

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1961 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 3

Discard Previous Pocket Part Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1961

Sec. 2. Secretary of state as receiving officer.—The secretary of state is hereby designated as the officer to receive all documents deposited pursuant to articles 6 and 7 of the interpleader compact. The secretary of state is also directed hereby to act as the repository for all such documents and to keep and make available upon request a complete list of the states with which this state is party to the interpleader compact, together with such other information as may be in his possession concerning the status of such compact in respect to enactment and withdrawals therefrom. (1955, c. 245.)

Sec. 3. Duties of governor.—As used in subsection III of article 7 of the interpleader compact, the phrase “executive head” shall mean the governor of this state. In the event that the governor shall take any action pursuant to subsection III of article 7 of such interpleader compact, he shall promptly notify the secretary of state and shall deposit with him copies of any and all official communications and documents relating to such action. The governor shall take appropriate action pursuant to subsection III of article 7 of the interpleader compact so as not to become party thereto with any state not recognized by the United States of America or with any state the features of whose legal system make the equitable operation of said compact impracticable. (1955, c. 245.)

Chapter 114.

Trustee Process.

Sections 67-72. Proceedings after Judgment.

Section 85. Trustee Action on Judgment Dismissed.

Procedure.

Sec. 1. Actions in which trustee process used.—In connection with the commencement of any personal action except actions only for specific recovery of goods and chattels, for malicious prosecution, for slander by writing or speaking, or for assault and battery, trustee process may be used in the superior court, or before a municipal court or a trial justice. (R. S. c. 101, § 1. 1959, c. 317, § 207.)

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

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 fur-

ther 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.”

Secs. 2, 3. Repealed by Public Laws 1959, c. 317, § 208.

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

Sec. 4. Effect of service on trustee; service on partnership.—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 on trustee process, service upon 1 member of the firm shall be a sufficient attachment of the property of the principal defendant in the possession of the firm, provided 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. (R. S. c. 101, § 4. 1961, c. 317, § 391.)

Effect of amendment.—The 1961 amendment substituted “on trustee process” for “in a trustee suit” near the beginning of the

last sentence of this section and deleted “that” following “provided” near the middle of such last sentence.

Sec. 5. County in which action must be brought; action for divorce; banking institution as trustee; counterclaim.—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 at its last annual meeting or usually holds its meetings; except that an action in which a railroad corporation is named and alleged as trustee may be brought in any county in which said railroad corporation runs and operates its road; and except that an action in which a banking institution is named and alleged as trustee may be brought in any county in which said banking institution maintains a place of business. Service may be made on the manager of such banking institution in the county having jurisdiction over the parties named in the action.

When trustee process is used in connection with the commencement of an action for divorce, the action must be brought in the county in which the court has jurisdiction over the parties named in the action, and the alleged trustee, although residing in another county, may be summoned to appear in the county in which said court has jurisdiction over the parties named in the action and must answer and make disclosure in such county. The court sitting therein shall have full power and authority to award from the funds found to be held by the alleged trustee and belonging to the defendant such sum or sums as it may deem proper as an award for alimony or in lieu thereof.

When trustee process is used in connection with a counterclaim arising out of the transaction or occurrence that is the subject matter of the opposing party's claim, the alleged trustee may be summoned to appear in the county in which the action is pending, even though he does not reside or maintain a usual place of business in that county. (R. S. c. 101, § 5. 1945, c. 131. 1947, c. 7. 1959, c. 317, § 209; c. 378, § 73.)

Effect of amendments.—Chapter 317, P. L. 1959, substituted "holds" for "held" preceding the first exception in the first sentence, substituted "that an action" for "in a suit" near the beginning of the first and second exceptions in that sentence and deleted "the action" following "trustee" in both. Chapter 317 also divided the second paragraph into two sentences, substituted the language which precedes the first comma in the paragraph for "Pro-

vided, however, that when a libel for divorce is inserted in a trustee writ," substituted "action" for "libel" at two places in the first sentence and substituted "defendant" for "libelee" in the last sentence of that paragraph. Chapter 378, P. L. 1959, effective on its approval, January 29, 1960, added the last paragraph.

