

# MAINE STATE LEGISLATURE

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REVISED STATUTES  
OF THE  
STATE OF MAINE

1954

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1959 CUMULATIVE SUPPLEMENT

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ANNOTATED

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IN FIVE VOLUMES

**VOLUME 3**

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**Place in Pocket of Corresponding  
Volume of Main Set**

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THE MICHIE COMPANY  
CHARLOTTESVILLE, VIRGINIA  
1959

the appeal in the appellate court where it shall be determined as a new entry. (R. S. c. 98, § 4. 1949, c. 349, § 127. 1959, c. 317, § 113.)

**Effect of amendment.**—The 1959 amendment substituted “a municipal court or” for “the judge or the” in the first sentence and deleted “next” preceding “superior

court” in that sentence.

**Effective date of 1959 amendment.**—See note to § 1.

### **Sec. 9. Actions and executions, when directed into other counties.**

—In actions against bail, indorsers for costs, and proceedings after judgment against executors or administrators, and in all actions against 2 or more defendants before a trial justice or a judge of a municipal court, where the defendant or trustee resides out of the county where the proceedings are had, the justice or judge may direct the summons, writ or execution to any proper officer of the county where such defendant or trustee resides, who shall charge fees of travel from the place of his residence to the place of service only, and postage paid by him. (R. S. c. 98, § 9. 1959, c. 317, § 114.)

**Effect of amendment.**—The 1959 amendment substituted “actions” for “cases of scire facias” and “for costs, and proceedings after judgment against” for “of writs” near the beginning of the section, substituted “actions” for “trustee processes or

original writs” preceding “against 2 or more defendants” and added “summons,” preceding “writ or execution.”

**Effective date of 1959 amendment.**—See note to § 1.

## **Chapter 112.**

### **Commencement of Civil Actions.**

Section 84-A. Attachment in Counterclaim, Cross-Claim or Third-Party Complaint.

#### **Forms and Requisites of Writs.**

**Sec. 1.** Repealed by Public Laws 1959, c. 317, § 115.

**Effective date and applicability of Public Laws 1959, c. 317.** — Section 420, chapter 317, Public Laws 1959, provides as follows: “This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits

in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail.”

**Sec. 2. Writs or precepts sold, etc., only to attorneys.**—Clerks of judicial courts, judges and registers of the probate courts, recorders of the municipal courts and trial justices of the state shall not sell or deliver any blank writs or precepts bearing the seal of said courts and the signature of said judges, recorders, registers and trial justices to any person except one who has been admitted as an attorney and counselor at law and solicitor and counselor in chancery in accordance with the laws of this state, and said judges and registers of said probate courts shall not receive any paper, petition or other instrument pertaining to the practice of law before said probate courts unless it bears the indorsement of an attorney or counselor at law duly authorized to practice before said courts, except that the above provisions shall not apply to a party in interest in the subject matter in said courts. (R. S. c. 99, § 2. 1959, c. 317, § 116.)

**Effect of amendment.**—The 1959 amendment repealed the former first paragraph of this section.

**Effective date of 1959 amendment.**—See note to § 1.

**Secs. 3, 4.** Repealed by Public Laws 1959, c. 317, § 117.

**Effective date and applicability of Public Laws 1959, c. 317.**—Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits

in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

**Sec. 5. Unknown defendant sued by assumed name.**—When the name of a defendant is not known to the plaintiff, the summons may issue against him by an assumed name. If duly served, it shall not be dismissed for that reason but may be amended on such terms as the court orders. (R. S. c. 99, § 5. 1959, c. 317, § 118.)

**Effect of amendment.**—The 1959 amendment divided the section into two sentences, substituted "summons" for "writ" in the first and substituted "dismissed" for

"abated" and "reason" for "cause" in the second.

