

# MAINE STATE LEGISLATURE

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CHAPTER 507  
ATTACHMENTS

Subch.	Sec.
I. General Provisions .....	4101
II. Personal Property .....	4151
III. Real Property .....	4451
IV. Dissolution .....	4601

SUBCHAPTER I

GENERAL PROVISIONS

Sec.

4101. Attachment by counterclaim, cross-claim or 3rd party.

4102. Subsequent attachments.

**§ 4101. Attachment by counterclaim, cross-claim or 3rd party**

Attachment of real estate, goods and chattels, or other property may be made by a party bringing a counterclaim, a cross-claim or a 3rd 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.

**§ 4102. Subsequent attachments**

After service of the summons and complaint upon the defendant, the court on motion without notice may for cause shown order an additional attachment of real estate, goods and chattels on other property.

R.S.1954, c. 113, § 20; 1959, c. 317, § 161.

SUBCHAPTER II  
PERSONAL PROPERTY

ARTICLE 1. GENERAL PROVISIONS

- Sec.  
4151. Property subject to attachment.  
4152. Property kept where found; owner's bond.  
4153. Attachment of hay and animals.  
4154. Record of attachment of bulky personal property.  
4155. Shares in a corporation.  
4156. Franchise and other corporate property.  
4157. Successive attachments.  
4158. Replevin of property attached and claimed by nonparty to action; sale.  
4159. Effect of creditor's failure to recover judgment.  
4160. Restriction of right to attach replevied goods.

ARTICLE 2. DEATH OR REMOVAL OF  
ATTACHING OFFICER

4201. Attached goods not assets of deceased officer's estate.  
4202. Replevied goods liable to further attachments.  
4203. Death or removal of officer; further attachments.

ARTICLE 3. MORTGAGED OR PLEDGED PROPERTY

4251. Attachment of encumbered personal property.  
4252. Liability of officer attaching mortgaged property.  
4253. Mortgagee to account within 10 days after notice; false account.  
4254. Validity of mortgage established.  
4255. Validity of mortgage tried before jury; costs.  
4256. Disposition of proceeds of sale.

ARTICLE 4. PROPERTY OF PART OWNERS

4301. Property of part owners; attachment; disposal.  
4302. Payment; part owner's lien; attachment dissolved.

ARTICLE 5. SALES OF ATTACHED PROPERTY

4351. Sale of attached personal property.  
4352. Perishable goods; sale without consent.  
4353. Petition for sale; order.  
4354. Proceeds attached in hands of officers; surplus.  
4355. Right of priority in case of sale preserved.

ARTICLE 6. EXEMPTIONS

4401. Items exempt.

## ARTICLE 1. GENERAL PROVISIONS

**§ 4151. Property subject to attachment**

All goods and chattels may be attached and held as security to satisfy the judgment for damages and costs which the plaintiff may recover, except such as, from their nature and situation, have been considered as exempt from attachment according to the principles of the common law as adopted and practiced in the State, and such as are hereinafter mentioned. Such personal property may be attached on writs issued by the District Court in any division, when directed to the proper officer.

R.S.1954, c. 112, § 24; 1963, c. 402, § 168.

**§ 4152. Property kept where found; owner's bond**

Personal property attached may be kept upon the premises where the same is found and the attaching officer may appoint a keeper thereof. If the owner of said property or the occupant of said premises requests the officer in writing to remove said keeper, the officer shall remove the property attached or the keeper without unreasonable delay. If the defendant in writing requests the officer making the attachment to allow said property attached to remain upon the premises where found until he may give a bond dissolving said attachment, the officer shall not remove said property until the defendant has had a reasonable opportunity to give said bond.

R.S.1954, c. 112, § 25.

**§ 4153. Attachment of hay and animals**

When hay in a barn, horses or neat cattle are attached and are suffered to remain by permission of the officer in the defendant's possession on security given for their safekeeping and delivery to the officer, they are not subject to a 2nd attachment to the prejudice of the first.

R.S.1954, c. 112, § 26.