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

Sec. 5-A. Where brought.—In determining where an action commenced by trustee process shall be brought in the district court under this chapter the word "county" shall mean "division" and the word "counties" shall mean "divisions." (1961, c. 395, § 47.)

Effective date.—P. L. 1961, c. 395, § 47, adding this section, became effective on its approval, June 17, 1961.

Sec. 6. Additional trustees; action discontinued, trustee not entitled to costs.—After service of the summons and complaint upon the principal defendant, the court, on motion without notice, may for cause shown order an additional attachment on trustee process against the same or an additional trustee, except for wages or salary due the defendant. When a trustee action is discontinued or settled by the principal parties thereto, the trustee shall be entitled to no costs, provided the plaintiff or his attorney shall, at least 7 days before the trustee's disclosure under oath is required to be served, notify the trustee

in writing that the action has been discontinued. (R. S. c. 101, § 6. 1959, c. 317, § 210.)

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

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

Sec. 7. When trustees may appear for principal.—When the principal is out of the state at the time of service and has no agent therein and 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. (R. S. c. 101, § 7. 1959, c. 317, § 211.)

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

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

Sec. 8. Corporations summoned as trustees; answer and disclosure.—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 summonses may be served on them as other process is served on such companies or corporations. 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 summons may be made. The same proceedings shall thereupon be had throughout except necessary changes in form, as in other cases of foreign attachment. (R. S. c. 101, § 8. 1959, c. 317, § 212.)

Effect of amendment.—The 1959 amendment divided the section into three sentences, substituted “summonses” for “writs” and “process is” for “writs are” in the first sentence, deleted “except that the service shall be by the summons de-

scribed in section 3” at the end of that sentence and substituted “summons” for “writ” in the second sentence.

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

Sec. 10. Trustee about to leave state may disclose before justice.—When a person summoned as trustee is about to depart from the state or go on a voyage and not return before his disclosure under oath is required to be served, 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. (R. S. c. 101, § 10. 1959, c. 317, § 213.)

Effect of amendment.—The 1959 amendment substituted the words “his disclosure under oath is required to be served” for the words “the term of the court where he

is summoned to appear” in the first sentence of this section.

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

Sec. 11. Commissioner to take disclosure.—The court in which the action is pending may appoint a commissioner to take the trustee’s 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. 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. (R. S. c. 101, § 11. 1959, c. 317, § 214.)

Effect of amendment.—The 1959 amendment divided the section into two sentences and substituted “in which the action is pending” for “before whom a trustee

is summoned” and “the trustee’s” for “his” in the first sentence.

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

Sec. 13. Nonresident adjudged trustee.—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. The action may be brought in the county in which either the plaintiff or principal defendant resides. (R. S. c. 101, § 13. 1959, c. 317, § 215.)

Effect of amendment.—The 1959 amendment divided this section into two sentences, and substituted the words “action may be brought” for the words “writ may

be made returnable” in the present second sentence.

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

Sec. 14. Trustee entitled to costs; payment.—If any supposed trustee serves within the time required therefor a disclosure under oath declaring 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 and submitting himself to an examination, on oath, he is entitled to his costs as in civil actions where issue is joined for trial. 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. (R. S. c. 101, § 14. 1959, c. 317, § 216.)

Effect of amendment.—The 1959 amendment divided the former first sentence of the section into two sentences, substituted “serves within the time required therefor a disclosure under oath declaring” for “comes into court at the first term and submits himself to an examination, on oath, after

having in writing declared” in the present first sentence and added in that sentence the words “and submitting himself to an examination, on oath.”

