

MAINE STATE LEGISLATURE

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FORTY-NINTH LEGISLATURE.

HOUSE.

No. 31.

STATE OF MAINE.

The Committee on Legal Reform, to which was referred the Report of the Commissioner on the Revision of the Public Laws, ask leave to report, that chapter 81 as revised, be printed for the use of the Legislature.

Per order.

JOSEPH BAKER.

HOUSE OF REPRESENTATIVES, }
February 7, 1870. }

Read and accepted. Sent up for concurrence.

S. J. CHADBOURNE, *Clerk.*

IN SENATE, February 8, 1870.

Read and concurred.

SAMUEL W. LANE, *Secretary.*



CIVIL ACTIONS.

CHAPTER 81.

COMMENCEMENT OF CIVIL ACTIONS; INDORSEMENT AND SERVICE OF WRITS; ATTACHMENT OF PROPERTY; ARRESTS; AND LIMITATION OF PERSONAL ACTIONS.

FORMS AND REQUISITES OF WRITS.

SECTION 1. The forms of writs in civil actions remain as established; but the supreme judicial court, by general rules, may make such alterations therein, for all courts, as changes in the law or other causes require.—R. S., c. 81, § 1.

SEC. 2. All civil actions, except scire facias and other special writs, shall be commenced by original writs; which, in the supreme judicial court, may be issued by the clerk in term time or vacation, and be framed to attach the goods and estate of the defendant, and for want thereof to take the body, or as an original summons with or without an order to attach goods and estate; and in actions against corporations and in other cases where goods or estate are attached, and the defendant is not liable to arrest, the writ and summons may be combined in one. A writ issued by the clerk of any county, may be made returnable in any other county, in which the action might be legally brought.—R. S., c. 81, § 12, 13, 14; 1864, c. 224.

SEC. 3. Writs issued by a trial justice, or judge of municipal or police court shall be signed by him and sealed.—R. S., c. 81, § 12.

SEC. 4. All writs of scire facias may contain a direction to the officer serving them to attach the property of the defendants

3 and to arrest their bodies when liable to be arrested, the same
4 as in case of writs of attachment.—R. S., c. 81, § 45.

SEC. 5. When the name of a defendant is not known to the
2 plaintiff, the writ may issue against him by an assumed name;
3 and if duly served, it shall not be abated for that cause, but
4 may be amended on such terms as the court orders.—R. S.,
5 c. 81, § 26.

ENDORSEMENT OF WRITS.

SEC. 6. Every writ original, of scire facias, of error, of audita
2 querela, petition for writ of certiorari, for review, or for parti-
3 tion, and bill in equity, shall, before entry in court, be endorsed
4 by some sufficient inhabitant of the state, when the plaintiff or
5 petitioner is not an inhabitant thereof; and if pending such suit
6 the plaintiff or petitioner removes from the state, such indorser
7 shall be procured on motion of the defendant or other party to
8 the suit; but if one of such plaintiffs or petitioners is an inhabi-
9 tant of the state, no indorser shall be required except by special
10 order of the court.—R. S., c. 81, § 9.

SEC. 7. In case of avoidance or inability of the plaintiff or
2 petitioner, the indorser is liable, in an action on the case,
3 brought within one year after the original judgment, in the
4 court in which it was rendered, to pay all costs recovered
5 against the plaintiff. A return upon the execution by an officer
6 of the county, where the indorser lives, that he has demanded
7 of the indorser payment thereof, and that he has neglected to
8 pay, or to show the officer personal property sufficient to satisfy
9 the execution, or that he cannot find the indorser within his
10 precinct, shall be conclusive evidence of his liability in the
11 suit.—R. S., c. 81, § 10, 96.

SEC. 8. If pending any such suit or petition, any such indorser
2 becomes insufficient or removes from the state, the court may
3 require a new and sufficient indorser, the defendant consenting
4 that the name of the original indorser shall be struck out; and

5 such new indorser shall be liable for all costs from the begin-
6 ning of the suit, as if he had been the original indorser; and
7 if such new indorser is not provided, the action shall be dis-
8 missed and the defendant recover his costs.—R. S., c. 81, § 11.

SEC. 9. Personal and transitory actions, except process of
2 foreign attachment, and except as provided in the six following
3 sections, shall be brought, when the parties live in the state, in
4 the county where any plaintiff or defendant lives; and when
5 the plaintiff does not live in the state, in the county where
6 any defendant lives; and when not so brought, on motion, or
7 inspection by the court, they shall be abated and the defendant
8 allowed double costs. When the plaintiff and defendant live in
9 different counties at the commencement of any such action,
10 except process of foreign attachment, and during its pendency
11 one party moves into the same county with the other, on motion
12 of either it may be transferred to the county where both then
13 live, if the court thinks justice will thereby be promoted; and
14 tried as if originally commenced and entered therein.—R. S.,
15 c. 81, § 2.

SEC. 10. Actions on bonds given by sheriffs and coroners to
2 the treasurer of the state, shall be brought in the county in
3 which such sheriff or coroner is commissioned to act.—R. S.,
4 c. 81, § 3.

SEC. 11. All actions of debt, founded on judgment rendered
2 by any court of record in this state, may be brought in the
3 county where it was rendered, or in the county in which either
4 party thereto, or his executor or administrator, resides at the
5 time of bringing the action.—R. S., c. 81, § 4.

SEC. 12. In all actions commenced in any court proper to try
2 them, jurisdiction shall be sustained, if goods, estate, effects
3 or credits of any defendant are found within this state and
4 attached on the original writ; and service shall be made as
5 provided in the nineteenth section hereof.—R. S., c. 81, § 5.

SEC. 13. Local and transitory actions shall be commenced
2 and tried as follows: When both parties are counties, in any
3 county adjoining either; when a county is plaintiff, if the
4 defendant lives therein, in an adjoining county; if he does not
5 live therein, in the county in which he does live; when a county
6 is defendant, if the plaintiff lives therein, in that county or in
7 any adjoining county; if he does not live therein, in that
8 county or in that in which he does live; when a corporation is
9 one party and a county the other, in any adjoining county;
10 when both parties are towns, parishes or school districts, in
11 the county in which either is situated; when one party is a
12 town, parish, or school district, and the other some corporation
13 or natural person, in the county in which either of the parties
14 is situated or lives; but all actions against towns, for damages
15 by reason of defects in highways, shall be brought and tried in
16 the county in which the town is situated. All other corpo-
17 rations may sue and be sued in the county in which they have
18 any established place of business, or in that in which the
19 plaintiff or defendant, being a natural person, lives.—R. S.,
20 c. 81, § 6.