**§ 4154. Record of attachment of bulky personal property**

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 municipal clerk or the Secretary of State or in the registry of

deeds, as the case may be, where filing is required to perfect a security interest in such goods under Title 11, section 9-401, 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 municipal clerk, Secretary of State or register of deeds, as the case may be, shall receive the copy, noting thereon the time, enter it in a suitable book or file and keep it on file for the inspection of those interested therein.

R.S.1954, c. 112, § 27; 1959, c. 317, § 127; 1963, c. 362, § 25.

### **§ 4155. 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.1954, c. 112, § 28; 1959, c. 317, § 128.

### **§ 4156. Franchise and other corporate property**

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.1954, c. 112, § 29; 1959, c. 317, § 129.

### **§ 4157. Successive attachments**

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 prop-

erty 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.1954, c. 112, § 30; 1959, c. 317, § 130.

**§ 4158. Replevin of property attached and claimed by non-party to action; sale**

When personal property, attached on mesne process, is claimed by a person not a party to the action, he may replevy it within 10 days after notice given him therefor by the attaching creditor, and not afterwards. After that, the attaching officer, without impairing the rights of such person, at the request and on the responsibility of the plaintiff and with consent of other attaching creditors, if any, may sell it at auction as on execution, unless the debtor claims it as his and forbids the sale.

R.S.1954, c. 112, § 41; 1961, c. 317, § 339.

**§ 4159. Effect of creditor's failure to recover judgment**

If the attaching creditor, after having paid the amount ordered by the court, does not recover judgment, he may nevertheless hold the property until the debtor has repaid with interest the amount so paid.

R.S.1954, c. 112, § 50.

**§ 4160. Restriction of right to attach replevied goods**

Goods, taken by replevin from an attaching officer, shall not be further attached as property of the original defendant in any other manner than that provided in sections 4202 and 4203, so long as they are held by the person who replevied them or by any one holding under him, unless the original defendant has acquired a new title to the goods.

R.S.1954, c. 112, § 54.

ARTICLE 2. DEATH OR REMOVAL OF ATTACHING OFFICER

**§ 4201. Attached goods not assets of deceased officer's estate**

Personal property, attached by an officer and in his possession, and his claim for damages when it is taken from him remain

subject to such attachment in case of his death, as if he were alive, and are not assets belonging to his estate.

R.S.1954, c. 112, § 51.

**§ 4202. Replevied goods liable to further attachments**

The property described in section 4201 replevied from the officer is liable to further attachments as if in his possession. If there is judgment for a return in the replevin action, the plaintiff and his sureties are liable for the whole property or its value, although some attachments were made after the replevin.

R.S.1954, c. 112, § 52; 1961, c. 317, § 343.

**§ 4203. Death or removal of officer; further attachments**

If an attaching officer dies or is removed from office while the attachment is in force, whether the property was in his possession or not, it and its proceeds may be further attached by any other officer the same as it might have been by the first officer. Such further attachments shall be made by a return setting forth an attachment in common form and by whom the property was previously attached; and if the goods have not been replevied, by leaving a certified copy of the writ of attachment, omitting the declaration and of the return of that attachment, with the former officer if living, or if dead, with his executor or administrator, or if none has been appointed, with the person having possession of the goods; or if the goods have been replevied and the officer who made the original attachment is dead, such copy shall be left with his executors or administrators or with the plaintiff in replevin. The attachment shall be considered as made when such copy is delivered in either of the modes described.

R.S.1954, c. 112, § 53; 1961, c. 317, § 344.

**ARTICLE 3. MORTGAGED OR PLEDGED PROPERTY****§ 4251. Attachment of encumbered personal property**

Personal property not exempt from attachment, mortgaged, pledged or subject to any lien created by law and of which the debtor has the right of redemption, may be attached, held and sold as if unencumbered, subject to sections 4159 and 4252 to 4256.

R.S.1954, c. 112, § 44.