**Effective date of 1959 amendment.**—See note to § 1.

**Indorsement of Writs.**

**Sec. 6. Indorsement of summons, writ, petition or complaint.**—When the plaintiff, petitioner or complainant in any judicial proceeding is not an inhabitant of the state, every original summons, writ, petition or complaint shall, upon motion of an adverse party made within 20 days of service upon him, be indorsed by a sufficient inhabitant of the state, or security for costs furnished by deposit in court in such amount as the court shall direct. If pending such action, the plaintiff, petitioner or complainant removes from the state, such an indorser shall be procured or security for costs furnished on motion; but if one of such plaintiffs, petitioners or complainants is an inhabitant of the state, no indorser or security shall be required except by special order of the court. The name of an attorney of this state upon such summons, writ, petition or complaint will be deemed to have been placed there to meet the requirements of this section in the absence of any words used in connection therewith showing a different purpose. (R. S. c. 99, § 6. 1959, c. 317, § 119.)

**Effect of amendment.**—The 1959 amendment rewrote this section.

**Effective date and applicability of Public Laws 1959, c. 317.**—See note to § 1.

**Venue.**

**Sec. 9. Personal and transitory actions; transfer from one county to another.**—Personal and transitory actions, except process of foreign attachment and except as provided in sections 10 to 16, shall be brought, when the parties live in this 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. Improper venue may be raised by the defendant by motion or by answer, and if it is established that the action was brought in the wrong county, it shall be dismissed 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. Actions by the assignee of a nonnegotiable chose in action, when brought in the superior court or in a municipal court, shall be commenced in the county in which the original creditor might have maintained his action; and when brought before a trial justice, the summons shall be made returnable before a magistrate who

would have had jurisdiction had the chose in action not been assigned. (R. S. c. 99, § 9. 1959, c. 317, § 120.)

**Effect of amendment.**—The 1959 amendment substituted "sections 10 to 16" for "the 7 following sections" in the first sentence and deleted at the end thereof the clause "and when not so brought, they shall on motion or inspection by the court be abated and the defendant allowed double

costs." The amendment also added the present second sentence, divided the former last sentence into two sentences and substituted "summons" for "writ" in the present last sentence.

**Effective date of 1959 amendment.**—See note to § 1.

**Sec. 12. Jurisdiction obtained by attachment.**—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. (R. S. c. 99, § 12. 1959, c. 317, § 121.)

**Effect of amendment.**—The 1959 amendment deleted "on the original writ; and service shall be made as provided in section 21" formerly appearing at the end of

the section.

**Effective date of 1959 amendment.**—See note to § 1.

**Sec. 15. Certain actions in behalf of state.**—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. On motion of the defendant, any justice of the superior court 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 courts of the county from which said action is transferred. (R. S. c. 99, § 15. 1959, c. 317, § 122.)

**Effect of amendment.**—The 1959 amendment divided this section into two sentences and deleted the words "holding the term at which such action is returnable,"

formerly appearing after "superior court" in the present second sentence.

**Effective date of 1959 amendment.**—See note to § 1.

**Sec. 16. Justice actions, service.**—An action against 2 or more defendants residing in different counties, to be tried before a trial justice or municipal court, may be brought in the county where either resides. The process shall be served and the execution levied by the proper officers in each of such counties. If there is only one defendant, such action shall be commenced in the county where he resides. (R. S. c. 99, § 16. 1959, c. 317, § 123.)

**Effect of amendment.**—The 1959 amendment divided the section into three sentences and substituted at the beginning of the present second sentence "The process shall be served and the execution levied"

for "and the writ and execution shall be directed to and executed."

**Effective date of 1959 amendment.**—See note to § 1.

### Service on Residents.

**Secs. 17-20.** Repealed by Public Laws 1959, c. 317, § 124.

**Effective date and applicability of Public Laws 1959, c. 317.** — Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits

in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

### Service on Nonresidents.

**Sec. 21. Service of process.**—

**I.** Any person, whether or not a citizen or resident of this state, who in

person or through an agent does any of the acts hereinafter enumerated in this section, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:

**A.** The transaction of any business within this state;

**B.** The commission of a tortious act within the state resulting in physical injury to person or property;

**C.** The ownership, use or possession of any real estate situated in this state;

**D.** Contracting to insure any person, property or risk located within this state at the time of contracting.

**II.** Service of process upon any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may be made by personally serving the summons upon the defendant outside this state, with the same force and effect as though summons had been personally served within this state.