SEC. 14. When a forfeiture is recoverable in a civil action, it
2 shall be brought in the county in which the offence was com-
3 mitted, unless a different provision is made in the statute im-
4 posing it; and if on trial it does not appear that it was
5 committed in the county where the action was brought, the
6 verdict shall be in favor of the defendant.—R. S., c. 81, § 7.

SEC. 15. Any action, against two or more defendants residing
2 in different counties, to be tried before a trial justice or muni-
3 cipal or police court, may be brought in the county where
4 either resides; and the writ and execution shall be directed to
5 and executed by the proper officers in each of such counties;
6 but if there is but one defendant, such action shall be com-
7 menced in the county where he resides.

WRITS, HOW SERVED ON RESIDENTS.

SEC. 16. When goods or estate are attached on either of
2 said writs, except in trustee writs, a separate summons, in
3 form by law prescribed, shall be delivered to the defendant, or
4 left at his dwelling house or place of last and usual abode,
5 fourteen days before the sitting of the court, to which it is
6 returnable, which shall be a sufficient service.—R. S., c. 81,
7 § 15.

SEC. 17. Where the process is by original summons, wherein
2 the law does not require a separate summons to be left with the
3 defendant, the service shall be sufficient by reading the writ or
4 original summons to the defendant, or by giving him in hand,
5 or leaving at his dwelling house or place of last and usual
6 abode, a certified copy thereof, fourteen days before it is
7 returnable.—R. S., c. 81, § 16.

SEC. 18. In suits against a county, the summons shall be
2 served by leaving an attested copy thereof with one of the
3 county commissioners or their clerk; against a town, parish,
4 religious society, or school district, with the clerk, or one of
5 the selectmen or assessors, if there is any such officer, if not,
6 with a member of such corporation; and against any other cor-
7 poration, however created, with its president, clerk, cashier,
8 treasurer, general agent or director; if there is no such officer
9 or agent found within the county where such corporation is
10 established, or where its records or papers are by law required
11 to be kept, with any member thereof; and in each case, it shall
12 be so served thirty days before the return day thereof.—R. S.,
13 c. 81, § 19, 20, 21, 23.

HOW SERVED ON NON-RESIDENTS.

SEC. 19. If any one defendant is not an inhabitant of the
2 state, the writ may be served by leaving a summons or copy,
3 as the case may be, with his tenant, agent or attorney fourteen
4 days before the sitting of the court; and if his goods or estate

5 are attached, and he has no such tenant, agent, or attorney,
 6 and in all cases where the court orders notice, a justice thereof
 7 in vacation or term time, in any county, may make his order,
 8 signed by him on the back of the process, directing how such
 9 defendant shall be notified; and if such order is complied with
 10 and proved, he shall be held to answer to the suit. A trial
 11 justice or judge of a municipal or police court may, in like man-
 12 ner, order notice on any process returnable or pending before
 13 him.—R. S., c. 81, § 17, 18, 24.

SEC. 20. In actions by inhabitants of this state against insur-
 2 ance companies established by any other state or country on
 3 policies of insurance, signed or countersigned by agents in this
 4 state, on property or lives or against accidents in this state;
 5 and in such actions against express companies so established,
 6 service shall be sufficient if made on the person who signed or
 7 countersigned such policies, or on any agent or attorney of
 8 either such company or left at his last and usual place of abode
 9 thirty days before the return day of the suit; but the court
 10 may, in any case, order further notice.—R. S., c. 81, § 22, 23;
 11 1868, c. 138, 161.

HOW WANT OR DEFECT OF SERVICE MAY BE CURED.

SEC. 21. When the property of a defendant is attached on a
 2 writ, and no service is made on him, or if service in any case
 3 is defective for any cause, without the fault of the plaintiff or
 4 his attorney, the court may order a new service, which, when
 5 made, shall be as effectual as if proper service had been made
 6 in the first instance.—R. S., c. 81, § 25.

ATTACHMENT OF PERSONAL PROPERTY.

SEC. 22. All goods and chattels may be attached and held as
 2 security to satisfy the judgment for damages and costs which
 3 the plaintiff may recover, except such as, from their nature and
 4 situation, have been considered as exempted from attachment

5 according to the principles of the common law as adopted and
6 practiced in this state, and such as are hereafter mentioned.
7 Such personal property may be attached on writs issued by a
8 trial justice, or judge of a police or municipal court in any
9 county in the state, when directed to the proper officer.—R. S.,
10 c. 81, § 27.

SEC. 23. When hay in a barn, horses, or neat cattle are
2 attached, and are suffered to remain, by the permission of the
3 officer, in the defendant's possession on security given for their
4 safe keeping and delivery to the officer, they shall not be sub-
5 ject to a second attachment to the prejudice of the first.—R. S.,
6 c. 81, § 34.

SEC. 24. When any personal property is attached, which by
2 reason of its bulk or other special cause cannot be immediately
3 removed, the officer may, within five days thereafter, file in the
4 office of the clerk of the town, in which the attachment is made,
5 an attested copy of so much of his return on the writ, as relates
6 to the attachment, with the value of the defendant's property
7 which he is thereby commanded to attach, the names of the
8 parties, the date of the writ, and the court to which it is re-
9 turnable; and such attachment shall be as effectual and valid,
10 as if the property had remained in his possession and custody.
11 The clerk shall receive the copy, and note thereon the time of
12 his receiving it, and enter it in a book kept for that purpose,
13 and keep it on file for the inspection of those interested there-
14 in, for which he shall be entitled to ten cents. When such an
15 attachment is made in an unincorporated place, such copy shall
16 be filed and recorded in the office of the clerk of the oldest
17 adjoining town in the county.—R. S., c. 81, § 35; 1861, c. 39.