§ 4252. Liability of officer attaching mortgaged property

When personal property, attached on a writ or seized on execution, is claimed by virtue of such mortgage, pledge or lien, the claimant shall not bring an action against the attaching officer therefor:

1. Notice. Until he has given him at least 48 hours' written notice of his claim and the true amount thereof; or

2. Payment. If the officer or creditor within that time discharges the claim by paying same or tendering the amount due thereon; or

3. Property restored. If the officer within that time restores the property; or

4. Claimant to answer. Where the property was attached on a writ or seized on execution while in the hands or possession of the mortgagor, the attaching creditor within that time summons the claimant to answer in the same action such questions as may be put to him relative to the consideration, validity and amount due secured by such mortgage.

Such summons may be in substantially the following form:

		Summons to Claimant	
State of Maine			Superior Court
....., ss.			Civil Action, File Number ....
A.B., Plaintiff	}	Summons	
v.			
C.D., Defendant			
E.F., Claimant			

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 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 the court issuing such execution on any day fixed by the court 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.1954, c. 112, § 45; 1959, c. 317, §§ 131, 132; 1961, c. 317, § 341.

**§ 4253. Mortgagee to account within 10 days after notice; false account**

The officer may give the claimant written notice of his attachment. If he does not within 10 days thereafter deliver to the officer a true account of the amount due on his claim, he thereby waives the right to hold the property thereon. If his account is false, he forfeits to the creditor double the amount of the excess, to be recovered in a civil action.

R.S.1954, c. 112, § 46; 1961, c. 317, § 342.

**§ 4254. Validity of mortgage established**

If, upon examination held under section 4252 or upon the verdict of a jury as provided, it appears that the mortgage is valid, the court, having first ascertained the amount justly due upon it, may direct the attaching creditor to pay the same to the mortgagee or his assigns within such time as it orders. If he does not pay or tender the amount within the time prescribed, the attachment shall be vacated and the property shall be restored. If the attaching creditor pays or tenders the amount directed to be paid within such time and the mortgagee or his assigns fail to immediately assign such mortgage to the attaching creditor, the mortgagee or his assigns shall be estopped from claiming any interest in such attached goods by virtue of his mortgage.

R.S.1954, c. 112, § 47; 1963, c. 414, § 119.

**§ 4255. Validity of mortgage tried before jury; costs**

If the attaching creditor denies the validity of the mortgage and moves that the validity may be tried by jury, the court

shall order such trial upon an issue which shall be framed under its direction and if, upon such examination or verdict, the mortgage is adjudged valid, the mortgagee or his assigns shall recover his costs.

R.S.1954, c. 112, § 48.

### § 4256. Disposition of proceeds of sale

When the attaching creditor has paid to the mortgagee or his assigns the amount ordered by the court, the sheriff after making the sale shall pay to the creditor, and the creditor may retain out of the proceeds of the property attached, when sold, the amount so paid with interest, and the balance shall be applied to the payment of his debt.

R.S.1954, c. 112, § 49.

## ARTICLE 4. PROPERTY OF PART OWNERS

### § 4301. Property of part owners; attachment; disposal

When personal property is attached in a civil action against one or more part owners thereof, at the request of another part owner, it shall be appraised as provided, one appraiser to be chosen by the creditor, one by the officer and the other by the requesting part owner. Thereupon it shall be delivered to such part owner on his giving bond to the officer with 2 sufficient sureties, conditioned to restore it in like good order, pay the appraised value of the defendant's share therein or satisfy all judgments recovered in the attaching actions, if demanded within the time during which it would be held by the attachments. Such bond shall be returned with the writ of attachment with the doings of the officer thereon.

R.S.1954, c. 112, § 42; 1961, c. 317, § 340; c. 417, § 181.

### § 4302. Payment; part owner's lien; attachment dissolved

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

R.S.1954, c. 112, § 43.

## ARTICLE 5. SALES OF ATTACHED PROPERTY

**§ 4351. Sale of attached personal property**

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

R.S.1954, c. 112, § 31; 1961, c. 317, § 338.