**III.** Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.

**IV.** Nothing contained in this section limits or affects the right to serve any process in any other manner now or hereafter provided by law. (R. S. c. 99, § 21, 1959, c. 317, § 125.)

**Effect of amendment.**—The 1959 amendment rewrote this section.

**Effective date and applicability of Public Laws 1959, c. 317.**—See note to § 22.

**Sec. 22.** Repealed by Public Laws 1959, c. 317, § 126.

**Effective date and applicability of Public Laws 1959, c. 317.**—Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits

in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

### Want or Defect of Service Cured.

**Sec. 23.** Repealed by Public Laws 1959, c. 317, § 126.

**Effective date and applicability of Public Laws 1959, c. 317.**—See note to § 22.

### Attachment of Personal Property.

**Sec. 27. Attachment of bulky personal property recorded in town clerk's office.**—When any personal property is attached which by reason of its bulk or other special cause cannot be immediately removed, the officer may within 5 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 of attachment 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 of attachment and the court to which it is 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. When the attachment is made in an unincorporated place, such copy shall be filed and recorded in the registry of deeds for the registry district in which said unincorporated place is located. (R. S. c. 99, § 27, 1959, c. 317, § 127.)

**Effect of amendment.**—The 1959 amendment added the words "of attachment" after the word "writ" in two places in the

first sentence of this section.

**Effective date of 1959 amendment.**—See note to § 22.

**Sec. 28. Attachment of shares in a corporation.**—When the share or interest of any person in an incorporated company is attached on mesne process, an attested copy of the writ of attachment with a notice thereon of the attachment, signed by the officer, shall be left with the clerk, cashier or treasurer of the company. Such attachment is a lien on such share or interest and on all accruing dividends. If the officer having the writ of attachment exhibits it to the official 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 official unreasonably refuses to give it or willfully 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 by the creditor. (R. S. c. 99, § 28. 1959, c. 317, § 128.)

**Effect of amendment.**—The 1959 amendment divided the section into three sentences, added “of attachment” following “writ” in the present first and third sentences and, near the end of the section,

corrected the spelling of “neglect” and deleted “on the case” following “action.”

**Effective date of 1959 amendment.**—See note to § 22.

**Sec. 29. Attachment of franchise and other property of corporation.**—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 serve an attested copy of the writ of attachment upon the corporation in the same manner as other process. (R. S. c. 99, § 29. 1959, c. 317, § 129.)

**Effect of amendment.**—The 1959 amendment rewrote this section.

**Effective date and applicability of Public Laws 1959, c. 317.**—See note to § 22.

**Sec. 30. Successive attachment on same writ or property.**—Successive attachments in one or more counties may be made upon the same writ of attachment by the same or different officers before service of the summons upon the person whose property is attached; but none after such service except on order of the court on motion without notice and for cause shown. Personal property attached on process may be subsequently attached by a different officer, who shall furnish the last preceding attaching officer with a copy of the precept within a reasonable time. (R. S. c. 99, § 30. 1959, c. 317, § 130.)

**Effect of amendment.**—The 1959 amendment added “of attachment” following “writ” near the beginning of the first sentence and added “except on order of the

court on motion without notice and for cause shown” at the end thereof.

**Effective date of 1959 amendment.**—See note to § 22.

**Attachment of Property Mortgaged or Pledged.**

**Sec. 45. When officer attaching mortgaged property is exempt from suit.**

Such summons may be in substantially the following form;

Summons to Claimant

State of Maine

....., ss.

A.B., Plaintiff

v.

C.D., Defendant

E.F., Claimant

} Summons

Superior Court

Civil Action, File Number ....

