

MAINE STATE LEGISLATURE

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N I N E T Y - N I N T H L E G I S L A T U R E

Legislative Document

No. 1314

S. P. 452

In Senate, April 15, 1959

Recommitted to Committee on Judiciary. Sent down forthwith for concurrence and 1,500 copies ordered printed.

CHESTER T. WINSLOW, Secretary

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-NINE

**AN ACT Affecting Certain Statutes Relating to Court Process and Procedure
and to Kindred Matters.**

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., c. 1, § 16, amended. Section 16 of chapter 1 of the Revised Statutes is amended to read as follows:

'Sec. 16. Report of county commissioners filed with Superior Court; petition for new trial. The commissioners shall file in the office of the clerk of the Superior Court a report of their doings, which shall be conclusive upon the parties, unless one of them within 30 days after the next term of the court files in court his petition for a new trial, which after due notice to the opposite party, may for due cause be granted, to be had in said court.'

Sec. 2. R. S., c. 16, § 67, amended. The 4th sentence of section 67 of chapter 16 of the Revised Statutes is amended to read as follows:

'Such appeal shall be entered ~~at the term first occurring~~ not less than 30 days after such statement of assessed valuation shall have been so deposited, and notice thereon shall be ordered by said court ~~in term time or by any justice thereof in vacation; and said.~~ Said appeal shall be tried, heard and determined by the court without a jury and with the rights provided by law in other civil cases so heard.'

Sec. 3. R. S., c. 16, § 67, amended. The next to the last sentence of section 67 of chapter 16 of the Revised Statutes is amended to read as follows:

'Either party may ~~file exceptions to~~ **appeal from** the decisions or rulings of the

court on matters of law arising at the trial in the same manner and with the same effect as are allowed in the Superior Court at a trial without jury.'

Sec. 4. R. S., c. 16, § 217, amended. Section 217 of chapter 16 of the Revised Statutes, as amended by section 23 of chapter 405 of the public laws of 1955, is further amended to read as follows:

'Sec. 217. Appeals from decisions of Tax Assessor. Any person aggrieved because of any action or decision of the Tax Assessor under the provisions of sections 200 to 221 may appeal therefrom within 20 days to the Superior Court. ~~Not less than 14 days before the sitting of said Superior Court~~ **When the appeal is taken**, the appellant shall serve upon the State Tax Assessor or his duly authorized representative a copy of the said ~~petition~~ **complaint** stating the reasons for the appeal and ~~notifying the Tax Assessor when the appeal is to be heard~~. Pending judgment of the court, the decision of the Tax Assessor shall remain in full force and effect.'

Sec. 5. R. S., c. 17, § 33, amended. Section 33 of chapter 17 of the Revised Statutes is amended to read as follows:

'Sec. 33. Appeal. Any taxpayer aggrieved by the decision upon such petition may, within 30 days after notice thereof from the Tax Assessor, appeal therefrom to ~~the next term of the Superior Court to be begun and held more than 30 days after such notice of said decision~~ in any county where he has a regular place of business for making retail sales, or, if he has no such place of business within the State, to such term of the Superior Court in Kennebec County. The appellant shall, ~~on or before the 3rd day of the term to which such appeal is taken~~ **when such appeal is taken**, file an affidavit stating his reasons of appeal and serve a copy thereof on the Tax Assessor, and in the hearing of the appeal shall be confined to the reasons of appeal set forth in such affidavit. Jurisdiction is granted to the Superior Court to hear and determine such appeals and to enter such order and decrees as the nature of the case may require. ~~Hearings may be had before the court in term time or any justice thereof in vacation and the decision of said court or justice~~ **The decision** upon all questions of fact shall be final. Decisions shall be certified forthwith by the clerk of courts to the Tax Assessor.' (1959, c. 68, § 5)

Sec. 6. R. S., c. 17, § 34, repealed and replaced. Section 34 of chapter 17 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 34. Injunctions. The State Tax Assessor may, by filing a complaint, apply for the revocation of registration and injunction from doing business of any person required to register by this chapter or any ruling, rule or regulation, who has omitted to register within 15 days after the Tax Assessor shall have made demand as provided by section 28; or has omitted to file with the Tax Assessor any overdue report within 15 days after the Tax Assessor shall have made demand therefor as provided by section 28, or shall have knowingly filed a false report; or has omitted to pay any tax required of him by this chapter when the same shall be shown to be due on a report filed by the taxpayer, or admitted to be due by the taxpayer, or shall have been determined

to be due and such determination shall have become final under this chapter. The existence of other civil or criminal remedies shall be no defense to this proceeding.

The complaint shall be deemed adequate as to form if it sets forth the name and the address of the defendant as stated in his last return filed with the Tax Assessor, or, if no such return was filed, the address, if any, known to the Tax Assessor; the breach of the law or ruling or rule or regulation committed by the defendant; the Tax Assessor's prayer for relief. The paragraphs of the complaint shall be numbered. The complaint need not be verified.