**§ 4352. Perishable goods; sale without consent**

When personal property liable to perish, be wasted, greatly reduced in value by keeping or be kept at great expense is attached, and the parties do not consent to a sale thereof, the same may be ordered sold either before or after entry of the action, in accordance with sections 4158 and 4353 to 4355.

R.S.1954, c. 112, § 32; 1961, c. 193, § 1.

**§ 4353. Petition for sale; order**

Either party may, on motion to the court setting forth the reasons therefor, petition the court to order the expeditious sale of the attached property. After such notice as the court may order and hearing on the motion, the court may, in its discretion, order the attached property to be sold and the proceeds held as security for the claim involved. As a part of its order, the court may impose such restrictions and conditions as it deems necessary for the conduct of such sale, the protection of lienors, the furnishing of bonds for the protection of the interests of any party, and to protect the interest of the attaching creditor and debtor.

R.S.1954, c. 112, § 33; 1961, c. 193, § 2.

**§ 4354. Proceeds attached in hands of officers; surplus**

The proceeds of such property sold by order of court may be further attached by the officer as property of the defendant while remaining in his hands; and held and disposed of as if the prop-

erty itself had been attached; but after retaining enough to satisfy all attachments existing thereon at any time, nothing herein shall prevent his paying the surplus to the debtor.

R.S.1954, c. 112, § 39; 1961, c. 193, § 4.

### § 4355. Right of priority in case of sale preserved

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

R.S.1954, c. 112, § 40; 1961, c. 193, § 5.

## ARTICLE 6. EXEMPTIONS

### § 4401. Items exempt

The following personal property is exempt from attachment and execution:

**1. Apparel, furniture, bed.** The debtor's apparel; household furniture necessary for himself, wife and children, not exceeding \$200 in value, and one bed, bedstead and necessary bedding for every 2 such persons.

**2. Bibles, statutes, watch, ring.** All family portraits, Bibles and schoolbooks in actual use in the family; one copy of the statutes of the State, a library not exceeding \$150 in value, a watch not exceeding \$10 in value and a wedding ring or engagement ring not exceeding \$10 in value.

**3. Pew.** All his interest in one pew in a meetinghouse where he and his family statedly worship.

**4. Stoves, coal, wood.** One cooking stove; all iron stoves used exclusively for warming buildings; charcoal, and not exceeding 12 cords of wood conveyed to his house for the use of himself and family; all anthracite coal, not exceeding 5 tons; all bituminous coal, not exceeding 50 bushels; and \$50 worth of lumber, wood or bark.

**5. Farm produce.** All produce of farms until harvested; one barrel of flour; 50 bushels of oats; 50 barrels of potatoes;

corn and grain necessary for himself and family, not exceeding 30 bushels; all other provisions raised or bought and necessary for himself and family; and all flax raised on a half acre of land and all articles manufactured therefrom for the use of himself and family.

**6. Trade tools, sewing machine, washing machine, musical instruments.** The tools necessary for his trade or occupation, materials and stock designed and procured by him and necessary for carrying on his trade or business and intended to be used or wrought therein, not exceeding \$100 in value, and one sewing machine and one washing machine not exceeding \$100 each in value for actual use by himself or family; the musical instruments used by him in his profession as a professional musician, not exceeding \$200 in value.

**7. Cattle, mules, horses, harness, sled.** One pair of working cattle, or instead thereof one pair of mules or one or 2 horses not exceeding in value \$400, and a sufficient quantity of hay to keep them through the season. If he has more than one pair of working cattle or mules, or if the 2 horses exceed in value \$400, he may elect which pair of cattle or mules or which horse shall be exempt. If he has a pair of mules or one or 2 horses so exempt, he may also have exempt for each of said horses or mules, one harness not exceeding \$40 in value; and one horse sled not exceeding the same value; but if he has at the same time an ox sled, he may elect which sled shall be exempt.