You are hereby summoned and required to appear at our ..... Court, to be held at ....., on the ..... day of ..... in an action between ....., plaintiff, and ....., defendant, in which the following described property, claimed by you as mortgagee, was attached as the property of said defendant; viz., ....., and there to answer in such action, such questions as may be put to you relative

to the consideration, validity and amount justly due secured by such mortgage, and abide the judgment of the court thereon.

If you fail to appear and answer, you will thereby waive the right to hold said property under the claimed mortgage.

(Signed) .....  
Clerk of said Superior Court

[Seal of the Court]

Dated .....

Such summons, when property is attached on the writ, shall be returnable to the court to which the writ is returnable or to any justice thereof in vacation not less than 10 days nor more than 60 days after service thereof, and when property is seized on execution such summons shall be made returnable to any justice or judge of the court issuing such execution on any day fixed by such justice or judge not less than 10 days nor more than 60 days thereafter. Service in either case shall be by copy of such summons. If in either case the mortgagee or claimant fails to appear and answer, or after hearing fails to establish his claim under such mortgage, pledge or lien, he thereby waives the right to hold the property thereon. (R. S. c. 99, § 45. 1949, c. 349, § 128. 1959, c. 317, §§ 131, 132.)

**Effect of amendment.**—This section was amended twice by P. L. 1959, c. 317. Section 131 of P. L. 1959, c. 317, rewrote the next to last paragraph. Section 132 deleted the words "attested by the officer serving the same," formerly appearing at the end

of the next to last sentence of the last paragraph. As the rest of the section was not affected by the amendments, only the last two paragraphs are set out.

**Effective date of 1959 amendment.**—See note to § 22.

**Attachment of Real Estate.**

**Sec. 61. Real estate attached on writs from certain municipal courts.**—If a municipal court has a regular seal and his jurisdiction in any action where the amount of damage claimed exceeds \$20, real estate and interests in real estate attachable on writs from the superior 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 \$20. (R. S. c. 99, § 61. 1959, c. 22.)

**Effect of amendment.**—The 1959 amendment deleted the words "and a recorder," formerly appearing after the word "seal."

**Sec. 63. Attachment not valid unless recorded and claim specified; seizure on execution; lien.**—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 the complaint or specifications therein or account annexed thereto, nor unless the officer making it within 5 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 the writ of attachment 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 of attachment and the court to which it is returnable. If the copy is not so filed within 5 days, the attachment takes effect from the time it is filed, although it is after service on the defendant, if before the time he is required to serve his answer. No seizure of real estate on execution, where there is no subsisting attachment thereof made in the action in which such execution issues, creates any lien thereon, unless the officer making it within 5 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. Such proceedings shall be had in such office by the register of deeds, as are prescribed in chapter 89, sections 212 to 242. All recorded deeds take precedence over unrecorded attachments. (R. S. c. 99, § 63. 1959, c. 317, § 133.)

**Effect of amendment.**—The 1959 amendment substituted “in the complaint or specifications therein or account annexed thereto” for “in proper counts or a specification is annexed to the writ” near the beginning of the first sentence, added “of attachment” following “writ” at two places in that sentence, substituted “although it is after service on the defendant, if before the time he is required to serve his answer”

for “if before the entry of the action, although it is after service on the defendant” at the end of the second sentence, substituted “action” for “suit” in the third sentence and changed the form of the reference to chapter 89 at the end of the section.

**Effective date of 1959 amendment.**—See note to § 22.

**Sec. 64. Action not effectual against person not party thereto, until attachment or lis pendens recorded.**—No action in which the title to real estate is involved is effectual against any person not a party thereto or having actual notice thereof until either:

**I.** An attachment of such real estate is duly made and recorded in the registry of deeds, in and for the county or district in which such real estate is situated, in the same manner as attachments of real estate in other actions are now recorded; or

**II.** A certificate setting forth the names of the parties, the date of the complaint and the filing thereof and a description of the real estate in litigation as described in said complaint, duly certified by the clerk of courts in and for the county where said complaint is pending is recorded in the registry of deeds in the county or district in which such real estate is situated. (R. S. c. 99, § 64. 1959, c. 317, § 134.)