SEC. 25. When the share or interest of any person in any
2 incorporated company is attached on mesne process, an attested
3 copy of the writ with a notice thereon of the attachment, signed
4 by the officer, shall be left with the clerk, cashier, or treasurer

5 of the company; and such attachment shall be a lien on such
6 share or interest, and on all accruing dividends; and if the
7 officer having the writ of attachment exhibits it to the officer
8 of the company having custody of the account of shares or
9 interest of the stockholders, and requests a certificate of the
10 number held by the defendant, and such officer unreasonably
11 refuses to give it, or willfully gives him a false certificate
12 thereof, he shall pay double the damages occasioned by such
13 refusal or neglect; to be recovered against him in an action on
14 the case by the creditor.—R. S., c. 81, § 42.

SEC. 26. The franchise and all right to demand and take toll,
2 and all other property of a corporation, may be attached on
3 mesne process, and the attaching officer shall leave an attested
4 copy of the writ with a notice of the attachment thereon, signed
5 by him, with the clerk, treasurer, or some officer or member of
6 the corporation, as provided in section eighteen.—R. S., c. 81,
7 § 43.

SEC. 27. Different attachments in one or more counties may
2 be made successively upon the same writ, and by different
3 officers, before the service of the summons upon the person
4 whose property is attached; but none after such service. And
5 personal property attached by a coroner may be again attached
6 by a sheriff, deputy sheriff, or constable, subject to the former
7 attachment by giving notice thereof to the coroner and furnish-
8 ing him with a copy of the precept within a reasonable time
9 thereafter, and so property attached by the last named officers
10 may be again attached by a coroner in like manner; and per-
11 sonal property attached by a constable may be again attached
12 by a coroner or by a deputy in the same manner.—R. S., c. 81,
13 § 44.

WHEN PERSONAL PROPERTY ATTACHED MAY BE SOLD ON WRIT.

SEC. 28. When personal property is attached by consent of
2 the debtor and creditor, the officer may sell it on the writ before

3 or after entry, observing the directions for selling on execution;
4 and if it is attached by different officers, it may be so sold by
5 the first attaching officer: or in case of his death, if he was a
6 deputy sheriff, by the sheriff or another deputy by the written
7 consent of the debtor and all attaching creditors; and the pro-
8 ceeds of sale, after deducting necessary expenses, shall be held
9 by the first attaching officer or the sheriff, subject to the succes-
10 sive attachments as if sold on execution.—R. S., c. 81, § 46;
11 1863, c. 198.

SEC. 29. When living animals, or goods liable to perish, be
2 wasted, greatly reduced in value by keeping, or kept at great
3 expense, are attached, and the parties do not consent to a sale
4 thereof, the same may be examined and appraised before or
5 after the entry of the action, as follows.—R. S., c. 81, § 47.
6 1863, c. 198.

SEC. 30. At the request of either party interested, the officer
2 shall give notice of the time and place of the appraisal, with
3 the names of the parties to the action, and of the supposed
4 owner of the property, by posting notices thereof in two or
5 more public places in the town where it was attached, or by
6 giving personal notice thereof to all parties to the suit in
7 which it is attached, four days at least before the appraisal.
8 He shall prepare a schedule of the property, and cause three
9 disinterested appraisers to be appointed, one by the creditor,
10 one by the debtor, and one by himself; and if the creditor or
11 debtor neglects to appoint one, he shall appoint one in his be-
12 half.—R. S., c. 81, § 48, 49.

SEC. 31. The appraisers shall be sworn by the officer with-
2 out fee, or by a justice of the peace or trial justice, and
3 examine such property; and if in their opinion, any part of it
4 is liable to perish, be wasted, be greatly reduced in value by
5 keeping, or kept at great expense, they shall appraise it at its
6 value in money.—R. S., c. 81, § 49, 50. 1868, c. 153.

SEC. 32. Thereupon, at the request of the debtor, the property shall be delivered to him, on his depositing with the officer the appraised value thereof in money, or giving bond to him with two sufficient sureties, conditioned to pay him said value, or satisfy all judgments recovered in the suits in which the property is attached, if demanded before the attachments expire, or within thirty days after the time when the creditors might demand payment out of the proceeds of the property if sold as hereinafter provided; and he shall return such bond with the writ on which the first attachment is made, with a return of his doings in relation thereto.—R. S., c. 81, § 51, 52.

SEC. 33. If the bond is forfeited any one or more of the creditors may bring an action of debt thereon in the name of the officer, and shall endorse their names on the writ. If judgment is for the defendants, execution for cost shall be issued against them jointly, or one against each for his proportion, as the court thinks just. If judgment is for the plaintiffs, the money recovered shall be applied to pay their necessary expenses in prosecuting the suit, not reimbursed by costs recovered of the defendants; and the residue belongs to the attaching creditors according to their priorities; but no execution shall be awarded for the use of any creditor, without reserving what may be due on any prior attachment, whether the creditor therein is a party to the suit on the bond or not; but after such reservation, he shall be entitled to receive satisfaction of his judgment from the appraised value of such goods or the proceeds of sale.—R. S., c. 81, § 52, 53, 54, 55, 57.

SEC. 34. An attaching creditor not a party to such suit, on his motion before final judgment therein, may become a party on such terms as the court orders, the same as if he had been a party originally; and his name shall then be endorsed on the writ; or he may bring scire facias on the judgment and recover the sum due him on the bond. But no creditor whose cause of action on the bond accrued more than a year prior

8 to the suit thereon, shall have judgment or execution therein ;
9 nor bring such scire facias unless within a year after the cause
10 of action accrued.—R. S., c. 81, § 56.

SEC. 35. If such property, after its appraisal, is not delivered
2 to the debtor as aforesaid, the officer shall sell it, make return
3 of all his doings relating thereto, and hold and dispose of the
4 proceeds as in a sale by consent.—R. S., c. 81, § 50.

SEC. 36. The proceeds of such property sold by consent or
2 after an appraisal, may be further attached by the officer as
3 the property of the defendant while remaining in his hands,
4 and held and disposed of as if the property itself had been
5 attached ; but after retaining enough to satisfy all attachments
6 existing thereon at any time, nothing herein shall prevent his
7 paying the surplus to the debtor.

SEC. 37. When personal property, attached on mesne pro-
2 cess, is claimed by a person not a party to the suit, he may
3 replevy it in ten days after notice given him therefor by the
4 attaching creditor, and not afterwards ; and after that the
5 attaching officer, without impairing the rights of such person
6 at the request and on the responsibility of the plaintiff, and
7 with the consent of other attaching creditors, if any, may
8 sell it at auction as on execution, unless the debtor claims it
9 as his, and forbids the sale.—R. S., c. 81, § 66.