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

Sec. 17. Discharge of trustees; effect upon principal.—If all the persons summoned as trustees are discharged or the action against them is discontinued, the plaintiff shall not proceed against the principal defendant unless there was sufficient personal service of the summons on him; but he may assume the defense of the action. (R. S. c. 101, § 17. 1959, c. 317, § 217.)

Effect of amendment.—The 1959 amendment substituted the word “action” for the word “suit” and the word “sum-

mons” for the word “writ” in this section.

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

Sec. 18. Compensation, if trustee lives in another county.—When the trustee, at the time when the summons was served on him, did not live in the county where the summons 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. (R. S. c. 101, § 18. 1959, c. 317, § 218.)

Effect of amendment.—The 1959 amendment substituted the word “summons” for the word “writ” twice in this section.

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

Sec. 19. Liability of trustee for not serving a disclosure.—If a person resident in the county in which the action is commenced is summoned and neglects to serve a disclosure under oath submitting to examination within the time required therefor, without reasonable excuse, he is liable for all costs afterwards arising in the action, 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. (R. S. c. 101, § 19. 1959, c. 317, § 219.)

Effect of amendment.—The 1959 amendment substituted “action is commenced” for “writ is returnable,” substituted “serve a disclosure under oath submitting” for “appear and submit,” substituted “within

the time required therefor” for “at the return term” and substituted “action” for “suit.”

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

Sec. 21. Trustees out of their county and those residing out of state.—Persons summoned as trustees, residing out of the county where the action is pending, are not liable for any costs arising on the original process. If the person summoned as trustee is out of the state at the time the summons is served on him and appears within 20 days after his return, he shall be allowed his costs and charges as if he had appeared at the time otherwise required therefor. (R. S. c. 101, § 21. 1959, c. 317, § 220.)

Effect of amendment.—The 1959 amendment divided the section into two sentences, substituted “action” for “suit” in the first sentence and rewrote what is now the second sentence.

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

Sec. 23. No costs for trustee unless he appears.—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 summons was served and submit himself to examination on oath, the court shall not award costs in his favor although the action is voluntarily dismissed. (R. S. c. 101, § 23. 1959, c. 317, § 221.)

Effect of amendment.—The 1959 amendment substituted “summons” for “writ”, “action” for “suit” and “voluntarily dis-

missed” for “discontinued” in this section.

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

Sec. 24. Trustee living out of county may appear by attorney.—A person summoned as trustee, and not then living in the county where the summons is returnable, need not appear in person in the original action or on motion after judgment; but he may appear by attorney and declare whether he had any goods or effects of the principal in his hands when the summons was served, and thereupon offer to submit himself to examination to oath. (R. S. c. 101, § 24. 1959, c. 317, § 222.)

Effect of amendment.—The 1959 amendment substituted “summons” for “writ” at two places in the section, substituted “action” for “suit” and substituted “on motion

after judgment” for “in a suit on scire facias.”

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

Sec. 28. Trustee not appearing defaulted.—When a person summoned as trustee neglects to appear and answer to the action, he shall be defaulted and adjudged trustee as alleged. (R. S. c. 101, § 28. 1961, c. 317, § 392.)

Effect of amendment.—The 1961 amendment substituted “action” for “suit” in this section.

Sec. 32. If trustee discloses an assignment of the principal’s claim.—When it appears by the answers of a trustee that any goods, effects or credits in his hands are claimed by a 3rd 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 sees 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 action 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. If he does not appear in person or by attorney, the assignment shall have no effect to defeat plaintiff’s attachment. (R. S. c. 101, § 32. 1961, c. 317, § 393.)

Effect of amendment.—The 1961 amendment divided the former second sentence of this section into three sentences and substi-

tuted “action” for “suit” in the present third sentence.

Sec. 33. Principal defendant may testify.—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 ex-

cept his being a party to the original action. (R. S. c. 101, § 33. 1961, c. 114, § 394.)