**Effect of amendment.**—The 1959 amendment rewrote this section.

**Effective date and applicability of Public Laws 1959, c. 317.**—See note to § 22.

### Dissolution of Attachments.

**Sec. 72. Attachment continues during pendency of appeal or for 60 days after judgment; expiration of real estate attachment.**—An attachment of real or personal estate continues during the time within which an appeal may be taken from the judgment and during the pendency of any appeal. When a judgment for the plaintiff has become final by expiration of the time for appeal, by dismissal of an appeal, or on certificate of decision from the law court, any such attachment shall continue for 60 days; except attachments of real estate taken on execution; or equities of redemption sold on execution; or an obligee's conditional right to a conveyance of real estate sold on execution; or property attached and replevied; or property attached belonging to a person dying thereafter, or specially provided for in any other case. An attachment of real estate shall expire at the end of 5 years from the date of filing the same in the office of the register of deeds in the county or district where the said real estate or some part of it is situated, unless the said register shall, within said period, at the request of the plaintiff or his attorney bring forward the same upon the book of attachments, and at the expiration of 5 years from the time of such first or any subsequent bringing forward, such attachment shall expire unless within said period it is again brought forward in like manner. The register shall be entitled to the same fee for bringing forward such attachment upon the said book of attachments as for the original entry thereof. (R. S. c. 99, § 72. 1959, c. 93, § 1; c. 317, § 135.)

**Effect of amendments.**—The second 1959 amendment divided the former first sentence into three sentences and substi-

tuted, in the present first and second sentences, the language beginning with the words “during the time” and conclud-

ing with "60 days" for the words "for 30 days and no longer after final judgment in the original suit, and not in review or error." The first 1959 amendment had divided the former first sentence into two

sentences and had substituted "60" for "30" in the phrase eliminated by the second amendment.

**Effective date and applicability of Public Laws 1959, c. 317.**—See note to § 22.

**Sec. 73. Attachments dissolved.**—An attachment of real or personal property is dissolved when a judgment for the defendant has become final by expiration of the time for appeal, by dismissal of an appeal, or on certificate of decision from the law court; by a decree of insolvency on his estate before a levy or sale on execution; by insolvency proceedings commenced within 4 months as provided in the insolvency law; by a reference of the action 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 complaint, 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 complaint. (R. S. c. 99, § 73. 1959, c. 317, § 136.)

**Effect of amendment.**—The 1959 amendment substituted the language preceding the first semicolon for "All attachments of real or personal estate are dissolved by final judgment for the defendant," substituted "action" for "suit" in the third clause,

"complaint" for "declaration" in the fourth clause and "complaint" for "writ" at the end of the section.

**Effective date of 1959 amendment.**—See note to § 22.

**Sec. 74. Certificate of dissolution of attachment.**—When an attachment is dissolved by judgment for the defendant, or if the complaint in the action in which an attachment is made is not filed with the court within 30 days after the first attachment therein, the clerk of the court 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. The said clerk of courts may charge a fee of 50¢ for such certificate. Before or after the entry of said writ in said court, or before or after judgment thereon, or if said writ is not entered in court, the plaintiff or his attorney in such suit may discharge the attachment in writing on the margin of the record thereof, or said plaintiff or said attorney may give a certificate, signed, sealed and acknowledged by him that said attachment is in whole or in part discharged, which the register of deeds shall record with a reference thereto on the margin of the records of attachments. The register of deeds shall note the record of said discharge on the margin of the records of attachments within an hour of the delivery to him of either of the aforesaid certificates. Such attachments may be discharged on the record thereof in the registry of deeds by an attorney at law authorized in writing by the plaintiff in said suit; provided, however, that said writing is first recorded or filed in said registry of deeds with a reference thereto made by said register of deeds on the margin of the record of the attachment. (R. S. c. 99, § 74. 1959, c. 317, § 137.)

