a subsisting right to redeem it, the court may order, that on fulfilment of such conditions by the plaintiff, within the time fixed by the court, and while the right to redeem exists, the trustee shall be held for the full amount of such demand; and when the court is satisfied that its order has been complied with, it may charge the trustee accordingly.

Sec. 87. Plaintiff's rights, in case of redemption. R. S. c. 91, § 87. The officer making demand on the trustee upon the execution, shall first deduct from the amount received by him the sum paid by the plaintiff to redeem, if any, with interest, and shall apply the balance on the execution; but if the demand has been redeemed otherwise than by the payment of money, the plaintiff shall be subrogated for the holder thereof, and have the same rights and remedies against the principal defendant, and may enforce them, at his own expense, in the name of such holder or otherwise.

60 Me. 173.

Proceedings to dissolve attachment on trustee process by application to court, c. 95, § 82; by bond properly approved, c. 95, § 84.
Costs taxable for trustee, c. 126, § 8.