The complaint may be presented to any Justice of the Superior Court in any county where the defendant has a regular place of business, or, if he have no regular place, then in Kennebec County. Such justice shall forthwith fix a time and place for hearing and cause notice thereof to be given the defendant. The defendant shall serve upon the State Tax Assessor a copy of his answer to the complaint at least 3 days before the day of hearing. The answer shall be paraphrased and numbered to conform with the numbering of the paragraphs in the complaint so far as may be. Any allegation of fact in the complaint which is not denied shall be taken as true.

Jurisdiction is granted to the Justices of the Superior Court to hear and determine such matters, and to enter and change such orders and decrees from time to time as the nature of the case may require and, if necessary, to appoint a receiver. From any final decree of such justice, an appeal lies to the law court. Said appeal shall be heard by the law court in the same manner as in other actions.'

Sec. 7. R. S., c. 23, § 23, amended. The 2nd sentence of section 23 of chapter 23 of the Revised Statutes is amended to read as follows:

'The appellant shall file notice of his appeal with the State Highway Commission at Augusta by registered mail within the time ~~above~~ limited, and ~~at the 1st term of the court held following the expiration of the said 30 days when such appeal is taken~~ shall file a complaint setting forth substantially the facts upon which the case shall be tried like other cases.'

Sec. 8. R. S., c. 29, § 5, sub-§ II, amended. The 3rd sentence of subsection II of section 5 of chapter 29 of the Revised Statutes is amended to read as follows:

'Any person aggrieved by any such regulation, or any act or order of the commission in enforcement thereof, may appeal to a Justice of the Superior Court by presenting to him a petition therefor ~~in term time or vacation~~ **within 30 days**, and he shall fix a time and place of hearing which may be at chambers, or in vacation, and cause notice thereof to be given the commission; and after the hearing, the justice may affirm or reverse the regulation, act or order of the commission.'

Sec. 9. R. S., c. 30, § 127, amended. The last paragraph of section 127 of chapter 30 of the Revised Statutes is amended to read as follows:

~~'Exceptions Appeal shall lie to the law court from the decision of the Superior Court.'~~

Sec. 10. R. S., c. 36, § 60, amended. Section 60 of chapter 36 of the Revised Statutes is amended to read as follows:

'Sec. 60. Appeal filed. Any person aggrieved by the opinion, direction or judgment of said court in matter of law, in a proceeding for the location of such public reserved lots as provided for in sections 56 to 59 may ~~allege exceptions thereto~~ **appeal therefrom** as in other actions.'

Sec. 11. R. S., c. 41, § 16, amended. The 6th sentence of section 16 of chapter 41 of the Revised Statutes, as repealed and replaced by chapter 342 of the public laws of 1957, is amended to read as follows:

'Any interested party aggrieved by their determination of location or damages may appeal from their determination to the Superior Court of the county ~~at the next regular term of said court~~ **within 30 days** following the date of filing of their return with their said clerk.'

Sec. 12. R. S., c. 41, § 16, amended. The last sentence of the first paragraph of section 16 of chapter 41, as repealed and replaced by chapter 342 of the public laws of 1957, is repealed and the following sentence enacted in place thereof:

'An appeal may be taken by any party to the Supreme Judicial Court as in other actions.'

Sec. 13. R. S., c. 45, § 37, amended. Section 37 of chapter 45 of the Revised Statutes is amended to read as follows:

'Sec. 37. Appeal; notice and proceedings. Any person, aggrieved by the decision or judgment of the county commissioners in relation to damages for land taken for railroad purposes, may appeal to ~~the next term of the Superior Court to be held in the county where the land is situated, more than 30 days from the day when~~ **within 30 days after** the report of the commissioners is made, ~~excluding the day of the commencement of the session of said court~~ which court shall determine the same by a committee of reference if the parties so agree or by a verdict of its jury, and shall render judgment and issue execution for the damages recovered, with costs to the party prevailing in the appeal, but no committee or jury shall alter the requirements in the report of the commissioners. ~~The appellants shall serve written notice of such appeal upon the opposite party 14 days at least before the session of said court; and shall at the first term file a complaint setting forth substantially the facts of the case. On the trial exceptions may be taken as in other cases. The appellants shall, when such appeal is taken, include in the complaint a statement setting forth substantially the facts of the case and shall serve notice of such appeal and a copy of the complaint upon the opposite party. Appeal may be taken from the judgment of the Superior Court as in other cases.'~~

Sec. 14. R. S., c. 45, § 40, amended. The first sentence of section 40 of chap-

ter 45 of the Revised Statutes is repealed and the following sentence enacted in place thereof :

‘Service of process and notice may be made as process is served in other actions.’