HOW PROPERTY OF PART OWNERS ATTACHED MAY BE DISPOSED OF.

SEC. 38. When personal property is attached in a suit
2 against one or more part owners thereof, at the request of
3 another part owner, it shall be appraised as herein before pro-
4 vided, one appraiser chosen by the creditor, one by the officer
5 and the other by the requesting part owner ; and thereupon
6 it shall be delivered to such part owner on his giving bond to
7 the officer with two sufficient sureties, conditioned to restore
8 it in like good order, or pay the appraised value of the de-
9 fendant's share therein, or satisfy all judgments recovered in

10 the attaching suits if demanded within the time it would be
11 held by the attachments. Such bond shall be returned with
12 the writ with the doings of the officer thereon, and if for-
13 feited, the like proceedings may be had as are provided in
14 section thirty-three.—R. S., c. 81, § 59, 60, 63.

SEC. 39. If any part of such appraised value is so paid,
2 the defendant's share of the property shall thereby be pledged
3 to the party paying; and if not redeemed, he may sell it, and
4 account to the defendant for the balance, if any; but if the
5 attachment is dissolved, he shall restore such share to the de-
6 fendant or to the attaching officer for him.—R. S., c. 81, §
7 61, 62.

ATTACHMENT OF PROPERTY, MORTGAGED OR PLEDGED.

SEC. 40. Personal property not exempt from attachment,
2 mortgaged, pledged, or subject to any lien created by law, and
3 of which the debtor has the right of redemption, may be
4 attached, held, and sold as if it was unencumbered, if the
5 attaching creditor first tenders or pays the mortgagee, pledgee,
6 or holder, the full amount unpaid on the demand so secured
7 thereon.—R. S., c. 81, § 64.

SEC. 41. When personal property, attached on a writ or
2 seized on execution, is claimed by virtue of such mortgage,
3 pledge or lien, the claimant shall not bring an action against
4 the attaching officer therefor, until he has given him at least
5 forty-eight hours written notice of his claim and the true
6 amount thereof; and the officer or creditor may, within that
7 time, discharge the claim by paying or tendering the amount
8 due thereon, or restore the property.—1859, c. 114, § 1, 5.

SEC. 42. The officer may give the claimant written notice of
2 his attachment; and if he does not, within ten days there-
3 after, deliver to the officer a true account of the amount due
4 on his claim, he thereby waives the right to hold the property
5 thereon; and if his account is false, he forfeits to the creditor

6 double the amount of the excess, to be recovered in an action
7 on the case.—R. S., c. 81, § 65; 1859, c. 114, § 2, 3, 5; 1860,
8 c. 168.

SEC. 43. If the creditor redeems such property, and it is
2 subsequently sold by the officer, he shall, from the proceeds,
3 first pay to the creditor the amount with interest paid by him
4 to redeem, and apply the balance, if any, to the debt on which
5 it was attached or seized on execution.—1859, c. 114, § 4, 5.

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

SEC. 44. Personal property attached by an officer and in his
2 possession, and his claim for damages when taken from him,
3 shall remain subject to such attachment in case of his death
4 as if he was alive, and shall not be assets belonging to his
5 estate.—R. S., c. 81, § 71.

SEC. 45. Such property replevied from the officer, shall be
2 liable to further attachments as if in his possession; and if there
3 is judgment for a return in the replevin suit, the plaintiff and
4 his sureties shall be liable for the whole property or its value,
5 though some attachments were made after the replevin.—R. S.,
6 c. 81, § 72, 73.

SEC. 46. If an attaching officer dies or is removed from office
2 while the attachment is in force, whether the property was in
3 his possession or not, it and its proceeds may be further
4 attached by any other officer, the same as it might have been
5 by the first officer. Such further attachments shall be made
6 by a return setting forth an attachment in common form and
7 by whom the property was previously attached; and if the
8 goods have not been replevied, by leaving a certified copy of
9 the writ, omitting the declaration, and of the return of that at-
10 tachment, with the former officer, if living, or if dead, with his
11 executor or administrator, or if none are appointed, with the
12 person having possession of the goods; or if the goods have

13 been replevied, and the officer who made the original attach-
 14 ment is dead, such copy shall be left with the plaintiff in re-
 15 plevin, or his executors or administrators; and the attachment
 16 shall be considered as made, when such copy is delivered in
 17 either of the modes before described.—R. S., c. 81, § 74, 75.

SEC. 47. Goods, that have been taken by replevin from an
 2 attaching officer, shall not be further attached as the property
 3 of the original defendant in any other manner, than that pro-
 4 vided in the four preceding sections, so long as they are held
 5 by the person who replevied them, or by any one holding
 6 under him, unless the original defendant has acquired a new
 7 title to the goods.—R. S., c. 81, § 76.

ATTACHMENTS AND ACTIONS WHERE A PARTY DIES.

SEC. 48. The attachment of personal property continues in
 2 force after the death of the debtor as if living, unless within
 3 one year after such death, his estate is decreed insolvent; but
 4 it is dissolved by such decree, and the officer, on demand
 5 thereafter, shall restore such property to the executor or ad-
 6 ministrator on payment of his legal fees and charges of keep-
 7 ing.—R. S., c. 81, § 77, 79.

SEC. 49. If before such demand, the officer has sold the
 2 property on execution, he shall be liable to the executor or
 3 administrator in an action, not of trespass, but for money had
 4 and received, for the proceeds if in his hands; but if paid
 5 over to the judgment creditor, such creditor shall be so liable;
 6 and shall not set off any demand he has against the executor
 7 or the administrator on the estate of the deceased.—R. S., c.
 8 81, § 80, 81, 82.

SEC. 50. After the death of a defendant and before a decree
 2 of insolvency on his estate, the executor or administrator may
 3 demand of the attaching officer a certified copy of his return
 4 on the writ with a description of the property attached, so that
 5 it may be described in the inventory of the estate subject to

6 the attachment, and the appraisers may demand a view thereof
7 so as to appraise it; and if the officer fails to comply with
8 either demand, he forfeits to the executor or administrator not
9 less than ten nor more than thirty dollars.—R. S., c. 81, § 78.