Effect of amendment.—The 1961 amendment substituted “action” for “suit” at the end of this section.

Sec. 34. Form of judgment against principal and trustee.—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 action 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. (R. S. c. 101, § 34. 1961, c. 317, § 395.)

Effect of amendment.—The 1961 amendment substituted “action” for “suit” near the middle of this section.

Sec. 35. Time extended for trustee to disclose.—The plaintiff and supposed trustee may by agreement entered on the docket extend the time within which the supposed trustee may make disclosure, preserving all the advantages that he would have on appearing and disclosing within the time required. (R. S. c. 101, § 35. 1959, c. 317, § 223.)

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

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

Sec. 37. Death of trustee after service, goods held in hands of administrator.—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 summons had been originally served on them. (R. S. c. 101, § 37. 1959, c. 317, § 224.)

Effect of amendment.—The 1959 amendment substituted “summons” for “writ” near the end of this section.

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

Sec. 38. Death of trustee before judgment, administrator cited.—If he dies before judgment in the original action, 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. 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. (R. S. c. 101, § 38. 1961, c. 317, § 396.)

Effect of amendment.—The 1961 amendment divided this section into two sentences and substituted “action” for “suit” in the present first sentence.

tences and substituted “action” for “suit” in the present first sentence.

Sec. 39. If administrator does not appear, judgment rendered.—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. The executor or administrator shall pay, on the execution, the amount which he would have been liable to pay to the principal defendant. He shall be thereby discharged from all demands on the part of the principal defendant in the action for the amount so paid, as if he had himself been adjudged trustee. (R. S. c. 101, § 39. 1961, c. 317, § 397.)

Effect of amendment.—The 1961 amendment divided this section into three sentences and substituted “action” for “suit” in the present third sentence.

tences and substituted “action” for “suit” in the present third sentence.

Sec. 40. If he does not pay, plaintiff may proceed on motion.—If the executor or administrator in the case last mentioned does not voluntarily pay the amount in his hands, the plaintiff may proceed on motion as if the judgment in the first action had been against him as trustee, but if he is discharged,

he may recover costs or not at the discretion of the court. (R. S. c. 101, § 40. 1959, c. 317, § 225.)

Effect of amendment.—The 1959 amendment substituted “on motion” for “by writ of scire facias” and “action” for “suit” in this section.

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

Sec. 41. If trustee dies within 30 days after judgment, proceedings to preserve the attachment.—If any person against whom execution issues as trustee is not living at the expiration of 30 days after final judgment in the action, the demand, to be made by force of the execution for continuing the attachment as provided in section 73, may be made on his executor or administrator at any time within 30 days after his appointment with the same effect as if made within 30 days after the judgment. (R. S. c. 101, § 41. 1961, c. 317, § 398.)

Effect of amendment.—The 1961 amendment substituted “action” for “trustee suit” near the middle of this section.

Sec. 42. Manner of issuing execution, if administrator is adjudged trustee.—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 an action originally commenced against him as a trustee, or against the deceased, 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. (R. S. c. 101, § 42. 1959, c. 317, § 226.)

Effect of amendment.—The 1959 amendment substituted “an action” for “a suit” and deleted “or in the original suit or on a writ of scire facias”, formerly appearing

after the word “deceased” in this section.

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

Sec. 43. Remedy on his bond if he neglects to pay.—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 an action 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. (R. S. c. 101, § 43. 1961, c. 317, § 399.)

Effect of amendment.—The 1961 amendment substituted “an action” for “a suit” near the middle of this section.

Sec. 45. Remedy if trustee refuses.—If the trustee neglects or refuses to deliver them, or sufficient to satisfy the execution, the judgment creditor has his remedy on motion as provided in sections 67 to 72; and the debtor has his remedy for an overplus belonging to him as at common law. (R. S. c. 101, § 45. 1959, c. 317, § 227.)

Effect of amendment.—The 1959 amendment substituted “motion” for “a scire facias.”