**8. Domestic fowl, cow, swine, sheep.** Domestic fowl not exceeding \$100 in value, 2 swine, one cow and one heifer under 3 years old and the calves raised from them until they are one year old, or if he has no oxen, horse or mule, 2 cows, and he may elect the cows or cow and heifer, if he has more than are exempt, 10 sheep and the wool from them and the lambs raised from them until they are one year old, and a sufficient quantity of hay to keep said cattle, sheep and lambs through the winter season.

**9. Farm equipment.** One plough, one cart or truck wagon or one express wagon, one harrow, one yoke with bows, ring and staple, 2 chains, one ox sled and one mowing machine, one corn planter, one potato planter, one cultivator, one horse hoe, one horse rake, one sprayer or duster, one grain harvester and one potato digger.

**10. Boat.** One boat not exceeding 2 tons burden, usually employed in fishing business, belonging wholly to an inhabitant of the State.

**11. Personal property of copartnership.** The personal property of any copartnership shall be exempt from attachment of mesne process or seizure on execution for any individual debt or liability of such copartner, but such copartner's interest in the partnership property may be reached and applied in payment of any judgment against him in the manner provided for in section 6054.

R.S.1954, c. 112, § 67.

### SUBCHAPTER III

### REAL PROPERTY

#### ARTICLE 1. GENERAL PROVISIONS

Sec.

- 4451. Real estate and interests subject to attachment.
- 4452. Writ of attachment from District Court.
- 4453. Attachment of right of redemption.
- 4454. Recording necessary to validity; claim specified in writ; seizure on execution; lien.
- 4455. Action ineffectual against nonparty until attachment recorded.
- 4456. Redemption or payment where right of redemption or contract for conveyance attached.
- 4457. Mortgagee or contractor to indicate sum due and release on payment.

#### ARTICLE 2. DEATH OF PARTY

- 4501. Attachments survive death of plaintiff.
- 4502. Attachments dissolved by death of insolvent.
- 4503. Liability of officer selling before demand; setoff prohibited.
- 4504. Appraisal of attached property.
- 4505. Actions by officers for attached goods do not abate by party's death.
- 4506. Continuance of action after officer's death.

#### ARTICLE 3. EXEMPTIONS

- 4551. Homestead.
- 4552. Exemption; claim recorded.
- 4553. Creditor claiming greater value.
- 4554. Occupancy during widowhood and minority; mechanics' liens.

## ARTICLE 1. GENERAL PROVISIONS

**§ 4451. Real estate and interests subject to attachment**

All real estate liable to be taken on execution as provided in chapter 403; the right to cut and carry away grass and timber from land sold by this State or Massachusetts, the soil of which is not sold and all other rights and interests in real estate may be attached on mesne process and held to satisfy the judgment recovered by the plaintiff, but the officers need not enter on or view the estate to make such attachment.

R.S.1954, c. 112, § 60.

**§ 4452. Writ of attachment from District Court**

If a District Court has jurisdiction in any action, real estate and interests in real estate attachable on writs of attachment from the Superior Court may be attached on writs of attachment or taken on executions from such court.

R.S.1954, c. 112, § 61; 1959, c. 22; 1961, c. 317, § 348; 1963, c. 402, § 169.

**§ 4453. Attachment of right of redemption**

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

R.S.1954, c. 112, § 62.

**§ 4454. Recording necessary to validity; claim specified in writ; 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 Title 33, chapter 11. All recorded deeds take precedence over unrecorded attachments.

R.S.1954, c. 112, § 63; 1959, c. 317, § 133.

**§ 4455. Action ineffectual against nonparty until attachment 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:

**1. Attachment made and recorded.** 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

**2. Certificate recorded.** 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.1954, c. 112, § 64; 1959, c. 317, § 134.

**§ 4456. Redemption or payment where right of redemption or contract for conveyance attached**

When a right to redeem real estate under mortgage, levy, sale on execution or for taxes or a right to a conveyance by contract is attached, the plaintiff in the action, before or after sale

on execution, may pay or tender to the person entitled thereto the amount required to discharge such encumbrance or fulfill such contract. Thereby the title and interest of such person vest in the plaintiff subject to the defendant's right to redeem. Such redemption by the defendant or any person claiming under him by a title subsequent to the attachment shall not affect such attachment, but it shall continue in force and the prior encumbrance as against it shall be deemed discharged.