**Effect of amendment.**—The 1959 amendment rewrote the first sentence of this section.

**Effective date of 1959 amendment.**—See note to § 22.

**Sec. 76. Plaintiff fails or refuses to discharge attachment.**—If the plaintiff shall upon demand unreasonably delay or refuse to discharge the said attachment as prescribed in section 75, then the defendant by action filed in the county in which the attachment of said real estate was made shall be entitled on proof thereof to have the attachment discharged by a decree of the court duly filed in the registry of deeds, which the register of deeds shall record with reference thereto on the margin of the record of said attachment. (R. S. c. 99, § 76. 1959, c. 317, § 138.)

**Effect of amendment.**—The 1959 amendment rewrote this section.

**Effective date and applicability of Public Laws 1959, c. 317.**—See note to § 22.

**Sec. 77. Debtor may petition for a valuation and release.**—Any defendant, whose interest in real estate is attached on mesne process, may petition a justice of the superior court, setting forth the names of the parties to the action, 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 action living in the state, including trustees mentioned in section 82, and on the plaintiff's attorney, 10 days at least before the time fixed therein for a hearing. (R. S. c. 99, § 77. 1959, c. 317, § 139.)

**Effect of amendment.**—The 1959 amendment deleted "in term time or vacation" following "superior court" in the first sentence and substituted "action" for "suit"

in both sentences.

**Effective date of 1959 amendment.**—See note to § 22.

**Sec. 78. Valuation and release on bond of debtor.**—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 bond to the plaintiff, with sufficient sureties, conditioned that within 30 days after judgment for the plaintiff has become final by expiration of the time for appeal, by dismissal of an appeal, or on certificate of decision from the law court, he will pay the judgment recovered by the plaintiff, with his costs on the petition, such bond, except as otherwise provided, to be in an amount equal to the amount ordered in the writ to be attached; but, if he finds that such interest is worth less than the amount ordered in the writ to be attached, such bond, except as otherwise provided, shall be in an amount equal to the value of such interest. If, in either event the justice shall find that the value of the interest attached is in excess of the amount of any judgment which the plaintiff may reasonably be expected to recover, with his costs on the petition, he may fix the amount of such bond at such sum, not exceeding the amount ordered to be attached and not exceeding the value of the interest attached, as he may deem adequate to protect the plaintiff in the collection of any judgment recovered by him, with his costs on the petition. (R. S. c. 99, § 78. 1959, c. 317, § 140.)

**Effect of amendment.**—The 1959 amendment divided the section into two sentences, rewrote the conditions of the bond and substituted "otherwise" for "herein-

after" at two places in the first sentence.

**Effective date of 1959 amendment.**—See note to § 22.

### **Attachment in Counterclaim, Cross-Claim or Third-Party Complaint.**

**Sec. 84-A. Attachment made by party bringing counterclaim, cross-claim or third-party complaint.**—Attachment of real estate, goods and chattels, or other property may be made by a party bringing a counterclaim, a cross-claim or a third-party complaint in the same manner as upon an original claim. For purposes of applicable statutes, the word "plaintiff" shall refer to the party to the action who makes the attachment and the word "defendant" shall refer to the party to the action whose property is attached. (1959, c. 317, § 141.)

**Effective date and applicability of Public Laws 1959, c. 317.**—See note to § 22.

### **Cross Actions against Nonresidents.**

**Secs. 85, 86.** Repealed by Public Laws 1959, c. 317, § 142.

**Effective date and applicability of Public Laws 1959, c. 317.**—See note to § 22.

### **Days on Which No Arrest Made or Process Served.**

**Sec. 87. Exemption from arrest on certain holidays.**—No person shall be arrested in a civil action, on mesne process, or execution or on a war-

rant for taxes on the day of annual Thanksgiving; the 19th day of April; the 30th day of May; the 4th of July; the 2nd Monday of September; Veterans Day, November 11th; or Christmas. 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. (R. S. c. 99, § 87. 1957, c. 397, § 52. 1959, c. 230, § 4.)

**Effect of amendments.** — The 1957 amendment made this section into two sentences and substituted "Veterans Day" for "Armistice Day".