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

Sec. 51. Excess determined by court or jury.—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. The amount of this excess shall be determined by the court or jury. (R. S. c. 101, § 51. 1959, c. 317, § 228.)

Effect of amendment.—The 1959 amendment divided the section into two sentences, deleted “On return of the scire facias against such trustee” at the beginning of the section and deleted “on the

trial of the scire facias” following the word “shall” in the last sentence.

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

Sec. 53. Property sold on execution.—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. 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 as provided in section 14. (R. S. c. 101, § 53. 1961, c. 317, § 400.)

Effect of amendment.—The 1961 amendment divided this section into two sentences, deleted “of the provisions” preceding “of this chapter” near the beginning of

the present first sentence and deleted “before the service of the scire facias” preceding “as provided in section 14” at the end of the section.

Sec. 55. When not adjudged trustee.

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 summons upon him, it is due absolutely and not on any contingency; (1959, c. 317, § 229)

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 \$30 of the amount due and payable to him as wages for his personal labor, and \$10 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 the trustee’s disclosure under oath is required to be served, 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 summons, the plaintiff shall recover no costs except the fees of the officer. If the defendant is defaulted without an appearance or if he files an offer of judgment before his disclosure under oath is required to be filed 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 trustees 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; (1951, c. 169. 1959, c. 317, § 229) (1959, c. 317, § 229.)

Effect of amendment.—The 1959 amendment substituted “summons” for “writ” in subsection IV, divided the former first sentence of subsection VI into four sentences, substituted “the trustee’s disclosure under oath is required to be served” for “entry of the writ” and “summons” for “writ” in the present third sentence in that subsection, and substituted “before his disclosure

under oath is required to be filed” for “on the return day of the writ” in the present fourth sentence.

As the rest of the section was not affected by the amendment, it is not set out.

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

Sec. 58. If defendant in action pending is summoned as trustee of plaintiff.—If, during the pendency of an action, the defendant is summoned as trustee of the plaintiff, the first action 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 action, continue it for

judgment until the termination of the trustee action, or until the attachment therein is dissolved by the discharge of the trustee or satisfaction of the judgment otherwise. (R. S. c. 101, § 58. 1961, c. 317, § 401.)

Effect of amendment.—The 1961 amendment substituted “action” for “suit” in three places in this section.

Sec. 59. Defendant not adjudged trustee after judgment in first action.—If the first action 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. (R. S. c. 101, § 59. 1961, c. 317, § 402.)

Effect of amendment.—The 1961 amendment substituted “action” for “suit” in this section.

Sec. 60. If, before final judgment, defendant adjudged trustee on other action.—If, before final judgment is rendered in the first action, the defendant in that action is adjudged trustee in the other and pays thereon the money demanded in the first action or any part of it, the fact shall be stated on the record of the first action 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. (R. S. c. 101, § 60. 1961, c. 317, § 403.)

Effect of amendment.—The 1961 amendment substituted “action” for “suit” in four places in this section.

Sec. 64. Trustee may retain pay due him, but not for unliquidated damages.—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 counterclaim on trial or by a setoff of judgments or executions between himself and the principal defendant, except unliquidated damages for wrongs and injuries. He is liable for the balance only, after their mutual demands are adjusted. (R. S. c. 101, § 64. 1961, c. 317, § 404.)

Effect of amendment.—The 1961 amendment divided this section into two sentences and substituted “counterclaim” for “setoff” in the present first sentence.

Sec. 65. Amount chargeable to trustee.—When a person is adjudged trustee on disclosure in the original action, the amount for which he is chargeable shall be fixed by the court, subject to appeal, and be conclusive in proceedings after judgment unless, for cause shown, an additional disclosure is allowed. On default, the amount need not be expressed in the judgment. In all proceedings after judgment, if he is adjudged trustee, the amount for which he is chargeable shall be set forth. (R. S. c. 101, § 65. 1959, c. 317, § 230.)