R.S.1954, c. 112, § 65; 1961, c. 317, § 349.

**§ 4457. Mortgagee or contractor to indicate sum due and release on payment**

Such person, on written demand, shall give the plaintiff a true written statement of the amount due him; and on payment or tender thereof shall release all his interest in the premises; and if he refuses, he may be compelled to do so in a civil action seeking equitable relief. Such release shall recite that under authority of this section and section 4456, the plaintiff had attached the premises and paid or tendered the amount due the grantor. The plaintiff shall thereupon hold such title in trust for the defendant, and subject to his right of redemption, without power of alienation until after one year from the termination of said action, or from the sale of the equity on any execution recovered therein.

R.S.1954, c. 112, § 66; 1961, c. 317, § 350.

ARTICLE 2. DEATH OF PARTY

**§ 4501. Attachments survive death of plaintiff**

When a plaintiff dies before the expiration of 60 days from the rendition of judgment in his favor, or before the expiration of 60 days after the clerk of courts in the county where the action is pending receives a certificate of decision from the law court ordering final judgment for the plaintiff, and no suggestion of death has been made upon the docket of said courts, execution may issue as is now provided and all attachments then in force continue for 90 days thereafter.

R.S.1954, c. 103, § 19; 1959, c. 317, § 72.

**§ 4502. Attachments dissolved by death of insolvent**

The attachment of personal property continues in force after the death of the debtor as if living, unless before a sale

thereof on execution his estate is decreed insolvent; but it is dissolved by such decree, and the officer, on demand thereafter, shall restore such property to the executor or administrator on payment of his legal fees and charges of keeping.

R.S.1954, c. 112, § 55.

**§ 4503. Liability of officer selling before demand; setoff prohibited**

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

R.S.1954, c. 112, § 56; 1961, c. 317, § 345.

**§ 4504. Appraisal of attached property**

After the death of a defendant and before a decree of insolvency on his estate, the executor or administrator may demand of the attaching officer a certified copy of his return on the writ of attachment, with a description of the property attached, so that it may be described in the inventory of the estate subject to the attachment, and the appraisers may demand a view thereof so as to appraise it. If the officer fails to comply with either demand, he forfeits to the executor or administrator not less than \$10 nor more than \$30.

R.S.1954, c. 112, § 57; 1961, c. 317, § 346.

**§ 4505. Actions by officers for attached goods do not abate by party's death**

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

R.S.1954, c. 112, § 58.

**§ 4506. Continuance of action after officer's death**

If an officer authorized to serve precepts dies pending an action for or against him for official neglect or misconduct and no administration is granted on his estate within 3 months thereafter, the party for whose benefit the action is so prosecuted or defended may carry it on in his own name by entering his appearance and giving security for costs, as the court directs.

R.S.1954, c. 112, § 59; 1961, c. 317, § 347.

## ARTICLE 3. EXEMPTIONS

**§ 4551. Homestead**

A lot of land and dwelling house and outbuildings thereon, the property of a householder in actual possession thereof and not the owner of an exempted lot purchased from the State, is exempt from attachment and levy on execution as provided in sections 4552 to 4554.

R.S.1954, c. 112, § 68.

**§ 4552. Exemption; claim recorded**

The person described in section 4551 may file in the registry of deeds in the county or district where the land lies a certificate signed by him, declaring his wish for such exemption and describing the land and buildings. The register shall record it in a suitable book. So much of such property as does not exceed \$1,000 in value is exempt from attachment or levy on execution issued on a judgment recovered for any debt, contracted jointly or severally by such person after the date of the recording thereof. The record in the register's office is prima facie evidence that the certificate purporting to be there recorded was made, signed and filed as there appears.