SEC. 51. An action, brought by an officer for taking from
2 him personal property attached by him, shall not abate by the
3 death of either party; but may be prosecuted by or against
4 his executor or administrator. If the officer is dead and his
5 representative recovers the property or money, it shall be held
6 and applied as if he was alive; but if he fails to recover, he
7 shall return the property or pay the damages awarded in full.
8 though the estate of the deceased is insolvent.—R. S., c. 81,
9 § 83, 84.

SEC. 52. If any officer authorized to serve precepts, dies
2 pending a suit for or against him for official neglect or
3 misconduct, and an administration is granted on his estate
4 within three months thereafter, the party for whose benefit the
5 suit is so prosecuted or defended, may carry it on in his own
6 name by entering his appearance and giving security for
7 costs, as the court directs.—R. S., c. 81, § 85.

ATTACHMENT OF REAL ESTATE.

SEC. 53. All real estate liable to be taken in execution as
2 provided in chapter seventy-six; the right to cut and carry
3 away grass and timber from land sold by this state or Massa-
4 chusetts, the soil of which is not sold, and all other rights and
5 interests in real estate, may be attached on mesne process, and
6 held to satisfy the judgment recovered by the plaintiff; but
7 the officers need not enter on or view the estate to make such
8 attachment.—R. S., c. 81, § 28, 67.

SEC. 54. When a right of redeeming real estate mortgaged
2 or taken on execution, is attached; and such estate is redeemed
3 or the incumbrance removed before the levy of the execution,
4 the attachment shall hold the premises discharged of the

5 mortgage or levy, as if they had not existed.—R. S., c. 81,
6 § 29.

SEC. 55. No attachment of real estate on mesne process
2 shall create any lien thereon, unless the nature and amount of
3 plaintiff's demand is set forth in proper counts, or a specifi-
4 cation thereof is annexed to the writ, nor unless the officers
5 making it, within five days thereafter, files in the office of
6 register of deeds in the county or district in which all or any
7 part of said estate is situated, an attested copy of so much of
8 his return on the writ, as relates to the attachment, with the
9 value of the defendant's property which he is thereby com-
10 manded to attach, the names of the parties, the date of the
11 writ, and the court to which it is returnable. If the copy is
12 not so filed, within five days, the attachment shall take effect
13 from the time it is filed, if before the entry of the action,
14 although it is after service on the defendant. And such pro-
15 ceedings shall be had in such office, by the register of deeds,
16 as are prescribed in the chapter respecting the registry of
17 deeds.—R. S., c. 81, § 30, 31.

SEC. 56. When a right to redeem real estate under a
2 mortgage, levy, sale on execution or for taxes, or a right to a
3 conveyance by contract, is attached, the plaintiff in the suit,
4 before or after a sale on execution, may pay or tender to the
5 person entitled thereto, the amount required to discharge such
6 incumbrance or fulfill such contract; and thereby the title
7 and interest of such person shall vest in the plaintiff, subject
8 to the defendant's right to redeem as he might from such
9 person; but such redemption by the defendant or any person
10 claiming under him by a title subsequent to the attachment,
11 shall not affect such attachment, but it shall continue in force,
12 and the prior incumbrance as against it, shall be deemed
13 discharged.—1862, c. 149, § 1; 1863, c. 161.

SEC. 57. Such person, on written demand, shall give the
2 plaintiff a true written statement of the amount due him; and

3 on payment or tender thereof, shall release all his interest in
 4 the premises; and if he refuses, he may be compelled to do so
 5 by a bill in equity. But such release shall recite that under the
 6 authority of this and the preceding section, the plaintiff had
 7 attached the premises and paid or tendered the amount due the
 8 grantor; the plaintiff shall thereupon hold such title in trust
 9 for the defendant, and subject to his right of redemption, with-
 10 out power of alienation till after one year from the termination
 11 of said suit, or from the sale of the equity on any execution
 12 recovered therein.—1862, c. 149, § 2; 1861, c. 161.

PROPERTY EXEMPT FROM ATTACHMENT.

SEC. 58. The following personal property is exempt from
 2 attachment and execution:

3 *First*—The debtor's wearing apparel; household furniture
 4 necessary for himself, wife and children, not exceeding fifty
 5 dollars in value, and one bed, bedstead and necessary bedding
 6 for every two such persons.—R. S., c. 81, § 36.

7 *Second*—All family portraits, all bibles and school books in
 8 actual use in the family; one copy of the statutes of the state,
 9 and a library not exceeding a hundred and fifty dollars in value.
 10 1858, c. 51.

11 *Third*—All his interest in one pew in a meeting house where
 12 he and his family stately worship.

13 *Fourth*—One cooking stove; all iron stoves used exclusively
 14 for warming buildings; charcoal, and not exceeding twelve
 15 cords of wood conveyed to his house for the use of himself and
 16 family; all anthracite coal not exceeding five tons; all bitumi-
 17 nous coal not exceeding fifty bushels; and ten dollars' worth
 18 of lumber, wood or bark.—1867, c. 102, § 4.

19 *Fifth*—All produce of farms until harvested; one barrel of
 20 flour; corn and grain necessary for himself and family, not ex-
 21 ceeding thirty bushels; all potatoes raised or purchased for
 22 himself and family; and all flax raised on a half acre of land,

23 and all articles manufactured therefrom for the use of himself
24 and family.—1864, c. 223.

25 *Sixth*—The tools necessary for his trade or occupation, and
26 one sewing machine not exceeding one hundred dollars in value
27 for actual use by himself or family.—1861, c. 9; 1865, c. 301.

28 *Seventh*—One pair of working cattle, or instead thereof one
29 pair of mules or one or two horses not exceeding in value three
hundred dollars, and a sufficient quantity of hay to keep them
31 through the winter season. If he has more than one pair of
32 working cattle, or more than one pair of mules, or if the two
33 horses exceed in value three hundred dollars, he may elect
34 which pair of cattle or mules or which horse shall be exempted.
35 If he has a pair of mules or one or two horses so exempt, he
36 may also have exempt for each of said horses or mules, one
37 harness not exceeding twenty dollars in value; and one horse
38 sled not exceeding the same value; but if he has at the same
39 time an ox sled, he may elect which sled shall be exempt.—
40 1867, c. 102, § 1, 2; 1859, c. 74; 1860, c. 129.