Sec. 15. R. S., c. 45, § 56, amended. The second sentence of section 56 of chapter 45 of the Revised Statutes is repealed and the following sentence enacted in place thereof :

‘Appeal from any ruling of the court in such proceedings, except in recommitting the report, may be taken as in other cases.’

Sec. 16. R. S., c. 48, § 25, sub-§ IV, amended. The 4th sentence of subsection IV of section 25 of chapter 48 of the Revised Statutes is amended to read as follows :

‘Within said period of 10 days any party deeming himself aggrieved by the order of the commission may appeal therefrom to the ~~term of the~~ Superior Court ~~next to be held~~ in the county wherein the holder of such permit or certificate resides, and cause notice of such appeal to be served on the commission.’

Sec. 17. R. S., c. 49, § 3, amended. Section 3 of chapter 49 of the Revised Statutes is amended to read as follows :

‘Sec. 3. Boats liable for loss or damage of property transported, and may be attached. For loss or damage of property transported on a river, stream or bay, by boat for hire, the boat is liable, whether owned or not by the person undertaking such transportation, and may be attached on a writ **of attachment in an action** against him, sued out within 60 days after such loss or damage, and sold like other personal property on an execution issued on the judgment recovered in such ~~suit; and any action.~~ **Any** surplus shall be paid to the owner of the boat. Such attachment is effectual against any conveyance or lien after such loss or injury and prior to the attachment.’

Sec. 18. R. S., c. 50, § 45, amended. The first 2 sentences of section 45 of chapter 50 of the Revised Statutes are amended to read as follows :

‘Any party aggrieved by any order or decision of the municipal officers relating to the joint use or occupation of poles or by any of the regulations established by the municipal officers of said city or town relating to the joint use of poles, or by their decision as to his proportionate share of the original cost, or the cost of maintaining any joint poles, or the annual rental for the use of the same, may appeal from such orders, decisions or regulations of the municipal officers at any time, within 10 days after service of notice of the same, to the ~~next term of the~~ Superior Court ~~to be held~~ in the county ~~more than 30 days~~ after service of such notice, ~~excluding the 1st day of the session.~~ The appellant shall serve written notice of such appeal upon the opposite party ~~14~~ **14** days at least before the session of said court, and shall at the ~~1st term file~~ **1st** term file ~~it,~~ when such appeal is taken, include in the complaint a statement setting forth substantially the facts of the case, and the orders, decisions, or regulations of the municipal officers from which he appeals and in what respect he is aggrieved

thereby; and shall serve notice of such appeal and a copy of the complaint upon the opposite party.'

Sec. 19. R. S., c. 52, § 6, amended. Section 6 of chapter 52 of the Revised Statutes is amended to read as follows:

'Sec. 6. Shares sold for debts of holders; franchise, pipes, fountains, etc., sold for corporate debts; redemption; execution, when revived by motion. Shares in such corporations are personal estate and may be attached on a writ and sold on execution for the debts of the holders, like shares in other corporations; ~~and the.~~ The franchises, fixtures, pipes, fountains and interests in lands of such corporations are liable to attachment and sale on execution, as personal property, for their corporate debts; but the purchaser thereof at such sale shall not interfere with the possession of the corporation for 2 months after the sale; ~~and within.~~ Within that time, it may redeem such franchise and property by paying the sum for which they were sold with interest; but if not so redeemed, the purchaser shall have the same rights under the franchise and to such property as the corporation had. Any creditor of such corporation, whose execution has been satisfied by an ineffectual sale of such franchise or property, may revive the judgment by ~~seire facias motion.~~

Sec. 20. R. S., c. 52, § 17, amended. The first sentence of section 17 of chapter 52 of the Revised Statutes is amended to read as follows:

'Any person aggrieved by the decision or judgment of the county commissioners in relation to damages for property taken may appeal to the ~~next term of the Superior Court to be held~~ in the county where the property is situated, ~~more than~~ ~~within~~ 30 days from the date when the report of the commissioners is made, ~~excluding the day of the commencement of the session of the court,~~ which court shall determine the same by a committee of reference if the parties so agree or by the verdict of its jury; and shall render judgment and issue execution.'

Sec. 21. R. S., c. 52, § 17, amended. The last 2 sentences of section 17 of chapter 52 of the Revised Statutes are repealed and the following sentences enacted in place thereof:

'The appellant shall, when such appeal is taken, include in the complaint a statement setting forth substantially the facts of the case and shall serve written notice of such appeal and a copy of the complaint upon the opposite party. Appeal may be taken to the law court as in other actions.'

Sec. 22. R. S., c. 59, § 73, amended. The first sentence of section 73 of chapter 59 of the Revised Statutes is amended to read as follows:

'After a decree of sequestration is passed as provided in section 71, the court or any justice thereof in vacation shall appoint commissioners who shall give such notice of the times and places of their sessions as the court or such justice orders; receive and decide upon all claims against the institution, and make report to the court at such time as the court orders of the claims allowed and

disallowed and of the amount due each depositor, which shall be subject to ~~exception~~ **objections** and amendment as reports of masters in chancery.'