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

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

Proceedings after Judgment.

Sec. 67. Motion by plaintiff against trustee.—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 on motion in the original action require the trustee 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. A trustee

who has not appeared shall be given such notice as the court may direct. (R. S. c. 101, § 67. 1959, c. 317, § 231.)

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

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

Sec. 68. Judgment rendered against trustee.—After notice of such motion has been served on him, if he neglects to appear and answer thereto, he shall be defaulted. If he was not examined in the original action, judgment shall be rendered against him for the whole sum remaining due on the judgment against the principal defendant. (R. S. c. 101, § 68. 1959, c. 317, § 232.)

Effect of amendment.—The 1959 amendment divided this section into two sentences, substituted “notice of such motion” for “such writ” in the first sentence and

substituted “action” for “suit” in the second sentence.

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

Sec. 69. Judgment when all trustees defaulted.—When all the trustees are defaulted in proceedings after judgment, not having been examined in the original action, the court may enter up joint or several judgments, as the case requires, and issue execution in common form. (R. S. c. 101, § 69. 1959, c. 317, § 233.)

Effect of amendment.—The 1959 amendment substituted “trustees” for “defendants in a writ of scire facias,” added “in proceedings after judgment” and substi-

tuted “action” for “suit.”

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

Sec. 70. If trustee defaulted.—If a trustee defaulted on proceedings after judgment was examined in the original action, 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. 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 proceedings after judgment. (R. S. c. 101, § 70. 1959, c. 317, § 234.)

Effect of amendment.—The 1959 amendment divided the section into two sentences, substituted “proceedings after judgment” for “the scire facias” and “action” for “suit” in the first sentence and substi-

tuted “proceedings after judgment” for “scire facias” at the end of the section.

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

Sec. 71. Liability for costs, if discharged in proceedings after judgment.—If the trustee appears and answers in the proceedings after judgment and was not examined in the original action, he may be examined as he might have been in the original action. If, on such examination, he appears 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. (R. S. c. 101, § 71. 1959, c. 317, § 235.)

Effect of amendment.—The 1959 amendment divided the section into two sentences, substituted “in the proceedings after judgment” for “to the scire facias” near the beginning of the first sentence and sub-

stituted “action” for “suit” at two places in that sentence.

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

Sec. 72. If examined in original action, trustee examined again.—If he had been examined in the original action, the court may permit or require him to be examined anew in the proceedings after judgment. He may then prove any matter proper for his defense. The court may enter such judgment as law and justice require, upon the whole matter appearing on such examination and trial. (R. S. c. 101, § 72. 1959, c. 317, § 236.)

Effect of amendment.—The 1959 amendment divided the section into three sentences and substituted “action” for “suit” and “proceedings after judgment” for “suit of scire facias” in the present first sentence.

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

Miscellaneous Provisions.

Sec. 77. False disclosure.—Whoever, summoned as trustee, upon his examination willfully and knowingly answers falsely, shall be deemed guilty of perjury, and shall pay to the plaintiff in the action so much of the judgment recovered against the principal defendant as remains unsatisfied, with interest and costs, to be recovered in a civil action. (R. S. c. 101, § 77. 1961, c. 317, § 405.)

Effect of amendment.—The 1961 amendment substituted “action” for “suit” near the middle of this section and substituted

“a civil action” for “an action on the case” at the end of the section.

Sec. 78. Trustee exempt from costs in proceedings after judgment.—If a person summoned as trustee is prevented from appearing in the original action 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 in the proceedings after judgment; 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 action. (R. S. c. 101, § 78. 1959, c. 317, § 237.)

Effect of amendment.—The 1959 amendment substituted “action” for “suit” near the beginning and at the end of the section and substituted “in the proceedings after

judgment” for “on the scire facias” near the middle of the section.