The 1959 amendment changed the fifth holiday from the first to the 2nd Monday in September.

**Effective date.** — P. L. 1959, c. 230, amending this section, provided in section 5 thereof as follows: "This act shall take effect on January 1, 1961, provided that on or before said date the majority of the following states, Massachusetts, New Hamp-

shire, Vermont, Rhode Island, Connecticut, New York, New Jersey and Pennsylvania shall have provided by legislation or otherwise for the observance of Labor Day on the same day as provided in this act and provided further that on or before January 1, 1961 the Governor, after determining that a majority of the above-named states has provided for the observance of Labor Day on the same day as provided in this act, shall by proclamation proclaim that this act is effective."

### Limitations of Personal Actions.

**Sec. 90. General limitation of 6 years.**—All civil actions shall be commenced within 6 years after the cause of action accrues and not afterwards, except actions on a judgment or decree of any court of record of the United States, or of any state, or of a municipal court, trial justice or justice of the peace in this state, and except as otherwise specially provided. (R. S. c. 99, § 90. 1959, c. 317, § 143.)

**Effect of amendment.**—The 1959 amendment rewrote this section.

**Effective date and applicability of Public Laws 1959, c. 317.**—See note to § 22.

**Statutory actions on insurance policies.**—

The usual six-year statute of limitation is not applicable to statutory actions upon insurance policies where other applicable law applies. *Hubert v. National Casualty Co.*, 154 Me. 94, 144 A. (2d) 119.

**Sec. 92. Suits against sheriff for escape; for misconduct.**—Actions for escape of prisoners committed on execution shall 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 4 years after the cause of action accrues. (R. S. c. 99, § 92. 1959, c. 317, § 144.)

**Effect of amendment.**—The 1959 amendment deleted the words "be actions on the case and," formerly appearing before the

words "be commenced" in the first clause.

**Effective date of 1959 amendment.**—See note to § 22.

**Sec. 94. Actions against bail, sureties in criminal recognizances and trustees, in one year.**—No action shall be commenced against bail unless within one year after judgment was rendered against the principal; nor against 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. No action in behalf of the state against sureties and recognizances in criminal cases shall be brought unless within one year after default of principal. (R. S. c. 99, § 94. 1959, c. 317, § 145.)

**Effect of amendment.**—The 1959 amendment substituted "action shall be commenced against bail" for "scire facias shall be served on bail" near the beginning of the section, substituted "nor against" for

"nor on" following the first semicolon and deleted "of debt" following "action" near the beginning of the last sentence.

**Effective date of 1959 amendment.**—See note to § 22.

**Sec. 95.** Repealed by Public Laws 1959, c. 317, § 146.

**Effective date and applicability of Public Laws 1959, c. 317.**—See note to § 22.

**Sec. 96. Mutual and open accounts current.**—In contract actions 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. (R. S. c. 99, § 96. 1959, c. 317, § 147.)

**Effect of amendment.**—The 1959 amendment substituted “contract actions” for “actions of debt or assumpsit” near the

beginning of this section.

**Effective date of 1959 amendment.**—See note to § 22.

**Sec. 97. Minors, etc., may sue after disability removed.**—If a person entitled to bring any of the actions under sections 90 to 96 is a minor, 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. (R. S. c. 99, § 97. 1959, c. 317, § 148.)

**Effect of amendment.**—The 1959 amendment deleted “aforesaid” formerly appearing before “actions,” added “under sections 90 to 96” following “actions” and deleted

“or married woman” following “minor.”

**Effective date of 1959 amendment.**—See note to § 22.

**Sec. 98. Actions to be commenced within 20 years.**—Personal actions on contracts or liabilities under seal, promissory notes signed in the presence of an attesting witness, or on the bills, notes or other evidences of debt issued by a bank shall be commenced within 20 years after the cause of action accrues. (R. S. c. 99, § 98. 1959, c. 317, § 149.)