R.S.1954, c. 112, § 69.

**§ 4553. Creditor claiming greater value**

When such property is claimed by a creditor to be of greater value than \$1,000, it may be seized on execution and the appraisers shall first set off such part thereof as the debtor may select, and if he neglects to do so, the officer may select for him, to such value, by metes and bounds. They shall then appraise and set off to the creditor so much of the remainder as may be necessary to satisfy the execution. The appraisers shall be sworn ac-

cordingly and the officer shall make return of his doings thereon.

R.S.1954, c. 112, § 70.

**§ 4554. Occupancy during widowhood and minority; mechanics' liens**

After his death, the exempted premises shall not be sold for payment of his debts, during the widowhood of his widow or the minority of any of his children, but may be occupied by his widow during her widowhood and by his children during minority, free from claim by any creditor of his estate. This section and sections 4551 to 4553 do not exempt such property from the lien of mechanics or material men.

R.S.1954, c. 112, § 71.

SUBCHAPTER IV

DISSOLUTION

Sec.

- 4601. Duration of attachment.
- 4602. Methods of dissolution.
- 4603. Certificate of dissolution.
- 4604. Real estate attachment discharged of record on dissolution.
- 4605. Failure or refusal to discharge attachment.
- 4606. Petition for valuation and release.
- 4607. Valuation and release on debtor's bond.
- 4608. Proceedings and bond filed in clerk's office.
- 4609. Certificate of proceedings from clerk recorded.
- 4610. Vacating attachment of personal property.
- 4611. Vacating foreign attachments.
- 4612. Costs.
- 4613. Bond.

**§ 4601. Duration of 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 at-

tached and replevied; or property attached belonging to a person dying thereafter, or specially provided for in any other case. In the case of attachments of real estate, the aforesaid 60-day period may be extended for a definite period, and thereafter extended for definite periods, with attachment remaining in full force and effect, by an order signed by any judge or justice of the court having jurisdiction over the cause of action upon which the attachment is based, provided said order is signed and recorded 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 within the said 60-day period. 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, and shall be entitled to a fee of \$2 for recording an order for such extension.

R.S.1954, c. 112, § 72; 1959, c. 93, § 1; c. 317, § 135; 1963, c. 326.

### **§ 4602. Methods of dissolution**

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.1954, c. 112, § 73; 1959, c. 317, § 136.

**§ 4603. Certificate of dissolution**

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 filing of said complaint in said court, or before or after judgment thereon, or if said complaint is not filed in court, the plaintiff or his attorney in such action 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 action, provided 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.1954, c. 112, § 74; 1959, c. 317, § 137; 1961, c. 317, § 351.

**§ 4604. Real estate attachment discharged of record on dissolution**

When an attachment of real estate is made in any action and the complaint is not filed in court, or when any attachment of real estate is dissolved by lapse of time or failure to levy upon the judgment debt within the time prescribed by law to preserve said attachment and the said attachment then remains undischarged upon the records of the registry of deeds, the plaintiff upon the demand of the defendant shall either cause the said attachment to be discharged upon the records of the registry of deeds or give a certificate, signed, sealed and acknowledged by him that said attachment is discharged, when said certificate is prepared and presented to the plaintiff by the defendant, which

said certificate the register of deeds shall record with reference thereto on the margin of the record of said attachment.

R.S.1954, c. 112, § 75; 1961, c. 317, § 352.

**§ 4605. Failure or refusal to discharge attachment**

If the plaintiff shall upon demand unreasonably delay or refuse to discharge the said attachment as prescribed in section 4604, 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.1954, c. 112, § 76; 1959, c. 317, § 138.

**§ 4606. Petition for valuation and release**

Any defendant, whose interest in real estate is attached on mesne process, may petition 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 court shall issue a written notice which shall be served on all parties to the action living in the State, including trustees mentioned in section 4611, and on the plaintiff's attorney, 10 days at least before the time fixed therein for a hearing.

R.S.1954, c. 112, § 77; 1959, c. 317, § 139; 1963, c. 414, § 120.