Sec. 23. R. S., c. 59, § 251, sub-§ IV, amended. The 3rd sentence of subsection IV of section 251 of chapter 59 of the Revised Statutes, as enacted by section 1 of chapter 386 of the public laws of 1957, is amended to read as follows:

'Either party may ~~file exceptions to appeal from~~ the decisions and rulings of the court upon matters of law arising upon the trial, in the same manner and with the same effect as is allowed in the Superior Court in the trial of ~~case cases~~ without a jury, without specifically reserving such right ~~to except~~.'

Sec. 24. R. S., c. 60, § 126, amended. The last paragraph of section 126 of chapter 60 of the Revised Statutes is amended to read as follows:

'~~Exceptions~~ **Appeal** shall lie to the law court from the decision of the Superior Court.'

Sec. 25. R. S., c. 60, § 330, sub-§ III, amended. The last paragraph of subsection III of section 330 of chapter 60 of the Revised Statutes is amended to read as follows:

'~~Exceptions~~ **Appeal** shall lie to the law court from the decision of the Superior Court.'

Sec. 26. R. S., c. 60, § 347, sub-§ III, amended. The last paragraph of subsection III of section 347 of chapter 60 of the Revised Statutes is amended to read as follows:

'~~Exceptions~~ **Appeal** shall lie to the law court from the decision of the Superior Court.'

Sec. 27. R. S., c. 63-A, § 21, amended. The first sentence of section 21 of chapter 63-A of the Revised Statutes, as enacted by section 1 of chapter 417 of the public laws of 1955, is amended to read as follows:

'Any person aggrieved by any decision or ruling of the board of trustees shall have the right of appeal from such decisions or ruling to the ~~next term of the~~ Superior Court ~~to be held in the County of Kennebec, held not less than 30 days after the rendition of said decision or ruling within 30 days after notice of such decision or ruling~~.'

Sec. 28. R. S., c. 82, § 11, amended. The next to the last paragraph of section 11 of chapter 82 of the Revised Statutes, is amended to read as follows:

'The licensee may appeal from such suspension or revocation within 30 days thereof to any Justice of the Superior Court, ~~in term time or vacation, by certiorari, or mandamus or by any other method permissible under the rules and practices of said court or the laws of this State and said court may make such further orders in respect thereto as justice may require~~.'

Sec. 29. R. S., c. 84, § 9, amended. The last sentence of section 9 of chapter 84 of the Revised Statutes is repealed and the following sentence enacted in place thereof:

'The findings of fact made by the commission acting within its powers shall be conclusive, but the Supreme Judicial Court shall have the power to review questions of law involved in any final decision or determination of the commission; provided that an appeal is taken by the aggrieved party within 30 days after such determination, and said court may make such further orders in respect thereto as justice requires.'

Sec. 30. R. S., c. 88, § 9, amended. The last paragraph of section 9 of chapter 88 of the Revised Statutes is amended to read as follows:

'Any person, club, association or corporation aggrieved by the findings of the commission may, by petition, take an appeal within 60 days to the Superior Court in the county where the hearing was held. Such petition shall, in substance, state the findings of the commission and the grounds for appeal, and said court shall consider said proceeding de novo and the parties thereto shall have right of ~~exception and~~ appeal as in civil matters. In the event the final judgment of the court reverses the finding of the commission, the court finding and order shall be conclusive upon the commission.'

Sec. 31. R. S., c. 89, § 39, amended. The last sentence of section 39 of chapter 89 of the Revised Statutes is amended to read as follows:

'If an appeal from the location be taken in accordance with section 59, then notice of appeal on damages may be filed with the clerk of the county commissioners within 60 days after the final decision of the appellate court in favor of such way as has been certified to him, to the Superior Court ~~first held~~ in the county where the land is situated, ~~more than 30 days after such notice of appeal is filed~~ which court shall determine the same in the same manner as is provided in section 42, when no appeal on location is taken.'