41 *Eighth*—Two swine, one cow, and one heifer under three
42 years old, or if he has no oxen, horse or mule, two cows, and
43 he may elect the cow or cows and heifer, if he has more than
44 is exempt, ten sheep and the wool from them, and the lambs
45 raised from them until they are one year old, and a sufficient
46 quantity of hay to keep said cattle, sheep and lambs through
47 the winter season.—1867, c. 102, § 3.

48 *Ninth*—One plow, one cart or truck wagon, one harrow, one
49 yoke with bows, ring and staple, two chains, one ox sled, and
50 one mowing machine.—1867, c. 102, § 4.

51 *Tenth*—One boat not exceeding two tons burthen, usually
52 employed in fishing business, belonging wholly to an inhabitant
53 of this state.

HOMESTEADS EXEMPT.

SEC. 59. A lot of land and dwelling house and out buildings
2 thereon, the property of a householder in actual possession

3 thereof and not the owner of an exempted lot purchased of the
4 state, is exempt from attachment and levy on execution as pro-
5 vided in the following sections.—R. S., c. 81, § 37, 41.

SEC. 60. Such person may file in the registry of deeds in the
2 county or district where the land lies, a certificate signed by
3 him, declaring his wish to have such exemption and describing
4 the land and buildings; and the register for the fees for record-
5 ing deeds shall record it in a book by him kept for that pur-
6 pose; and so much of such property as does not exceed five
7 hundred dollars in value, shall be forever exempt from attach-
8 ment or levy on execution issued on a judgment recovered for
9 any debt, contracted jointly or severally by such person after
10 the date of the recording thereof; and the record in the regis-
11 ter's office shall be prima facie evidence that the certificate
12 purporting to be there recorded, was made, signed, and filed as
13 there appears.—R. S., c. 81, § 38.

SEC. 61. When such property is claimed by a creditor to be
2 of greater value than five hundred dollars, it may be seized on
3 execution, and the appraisers shall first set off such part of the
4 property as the debtor may select, and if he neglects so to do,
5 as the officer may select for him, to such value, by metes and
6 bounds; and shall then appraise and set off to the creditor,
7 so much of the remainder as necessary to satisfy the execu-
8 tion; and the appraisers shall be sworn accordingly, and the
9 officer shall make return of his doings thereon.—R. S., c. 81,
10 § 39.

SEC. 62. After his death, the exempted premises shall not be
2 sold for the payment of his debts during the widowhood of his
3 widow, or the minority of any of his children; but may be
4 occupied by his widow during her widowhood and by his chil-
5 dren during minority, free from any claim by any creditor of
6 his estate. But the four preceding sections shall not exempt
7 such property from the lien of mechanics or material men.—
8 R. S., c. 81, § 40.

HOW AND WHEN ATTACHMENTS ARE DISSOLVED.

SEC. 63. An attachment of real or personal estate continues
2 thirty days and no more after final judgment in the original
3 suit, and not in review or error, except equities of redeeming
4 real estate mortgaged or taken in execution; or equities of
5 redemption sold on execution; or an obligee's conditional
6 right to a conveyance of real estate on execution; or property
7 attached and replevied; or property attached belonging to a
8 person dying thereafter, or specially provided for in any other
9 case.—R. S., c. 81, § 32.

SEC. 64. All attachments of real or personal estate are dis-
2 solved by final judgment for the demand; by a decree of insol-
3 vency on his estate within a year after his death; by a reference
4 of the suit and all demands between the parties thereto, by a
5 rule of court, and judgment on the report of the referees; and
6 by an amendment of the declaration, by consent of parties, so
7 as to embrace a larger demand than it originally did, and judg-
8 ment for the plaintiff thereon, unless the record shows that no
9 claims were allowed the plaintiff not originally stated in the
10 writ.—R. S., c. 81, § 33, 78, 79, 86, 87.

SEC. 65. When an attachment is dissolved by judgment for
2 the defendant, the clerk of the court, on payment of twenty-
3 five cents, shall give him a certificate of that fact, which the
4 register of deeds shall note on the margin of the record of the
5 attachment; and before or after judgment, the plaintiff, in
6 such suit may cause a discharge of such attachment, signed
7 by him, to be entered on the margin of the record thereof; or
8 he may give a certificate, signed, sealed and acknowledged by
9 him, that such attachment is, in whole or in part, discharged;
10 which the register of deeds shall record, with a reference there-
11 to on the margin of the record of the attachment, for which
12 he shall be entitled to twenty-five cents, and for entering such
13 discharges, twelve cents each.—1859, c. 62, § 1, 2.

SEC. 66. Any defendant, whose interest in real estate is at-
2 tached on mesne process, may petition in writing to a justice

3 of the supreme judicial court, in term time or vacation, set-
4 ting forth the names of the parties to the suit, the court and
5 county in which is returnable or pending, the fact of the at-
6 tachment, the particular real estate, and his interest therein,
7 its value, and his desire to have it released from the attach-
8 ment. Such Justice shall issue a written notice, which shall
9 be served on all parties to the suit living in the state, including
10 trustees mentioned in section seventy-one, and on the plaintiff's
11 attorney, ten days at least before the time fixed therein for a
12 hearing.—1865, c. 333, § 1, 2, 3.

SEC. 67. If at the hearing, such justice finds that such inter-
2 est is worth as much as the amount ordered in the writ to be
3 attached, he shall order such defendant to give bonds to the
4 plaintiff, with sufficient sureties, conditioned to pay the judg-
5 ment recovered by the plaintiff, with his costs on the petition,
6 within thirty days after judgment. If he finds it is worth less,
7 the bond shall be conditioned to pay the value of such interest
8 so found and costs on the petition, within said time.—1865, c.
9 333, § 4.

SEC. 68. The petition and proceedings thereon shall be filed
2 in the clerk's office in the county where the action is pending
3 or returnable and recorded as a part of the case; and the
4 bond, when approved by such justice, shall also be filed there-
5 in for the use of the plaintiff.—1865, c. 333, § 5.