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

Sec. 79. On appeal, whole case reexamined by law court.—Whenever objections are made 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 on appeal and remanded for further disclosure or other proceedings, as justice requires. (R. S. c. 101, § 79. 1959, c. 317, § 238.)

Effect of amendment.—The 1959 amendment substituted “objections are made” for “exceptions are taken” near the beginning of the section and added “on appeal” fol-

lowing: “law court.”

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

Municipal Courts and Trial Justices.

Sec. 80. Form and service of trustee summons for inferior courts.—When a trustee process is issued by a municipal court or a trial justice, the summons shall be substantially in the form used in the superior court, and be served 7 days before the return day in the same manner as in the superior court; and shall be brought in the county where either of the supposed trustees resides. If not so brought, it shall be dismissed and the trustees shall recover their costs. (R. S. c. 101, § 80. 1959, c. 317, § 239.)

Effect of amendment.—The 1959 amendment divided the section into two sentences and rewrote what is now the first sen-

tence.

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

Sec. 81. Default if trustee does not appear; costs.—When the person summoned does not appear and answer to the action, he shall be defaulted, adjudged trustee and be liable to costs. If he appears at the return day and submits to an examination on oath and is discharged, he shall be allowed his legal costs. If he is charged, he may retain the amount of his costs. When the plaintiff dismisses his action against him or the principal, the trustee shall be allowed his costs. (R. S. c. 101, § 81. 1959, c. 317, § 240.)

Effect of amendment.—The 1959 amendment divided the section into four sentences, substituted “action” for “suit” in the first and last sentences, deleted “on scire facias” at the end of the present first

sentence and substituted “dismisses” for “discontinues” in the last sentence.

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

Sec. 82. Subsequent proceedings; discharge of trustee if judgment is less than \$5, save in counterclaim.—All subsequent proceedings in such actions shall be the same as in the superior court, varying the forms as circumstances require. When, in a trustee action before such municipal court or trial justice, the debt recovered against the principal is less than \$5, the trustee shall be discharged unless the judgment is so reduced by means of a counterclaim filed. (R. S. c. 101, § 82. 1959, c. 317, § 241.)

Effect of amendment.—The 1959 amendment divided the section into two sentences, substituted “actions” for “causes” in the first sentence and substituted “ac-

tion” for “process” and “counterclaim” for “setoff” in the second sentence.

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

Sec. 84. If trustee living in another county is discharged.—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 dismissed as to him, the action shall still proceed if there was legal service on the principal defendant, unless it is set forth by motion or answer and established on hearing that the trustee was conclusively included in the action for the purpose of giving the court in such county jurisdiction. (R. S. c. 101, § 84. 1959, c. 317, § 242.)

Effect of amendment.—The 1959 amendment substituted “dismissed” for “discontinued,” substituted “is set forth by motion or answer and established on hearing”

for “appears by plea in abatement” and substituted “action” for “writ.”

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

Trustee Action on Judgment Dismissed.

Sec. 85. Trustee action on judgment dismissed; costs.—When trustee process is used in connection with an action 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 dismissed, with costs to the defendant. (R. S. c. 101, § 85. 1959, c. 317, § 243.)

Effect of amendment.—The 1959 amendment substituted “trustee process is used in connection with an action on a judgment” for “an action is commenced by trustee process on a judgment” near the

beginning of this section, and substituted “dismissed” for “abated” near the end of the section.

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

Chapter 115.

Bail in Civil Actions.

Sec. 1. Bail bond; returned with writ.—When bail is taken on mesne process, it shall be by bond to the sheriff, if taken by him or his deputy, otherwise to the officer making the arrest, with condition that the defendant will appear and answer to the action and abide final judgment thereon and not avoid. The bond shall be returned with the writ and the clerk shall note on the writ that a bail bond is so filed. (R. S. c. 102, § 1. 1961, c. 317, § 406.)

Effect of amendment.—The 1961 amendment substituted “action” for “suit” in the first sentence of this section.