Sec. 32. R. S., c. 89, § 42, amended. The first 2 sentences of section 42 of chapter 89 of the Revised Statutes are amended to read as follows:

'Any person aggrieved by the estimate of damages by the county commissioners, on account of the laying out or discontinuing of a way, may appeal therefrom, at any time ~~before the 3rd day of the regular term succeeding that at which~~ within 30 days after the commissioners' return is made, to ~~the term of the Superior Court, first held~~ in the county where the land is situated, ~~more than 30 days after the expiration of the time within which such appeal may be taken, excluding the 1st day of its session~~ which court shall determine the same by a committee of reference if the parties so agree, or by a verdict of its jury, and shall render judgment for the damages recovered, and judgment for costs in favor of the party entitled thereto, and shall issue execution for the costs only. The appellant shall file notice of his appeal with the county commissioners within the time above limited, and ~~at the 1st term of the court shall file a complaint shall include in the complaint a statement setting forth substantially the facts, upon which the case shall be tried like other cases.'~~

Sec. 33. R. S., c. 89, § 56, amended. The first 4 sentences of section 56 of chapter 89 of the Revised Statutes are amended to read as follows:

'Any party interested in such decision under ~~the provisions of~~ section 55 may appeal therefrom to the Superior Court in said county ~~to be entered at the term thereof first held after such decision~~ **within 30 days**. All further proceedings before the commissioners shall be stayed until a decision is made in the appellate court. If no person appears ~~at that term~~ to prosecute the appeal, the judgment of the commissioners shall be affirmed. If ~~the appeal is then entered, not afterwards appellant appears,~~ the court may appoint a committee of 3 disinterested persons, who shall be sworn, and if one of them dies, declines or becomes interested, the court shall appoint another in his place and they shall cause notice to be given of the time and place of hearing before them by publication thereof in the state paper for 6 successive weeks, the last publication to be 14 days at least before the day of hearing, and personal notice to the appellant and to the chairman of the county commissioners, 30 days at least before the time set for hearing; ~~they.~~ **They** shall view the route, hear the parties and make their report at the next or 2nd term of the court after their appointment, whether the judgment of the commissioners should be in whole or in part affirmed or reversed, which, being accepted and judgment thereon entered, shall forthwith be certified to the clerk of the commissioners.'

Sec. 34. R. S., c. 89, § 58, amended. The next to the last sentence of section 58 of chapter 89 of the Revised Statutes is amended to read as follows:

'The time and place of hearing upon such petition shall be according to ~~the provisions of~~ section 55; ~~in.~~ **In** case of an appeal to the Superior Court, the appeal may be made ~~at any time within 30 days~~ **after the return of the commissioners has been placed on the files and before the next term of said court in the county; and the.** The proceedings upon the appeal shall be according to ~~the provisions of~~ section 56.'

Sec. 35. R. S., c. 89, § 59, amended. Section 59 of chapter 89 of the Revised Statutes is amended to read as follows:

'Sec. 59. Petition for laying out highway; appeal; stay of proceedings. Parties interested may appear, jointly or severally, at the time of hearing before the commissioners on a petition for laying out, altering, grading or discontinuing a highway; ~~and any.~~ **Any** such party may appeal from their decision thereon ~~at any time within 30 days~~ **after it has been placed on file and before the next term of the superior court in said county, at which term such appeal may be entered and to the Superior Court in said county, which appeal may be** prosecuted by him or by any other party who so appeared. All further proceedings before the commissioners shall be stayed until a decision is made in the appellate court.'

Sec. 36. R. S., c. 89, § 60, amended. Section 60 of chapter 89 of the Revised Statutes is amended to read as follows:

'Sec. 60. Proceedings on appeal. If no person appears ~~at that term~~ to prosecute the appeal provided for in section 59, the judgment of the commissioners may be affirmed. If ~~the appeal is then entered, not afterwards appellant appears,~~ the court may appoint a committee of 3 disinterested persons, who

shall be sworn, if one of them dies, declines or becomes interested, the court may appoint some suitable person in his place, ~~and they.~~ **They** shall give such notice as the court has ordered, view the route, hear the parties and make their report ~~at the next or 2nd term of the court to the court within 60 days or such further time as the court allows~~ after their appointment, whether the judgment of the commissioners should be in whole or in part affirmed or reversed; which, being accepted and judgment thereon entered, shall forthwith be certified to the clerk of the commissioners.'

Sec. 37. R. S., c. 89, § 63, amended. The 2nd sentence of section 63 of chapter 89 of the Revised Statutes is amended to read as follows:

'Any person aggrieved by an assessment may appeal to the Superior Court ~~at the term thereof first held after such assessment; and the~~ **within 30 days.** The presiding judge justice ~~at that term~~ shall, on hearing the case, determine what part of said assessment shall be paid by the owners of the tract or township, and what part, if any, by the county, and there shall be no appeal from such decision.'

Sec. 38. R. S., c. 89, § 115, amended. The last sentence of the first paragraph of section 115 of chapter 89 of the Revised Statutes is amended to read as follows:

'He shall prosecute to final judgment and execution all civil cases in which the State is a party in his county and shall institute ~~seire facias proceedings~~ against sureties on any recognizance upon which the principal and sureties have been defaulted, before the term next succeeding that at which such default was entered upon the docket of the court, unless by order in open court the presiding justice shall grant a delay in ~~matters of seire facias proceedings against such sureties.~~

Sec. 39. R. S., c. 89, § 133, amended. Section 133 of chapter 89 of the Revised Statutes is amended to read as follows:

'**Sec. 133. Receive costs in favor of State.** Costs in all civil actions in the name of the State ~~on seire facias or other process~~, paid before execution issues, shall be paid to the clerk of the court where the suit is pending and be by him paid, without deduction, to the county treasurer.'