SEC. 69. The clerk shall give the petitioner an attested copy
2 of the petition and proceedings, with a certificate, under seal
3 of the court, attached thereto, that such bond has been duly
4 filed in his office; and the recording of such copy and certifi-
5 cate in the registry of deeds in the county where such real
6 estate or interest therein lies, shall vacate the attachment.—
7 1865, c. 333, § 6.

SEC. 70. When personal property is attached and actual
2 possession is taken by the attaching officer, the same proceed-
3 ings may be had, as provided in the four preceding sections,

4 and the officer shall also be notified of the hearing and the
5 delivery to him of the copy and certificate mentioned in the
6 preceding section, shall vacate the the attachment, and he shall
7 return the property to the petitioner on demand. When the
8 property attached is stock in a banking or other corporation,
9 or is such that the attachment is required to be recorded in the
10 town clerk's office, such copy and certificate shall be filed with
11 the officer of such corporation or the town clerk with whom
12 the attachment is filed; and thereby the attachment is va-
13 cated.—1865, c. 333, § 7, 8.

SEC. 71. In cases of foreign attachment the same proceed-
2 ings originated by any principal defendant may be had, except
3 that the bond to the plaintiff shall be conditioned to pay the
4 amount, if any, which he may finally recover against the trus-
5 tees, with costs on the petition, within thirty days of the judg-
6 ment, not exceeding the amount of the judgment, against the
7 principal defendant. The justice shall also require the peti-
8 tioner to give bond to each trustee named in the petition, with
9 sureties, in a sum sufficient to protect him against any judg-
10 ment recovered by the plaintiff and paid by him, and his legal
11 costs in the suit, and the costs allowed him by such justice at
12 the hearing on the petition if he approves. Such bonds, when
13 approved by such justice, shall be filed in the clerk's office for
14 the use of the trustees. The delivery of the copy and certifi-
15 cate, hereinbefore mentioned, to the trustees, shall vacate the
16 attachment of any goods, effects or credits in their hands
17 belonging to the petitioner.—1865, c. 333, § 9.

SEC. 72. The clerk shall be entitled to two dollars for record-
2 ing the petition and proceedings, and making the copy and
3 certificate; the register of deeds, seventy-five cents for record-
4 ing the same; and the officer or clerk, twenty cents for each
5 filing and necessary certificate thereof; and the party finally
6 prevailing in the suit shall recover the costs of these proceed-
7 ings, taxed as costs of court in other cases, and certified by

8 such justice, and execution shall issue therefor.—1865, c. 333,
9 § 10.

CROSS ACTIONS AGAINST NON-RESIDENTS.

SEC. 73. When an action is brought by a person not an in-
2 habitant of this state, nor to be found therein to be served with
3 process, he shall be held to answer to any action brought
4 against him here by the defendant in the first action, if the
5 demands in the two cases are of such a nature that the judg-
6 ment or execution in the one case be set off against the judg-
7 ment or execution in the other; and if there are several defend-
8 ants, each may bring such cross action, and set off his judg-
9 ment against the judgment recovered against him and his co-
10 defendants as if against him alone; and the service of the writs
11 in such cross actions, made on the attorney of the plaintiff in
12 the original suit, shall be as valid as if made on the party him-
13 self in this state.—R. S., c. 81, § 68, 69, 70; 1868, c. 156, § 1, 2, 3.

SEC. 74. The court in which either of such actions is pend-
2 ing may grant continuance, to enable the absent party to de-
3 fend, or either party to set off his judgment or execution
4 against the other; but they shall not be delayed by the neglect
5 or default of either party.—R. S., c. 81, § 70. 1868, c. 156, § 4.

DAYS ON WHICH NO ARRESTS CAN BE MADE OR PROCESS SERVED.

SEC. 75. No person shall be arrested on the fourth of July,
2 christmas day, or on the day of annual fast or thanksgiving;
3 and no officer or soldier who is required by law to attend
4 shall be arrested on the day of a military training, inspection,
5 review or election, in civil action, on mesne process, execu-
6 tion or warrant for taxes.—R. S., c. 81, § 88, 89.

SEC. 76. No elector shall be arrested, except for treason,
2 felony, or breach of the peace, on the days of election of
3 United States, state, or town officers.—R. S., c. 81, § 90.

SEC. 77. No person shall serve or execute any civil process

2 from midnight preceding to midnight following Sunday; but
 3 such service shall be void, and the person executing such pro-
 4 cess shall be liable in damages to the party aggrieved, as if
 5 he had no process.—R. S., c. 81, § 91.

LIMITATION OF PERSONAL ACTIONS.

SEC. 78. The following actions shall be commenced within
 2 six years next after the cause of action accrues and not after-
 3 wards.

4 *First*—All actions of debt founded upon any contract or lia-
 5 bility not under seal, except such as are brought upon the
 6 judgment or decree of some court of record of the United
 7 States, or a state, or of some municipal or police court or jus-
 8 tice of the peace in this state.

9 *Second*—All actions upon judgments of any court not a court
 10 of record, except municipal and police courts and justices of
 11 the peace in this state.

12 *Third*—All actions for arrears of rent.

13 *Fourth*—All actions of assumpsit or upon the case founded
 14 on any contract or liability, express or implied.

15 *Fifth*—All actions for waste, of trespass on land, and of
 16 trespass, except those for assault and battery and false im-
 17 prisonment.

18 *Sixth*—All actions of replevin, and other actions for taking,
 19 detaining, or injuring goods or chattels.

20 *Seventh*—All other actions on the case, except actions for
 21 slanderous words and for libels.—R. S., c. 81, § 92.

SEC. 79. All actions for the escape of prisoners committed
 2 on execution, shall be actions on the case, and commenced
 3 within one year after the cause of action accrues; but all ac-
 4 tions against a sheriff, for the negligence or misconduct of
 5 himself or his deputies, shall be commenced within four years
 6 next after the cause of action accrues.—R. S., c. 81, § 93.

SEC. 80. All actions of assault and battery, false imprison-

2 ment, for slanderous words, and for libels, shall be commenced
3 within two years next after the cause of action accrues.—R.
4 S., c. 81, § 94.

SEC. 81. No scire facias shall be served on bail unless within
2 one year after judgment rendered against the principal; nor on
3 sureties in recognizances in criminal cases unless within one
4 year next after the default of the principal; nor against any
5 person adjudged trustee, unless within one year from the expi-
6 ration of the first execution against the principal and his goods,
7 effects and credits in the hands of the trustee.—R. S., c. 81,
8 § 95; 1859, c. 99; 1861, c. 15.