**Effect of amendment.**—The 1959 amendment rewrote this section.

**Effective date of 1959 amendment.**—See note to § 22.

**Sec. 99. When summons fails of service or defeated, new action in 6 months.**—When a summons fails of sufficient service or return by unavoidable accident, or default, or negligence of the officer to whom it was delivered or directed, or the action is otherwise defeated for any matter of form, or by the death of either party, the plaintiff may commence a new action on the same demand within 6 months after determination of the original action; and if he dies and the cause of action survives, his executor or administrator may commence such new action within said 6 months. (R. S. c. 99, § 99. 1959, c. 317, § 150.)

**Effect of amendment.**—The 1959 amendment substituted “summons” for “writ” and “original action” for “original suit” and deleted provisions as to abatement, or

reversal of the judgment.

**Effective date of 1959 amendment.**—See note to § 22.

**Sec. 103. When action is commenced.**—An action is commenced when the complaint is either filed with the clerk, deposited in the mail addressed to the clerk, delivered to an officer for service or deposited in the mail addressed to such officer. (R. S. c. 99, § 103. 1959, c. 317, § 151.)

**Effect of amendment.**—The 1959 amendment rewrote this section.

**Effective date and applicability of Public Laws 1959, c. 317.**—See note to § 22.

**Sec. 105. Renewal of promise in writing.**—In actions 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. (R. S. c. 99, § 105. 1959, c. 317, § 152.)

**Effect of amendment.**—The 1959 amendment deleted “of debt or on the case,” formerly appearing after the word “actions”

in the first sentence.

**Effective date of 1959 amendment.**—See note to § 22.

**Sec. 107. When nonjoinder of defendants is pleaded.**—In an action on a contract, if the defendant pleads 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. (R. S. c. 99, § 107. 1959, c. 317, § 153.)

**Effect of amendment.**—The 1959 amendment deleted “in abatement,” formerly appearing after the word “pleads” near the

beginning of this section.

**Effective date of 1959 amendment.**—See note to § 22.

**Sec. 109. Presumption of payment after 20 years.**—Every judgment and decree of any court of record of the United States, or of any state, or of a municipal court, trial justice or justice of the peace in this state shall be presumed to be paid and satisfied at the end of 20 years after any duty or obligations accrued by virtue of such judgment or decree. (R. S. c. 99, § 109. 1959, c. 317, § 154.)

**Effect of amendment.**—The 1959 amendment added the words “municipal court” in this section.

**Effective date of 1959 amendment.**—See note to § 22.

**Sec. 110. Application of the statutes of limitation to counterclaims.**—All the provisions hereof respecting limitations apply to any counterclaim by the defendant. The time of such limitation shall be computed as if an action had been commenced therefor at the time the plaintiff’s action was commenced. (R. S. c. 99, § 110. 1959, c. 317, § 155.)

**Effect of amendment.**—The 1959 amendment rewrote this section.

**Effective date and applicability of Public Laws 1959, c. 317.**—See note to § 22.

## Chapter 113.

### Proceedings in Court in Civil Actions.

Sections 75-88. Counterclaim.

Sections 89-94. Referees, Masters and Auditors.

#### Procedure. General Provisions.

**Secs. 1-4.** Repealed by Public Laws 1959, c. 317, § 156.

**Effective date and applicability of Public Laws 1959, c. 317.**—Section 420, chapter 317, Public Laws 1959, provides as follows: “This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits

in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail.”

**Sec. 5. Execution stayed one year unless bond given.**—Execution shall not issue upon a judgment by default against an absent defendant in a personal action who has no actual notice thereof until one year after entry of the judgment unless the plaintiff first gives bond to the defendant with one or more sureties in double the amount of damages and costs, conditioned to repay to the defendant the amount of the judgment or any part thereof from which he may ultimately be relieved as a result of motion therefor. If a bond is given, any attachment of real or personal property or attachment on trustee process shall continue for 60 days after the bond is filed with the court. If a bond is not given, any such attachment shall continue for one year and 60 days after entry of the default judgment. If the defaulted defendant files within one year of the default judgment a motion for relief therefrom, any such attachment shall continue until 60 days after denial of