Sec. 40. R. S., c. 89, § 164, amended. The 2nd sentence of section 164 of chapter 89 of the Revised Statutes is amended to read as follows:

'His name and place of residence or that of his attorney shall be indorsed on the writ, ~~summons or complaint~~ and the indorser alone is liable for costs.'

Sec. 41. R. S., c. 89, § 165, amended. Section 165 of chapter 89 of the Revised Statutes is amended to read as follows:

'**Sec. 165. Actions on sheriff's bond; proceedings.** Any other person having a right of action on such bond may file an additional ~~declaration~~ **complaint** in the same action in the office of the clerk of courts, who shall issue a sum-

mons, directed to the defendant, specifying the cause of action and the amount demanded, returnable to the same court and indorsed by the name and place of residence of such other person or his attorney; ~~and such.~~ **Such** indorser is liable for costs like indorsers of writs, **summonses and complaints.**'

Sec. 42. R. S., c. 89, § 166, amended. Section 166 of chapter 89 of the Revised Statutes is amended to read as follows :

'Sec. 166. Service; right of person filing complaint; answer. The property of the defendant may be attached on such summons as on mesne process, and it shall be served on the defendant as an original summons; ~~and thereupon.~~ **Thereupon** such person has all the rights of a plaintiff in the suit; ~~and the.~~ The defendant shall answer to said ~~declaration~~ **complaint**, and judgment may be rendered thereon as if it were filed in an action originally instituted for the same cause.'

Sec. 43. R. S., c. 89, § 167, amended. Section 167 of chapter 89 of the Revised Statutes is amended to read as follows :

'Sec. 167. Damages assessed on rendition of judgment; issue of executions. When judgment is rendered against the defendant in such action, damages shall be assessed on each ~~declaration~~ **complaint** for the amount which the party filing it would recover in a suit on the bond, with costs; ~~and executions.~~ **Executions** shall issue therefor in the name of each party so recovering in the order in which the ~~declarations~~ **complaints** were filed, but not beyond the amount of the bond. If judgment is for the defendant on any such ~~declaration~~ **complaint**, execution for costs shall issue against the party filing it. No such action shall be dismissed, ~~discontinued or nonsuited.~~ except by order of court, without the consent of all parties interested as plaintiffs.'

Sec. 44. R. S., c. 89, § 191, amended. Section 191 of chapter 89 of the Revised Statutes is amended to read as follows :

'Sec. 191. If escape happens through insufficiency of jail, sum paid, reimbursed. When such escape happens through the insufficiency of the jail, the county commissioners may order the county treasurer to pay to the sheriff the amount paid by him to such party; ~~and if.~~ If they do not make such order within 6 months after the demand is laid before them, the sheriff may bring his action ~~on the case~~ against the inhabitants of such county, to be tried therein or in an adjoining county; ~~and an attested copy of the writ left with the county treasurer, 30 days before the sitting of the court to which it is returnable, is a sufficient service~~ **service shall be made as in other actions.**

Sec. 45. R. S., c. 89, § 192, amended. Section 192 of chapter 89 of the Revised Statutes is amended to read as follows :

'Sec. 192. Agent to defend county appointed by commissioners; execution. The commissioners may appoint an agent to appear and defend the suit; ~~and if.~~ If they have no meeting between the time of service and the ~~return day~~ **thereof** time within which the answer is required to be served, it shall be continued ~~to the next term~~ for such time as the court directs, saving all advan-

tages to the defendants; ~~and if~~. If judgment is rendered against the county, the execution may be levied on the estate of any inhabitant, who has his remedy against the county to recover the amount so levied.'

Sec. 46. R. S., c. 90-A, § 3, sub-§ IV, ¶ C, sub-¶ 5, div. (b), amended. The 3rd sentence of division (b) of subparagraph 5 of paragraph C of subsection IV of section 3 of chapter 90-A of the Revised Statutes, as enacted by section 1 of chapter 405 of the public laws of 1957, is repealed, as follows:

~~'The appeal shall be tried at the term to which the notice is returnable unless otherwise ordered by the Court.'~~

Sec. 47. R. S., c. 90-A, § 61, sub-§ III, ¶ B, sub-¶ 2, amended. The first sentence of subparagraph 2 of paragraph B of subsection III of section 61 of chapter 90-A of the Revised Statutes, as enacted by section 1 of chapter 405 of the public laws of 1957, is amended to read as follows:

~~'The appeal to the Superior Court shall be entered at the term first occurring in the county not less than 30 days after the decision from which the appeal is taken taken within 30 days after the decision.'~~

Sec. 48. R. S., c. 91-A, § 52, amended. Section 52 of chapter 91-A of the Revised Statutes, as enacted by section 1 of chapter 399 of the public laws of 1955, is amended to read as follows:

'Sec. 52. Appeal; hearing. The appeal provided for in sections 50 and 51 shall be entered at the term first occurring not less than taken within 30 days after notice of the decision from which the appeal is being taken, or not less than 30 days after the application shall be deemed to have been denied. Notice thereon shall be ordered by said court in term time or by any justice thereof in vacation, and said appeal shall be tried, heard and determined by the court without a jury in the manner and with the rights provided by law in other civil cases so heard.'