**§ 4607. Valuation and release on debtor's bond**

If, at the hearing, such court finds that such interest is worth as much as the amount ordered in the writ to be attached, it 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 it 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 court 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, it 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 it may deem adequate to protect the plaintiff in the collection of any judgment recovered by him, with his costs on the petition.

R.S.1954, c. 112, § 78; 1959, c. 317, § 140; 1963, c. 414, § 121.

**§ 4608. Proceedings and bond filed in clerk's office**

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

R.S.1954, c. 112, § 79.

**§ 4609. Certificate of proceedings from clerk recorded**

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

R.S.1954, c. 112, § 80.

**§ 4610. Vacating attachment of personal property**

When personal property is attached, the same proceedings may be had as provided in sections 4606 to 4609 and the officer shall be notified of the hearing, and the delivery to him of the copy and certificate mentioned in section 4609 vacates the attachment and he shall return the property to the petitioner on demand. When the property attached is stock in a banking or other corporation or is such that the attachment must be recorded in the town clerk's office, such copy and certificate shall be filed with the officer of such corporation, who shall be entitled to 20¢ for filing the same and necessary certificate thereof, or with the town clerk with whom the attachment is filed, and thereby the attachment is vacated.

R.S.1954, c. 112, § 81.

**§ 4611. Vacating foreign attachments**

In cases of foreign attachment, the same proceedings originated by any principal defendant may be had, except that the bond to the plaintiff shall be conditioned to pay the amount, if any, which he may finally recover against the trustees, with costs on the petition, within 30 days after judgment, not exceeding the amount of the judgment against the principal defendant. The court shall require the petitioner to give bond to each trustee named in the petition, with sureties, in a sum sufficient to protect him against any judgment recovered by the plaintiff and paid by him, and his legal costs in the action, and the costs allowed him by the court at the hearing on the petition, if he appears. Such bonds, when approved by the court, shall be filed in the clerk's office for the use of the trustees. The delivery of the copy and certificate to the trustees vacates the attachment of any goods, effects or credits in their hands belonging to the petitioner.

R.S.1954, c. 112, § 82; 1961, c. 317, § 353; 1963, c. 414, § 122.

**§ 4612. Costs**

The party finally prevailing in the action shall recover the costs of these proceedings, taxed as costs of court in other cases and certified by the court, and execution shall issue therefor.

R.S.1954, c. 112, § 83; 1961, c. 317, § 354; 1963, c. 414, § 123.

**§ 4613. Bond**

When real estate or personal property is attached on mesne process, and in all cases of attachment on trustee process, the attachment shall be vacated upon the defendant or someone in his behalf delivering to the officer who made such attachment, or to the plaintiff or his attorney, a bond to the plaintiff in a penal sum not exceeding the amount of the attachment, such bond to be approved as to penal sum and sureties by the plaintiff or his attorney, or by any Justice or clerk of the Superior Court, conditioned that within 30 days after the rendition of the judgment, or after the adjournment of the court in which it is rendered or after the certificate of decision of the law court shall be received in the county where the cause is pending, he will pay to the plaintiff or his attorney of record the amount of said judgment including costs. The bond shall be returned by the officer with the

process, for the benefit of the plaintiff, and thereupon all liability of the officer to the plaintiff by reason of such attachment shall cease. Upon request, the plaintiff or his attorney shall give to the defendant a certificate acknowledging the discharge of such attachment, which may be recorded in the registry of deeds or town clerk's office, as the case may be, in which the return of the attachment is filed. If stock in any corporation is attached, such certificate shall be filed with the officer of the corporation with whom the return of such attachment is filed and he shall record the same. In trustee process the alleged trustee shall not be liable to the principal defendant for the goods, effects and credits in his hands or possession until such certificate shall be delivered to him, and upon receiving such certificate he shall be discharged from further liability in said trustee action and need not disclose and shall not recover costs.

R.S.1954, c. 112, § 84; 1961, c. 317, § 355.