SEC. 82. The foregoing limitations do not apply to actions on
2 promissory notes signed in the presence of an attesting witness
3 or on the bills, notes or other evidences of debt issued by any
4 bank; nor to any case or suit limited to be commenced within
5 a different time by any statute.—R. S., c. 81, § 97, 98.

SEC. 83. In all actions of debt or assumpsit to recover the
2 balance due, in cases where there have been mutual dealings
3 between the parties, the items of which are unsettled, whether
4 kept or proved by one party or both, the cause of action shall
5 be deemed to accrue at the time of the last item proved in such
6 account.—R. S., c. 81, § 99; 1867, c. 117; 1868, c. 206.

SEC. 84. If a person entitled to bring any of the aforesaid
2 actions is a minor, married woman, insane, imprisoned, or with-
3 out the limits of the United States when the cause of action
4 accrues, he may bring his action within the times limited
5 herein, after the disability is removed.—R. S., c. 81, § 100.

SEC. 85. All personal actions on any contract, not limited by
2 any of the foregoing sections or other law of the state, shall be
3 brought within twenty years after the cause of action accrues.
4 R. S., c. 81, § 101.

SEC. 86. When a writ fails of a sufficient service or return
2 by unavoidable accident, or default, or negligence of the officer
3 to whom it was delivered or directed, or is abated, or the action

4 otherwise defeated for any matter of form, by the death of either
5 party, or if a judgment for the plaintiff is reversed on a writ
6 of error, the plaintiff may commence a new action on the same
7 demand within six months after the abatement or determination
8 of the original suit, or reversal of the judgment; and if he dies
9 and the cause of action survives, his executor or administrator
10 may commence such new action within said six months.—R. S.,
11 c. 81, § 102.

SEC. 87. If any person entitled to bring or liable to any
2 action before mentioned, dies before, or within thirty days
3 after the expiration of the time herein limited therefor, and the
4 cause of action survives, the action may be commenced by or
5 against the executor or administrator at any time within two
6 years after his appointment, and not afterwards if barred by
7 the other provision hereof.—R. S., c. 81, § 103.

SEC. 88. If any person is disabled to prosecute an action in
2 this state by reason of his being an alien subject or citizen of
3 a country at war with the United States, the time such war
4 continues shall not be a part of the period herein limited for
5 the commencement of any of said actions.—R. S., c. 81, § 104.

SEC. 89. All actions and suits for any penalty or forfeiture
2 on any penal statute, brought by a person to whom the penalty
3 or forfeiture is given in whole or in part, shall be commenced
4 within one year after the offence was committed; and if no
5 individual so prosecutes, it may be recovered by suit, indict-
6 ment, or information, in the name and for the use of the state,
7 at any time within two years after the offence was committed,
8 and not afterwards.—R. S., c. 81, § 105.

SEC. 90. The time when a writ is actually made, with an
2 intention of service, shall be deemed the commencement of the
3 suit.—R. S., c. 81, § 106.

SEC. 91. If a person liable to any action mentioned herein,
2 fraudulently conceals the cause thereof from the person entitled
3 thereto, or if a fraud is committed which entitles any person to

4 an action, the action may be commenced at any time within
5 six years after the person entitled thereto discovers that he has
6 just cause of action.—R. S., c. 81, § 107.

SEC. 92. In actions of debt or on the case founded on any
2 contract, no acknowledgment or promise shall be allowed to
3 take the case out of the operation of the provisions hereof
4 unless the acknowledgment or promise is an express one, in
5 writing, signed by the party chargeable thereby. No such
6 acknowledgment or promise made by a joint contractor shall
7 affect the liability of the other.—R. S., c. 81, § 108.

SEC. 93. In actions against two or more joint contractors, if
2 it appears, on trial or otherwise, that the plaintiff is barred by
3 the provisions hereof as to one or more of the defendants, but
4 entitled to recover against the others by virtue of a new
5 acknowledgment, promise, or otherwise, judgment shall be
6 rendered for the plaintiff as to that defendant, and for the
7 other defendants against the plaintiff.—R. S., c. 81, § 109.

SEC. 94. In an action on contract, if the defendant pleads in
2 abatement, that any other person ought to have been jointly
3 sued, and issue is joined thereon, and it appears on the trial,
4 that the action was barred by the provisions hereof against
5 such person, the issue shall be found for the plaintiff.—R. S.,
6 c. 81, § 110.

SEC. 95. Nothing herein contained shall alter, take away, or
2 lessen the effect of payment of any principal or interest made
3 by any person; but no indorsement or memorandum of such
4 payment made on a promissory note, bill of exchange, or other
5 writing, by or on behalf of the party to whom such payment is
6 made or purports to be made, shall be deemed sufficient proof
7 of payment to take the case out of the statute of limitations;
8 and no such payment made by a joint contractor, or his execu-
9 tor or administrator, shall affect the liability of another.—R. S.,
10 c. 81, § 111.

SEC. 96. Every judgment and decree of any court of record
2 of the United States, or any state, or of a justice of the peace
3 in this state, shall be presumed to be paid and satisfied at the
4 expiration of twenty years after any duty or obligations accrued
5 by virtue of such judgment or decree.—R. S., c. 81, § 112.

SEC. 97. All the provisions hereof respecting limitations,
2 shall apply to any debt or contract filed by way of set-off on
3 the part of the defendant; and the time of such limitation of
4 such debt or contract shall be computed, as if an action had
5 been commenced therefor at the time when the plaintiff's
6 action was commenced, unless the defendant is deprived of the
7 benefit of the set-off by the non-suit or other act of the plain-
8 tiff; and when he is thus defeated of a judgment on the merits
9 of such debt or contract, he may commence an action thereon
10 within six months after the final determination of the suit afore-
11 said.—R. S., c. 81, § 114.

SEC. 98. If any person is out of the state when a cause of
2 action accrues against him, the action may be commenced
3 within the time limited therefor after he comes into the state;
4 and if any person is absent from and resides out of the state
5 after a cause of action has accrued against him, the time of his
6 absence shall not be taken as a part of the time limited for the
7 commencement of the action.—R. S., c. 81, § 114.