Sec. 49. R. S., c. 91-A, § 54, amended. Section 54 of chapter 91-A of the Revised Statutes, as enacted by section 1 of chapter 399 of the public laws of 1955, is amended to read as follows:

'Sec. 54. Appeal; trial. The appeal provided for in sections 50 and 51 shall be tried at the term to which the notice is returnable first term held not less than 10 days after the notice has been given, unless delay shall be granted at the request of the municipality for good cause, and said court shall, if requested by the municipality, advance the case upon the docket so that it may be tried and decided with as little delay as possible. Either party may file exceptions to appeal from the decisions and rulings of the court upon matters of law arising upon the trial, in the same manner and with the same effect as is allowed in the Superior Court in the trial of cases without a jury.'

Sec. 50. R. S., c. 91-A, § 91, sub-§ III, repealed and replaced. Subsection III of section 91 of chapter 91-A of the Revised Statutes, as enacted by section

1 of chapter 399 of the public laws of 1955, is repealed and the following enacted in place thereof:

'III. Service shall be made as in other actions and further notice shall be given by posting a true copy of the complaint and the order of notice thereof, attested by the clerk of courts, in at least 3 public places within the municipality not less than 30 days before the time set for appearance of the defendants.'

Sec. 51. R. S., c. 91-A, § 92, sub-§ I, repealed and replaced. Subsection I of section 92 of chapter 91-A of the Revised Statutes, as enacted by section 1 of chapter 399 of the public laws of 1955, is repealed and the following enacted in place thereof:

'I. Service shall be made within or outside the State as in other actions, and if the identity or whereabouts of any defendants are unknown, service may be made upon them by publication as the court may order.'

Sec. 52. R. S., c. 94, § 28, amended. The 4th paragraph of section 28 of chapter 94 of the Revised Statutes is amended to read as follows:

'In all actions between towns in which the determination of the pauper settlement of a person or persons is involved, it shall be the duty of the clerk of the court wherein such action is pending to notify the State Department of Health and Welfare in writing of the pendency of such suit ~~within 10 days from the date of entry of the suit~~ **forthwith upon the filing of the complaint.** Such notice shall contain the names of the parties to the suit and the names and addresses of the persons whose pauper settlement is involved. ~~In the event of a notice for trial at the return term the aforesaid notice shall be forwarded as soon as is possible after the entry of the action~~ The State shall have the right to enter its appearance on the docket of the court in which such action is pending as a party defendant to plead and introduce evidence in the trial of the cause on material issues involving pauper settlement. A recovery in such an action against a town estops it from disputing the settlement of the pauper with the town recovering in any future action brought for the support of the same pauper.'

Sec. 53. R. S., c. 96, § 34, amended. Section 34 of chapter 96 of the Revised Statutes is amended to read as follows:

'Sec. 34. Damages for ways; appeal. The damages for a town way shall be paid by the town; for a private way, by those for whose benefit it is stated in the petition to be, or wholly or partly by the town, if under an article in the warrant to that effect it so votes at the meeting accepting such private way; or by cities, if it is proposed in the return laying out such way. Any person aggrieved by the estimate of such damages may have them determined as provided in ~~section 42 of chapter 89, section 42,~~ by written complaint to the Superior Court, ~~returnable at the term thereof next to be held within~~ in the county where the land lies, ~~after~~ **within** 60 days from the date of the establishment, alteration or discontinuance of such way by the town at its town meeting. ~~The complaint shall be served at least 30 days before said term by delivering~~

in hand an attested copy to the clerk of the town where the land lies, and by posting attested copies in 2 public and conspicuous places within said town and in the vicinity of the way; but the final judgment shall be recorded in said court and shall not be certified to the county commissioners. Service shall be made upon the town where the land lies as in other actions, and by posting attested copies in 2 public and conspicuous places within said town and in the vicinity of the way; but the final judgment shall be recorded in said court and shall not be certified to the county commissioners. When any person aggrieved by the estimate of damages for his land taken for a town or private way, honestly intended to appeal therefrom and has by accident or mistake omitted to take his appeal within the time provided by law, he may at any time within 6 months after the expiration of the time when said appeal might have been taken, apply to any justice of the court, in term time or vacation, stating in his said application the facts of his case ~~and said~~. Said justice, after due notice and hearing, may grant to such petitioner permission to take his said appeal ~~to such term of said court within such time~~ as said justice shall direct and on such terms as said justice shall order, and the subsequent proceedings thereon shall be the same and with the same effect as if said appeal had been seasonably taken.'

Sec. 54. R. S., c. 96, § 48, amended. The 4th, 5th, 6th and 7th sentences of section 48 of chapter 96 of the Revised Statutes are amended to read as follows:

'Such decision shall be final and binding upon all parties unless an appeal therefrom shall be taken ~~and entered at the next succeeding term of~~ to the Superior Court, ~~to be held in the county where the crossing is located, more than within~~ 30 days after the date of the filing of the report; ~~and said~~. Said Public Utilities Commission shall be made a party defendant in such appeal and entitled to be heard in all subsequent proceedings had upon such appeal. The appellant shall, within 14 days from the date of the filing of such report, file in the office of the Public Utilities Commission its reasons for appeal, and ~~14 days at least before the sitting of the appellate court~~ it shall **forthwith** cause to be served upon such other interested corporations or municipality or the State Highway Commission a copy of such reasons for appeal, certified by the clerk of the Public Utilities Commission. The presiding justice at such term of court shall make such order or decree thereon as law and justice may require. ~~Exceptions may be taken to~~ **An appeal may be taken from** such order or decree.'

Sec. 55. R. S., c. 96, § 81, amended. The last sentence of section 81 of chapter 96 of the Revised Statutes is amended to read as follows:

'Said complaint shall be filed ~~at the term of~~ in the Superior Court ~~next to be held within~~ in the county where the land is situated ~~after~~ **within** 60 days from the date of assessment.'

Sec. 56. R. S., c. 96, § 95, repealed and replaced. Section 95 of chapter 96 of the Revised Statutes is repealed and the following enacted in place thereof:

'**Sec. 95. Notice to company.** The notice required in section 93 shall be by copy of the summons and complaint served upon the company at least 30 days before the action is in order for trial unless the court orders otherwise.'

Sec. 57. R. S., c. 96, § 168, amended. Section 168 of chapter 96 of the Revised Statutes is amended to read as follows:

'Sec. 168. Appeal. Any person, whether a party to the proceedings or otherwise interested therein or affected thereby, aggrieved by the doings of the commissioners, may appeal to the court at any time after their appointment and before the end of the term following that at which the return is made within 60 days after the return is made.'

Sec. 58. R. S., c. 96, § 171, repealed and replaced. Section 171 of chapter 96 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 171. Appeal. Any person aggrieved by opinion, direction or judgment of the court in any matter of law may appeal therefrom as in other actions.'

Sec. 59. R. S., c. 102, § 12, amended. Section 12 of chapter 102 of the Revised Statutes is amended to read as follows:

'Sec. 12. Debts of deorganized towns and school districts therein. Where towns are deorganized by a repeal of their charters, and their liabilities are excepted and reserved by the repealing act, legal service of process to collect such liabilities may be made on any inhabitant of lawful age resident in the territory included in said towns as provided for service of such process against towns; provided that there are no legal officers in said territory on whom service can be made. The provisions of this section extend to school districts in said towns so far as applicable.'

Sec. 60. R. S., c. 103, § 9, amended. The last sentence of section 9 of chapter 103 of the Revised Statutes is repealed, as follows:

~~'In any civil action in which there is a subsisting verdict, if a majority of the justices sitting and qualified to act in the case after mature consideration and consultation do not concur in granting a new trial, the court shall render judgment on the verdict.'~~

Sec. 61. R. S., c. 103, § 15, amended. The first sentence of section 15 of chapter 103 of the Revised Statutes is amended to read as follows:

'The following cases only come before the court as a court of law: cases on appeal from the Superior Court or a single justice of the Supreme Judicial Court; cases in which there are motions for new trials upon evidence reported by the justice; questions of law arising on reports of cases; bills of exceptions in criminal cases; agreed statement of facts; cases, civil or criminal, presenting a question of law; all questions arising in equity cases in which equitable relief is sought; motions to dissolve injunctions issued after notice and hearing or continued after a hearing; questions arising on writs of habeas corpus, mandamus and certiorari when the facts are agreed on or are ascertained and reported by a justice.'

Sec. 62. R. S., c. 103, § 18, repealed and replaced. Section 18 of chapter 103 of the Revised Statutes is repealed and the following section enacted in place thereof:

'Sec. 18. Entry of judgment; attachments; death of party. In criminal cases the clerk of courts of a county, by virtue of a certificate provided for in this chapter, received in vacation, shall enter judgment as of the preceding term.'

In civil cases judgment shall be entered forthwith upon receipt of the certificate of decision from the law court. If the judgment is for the plaintiff, any attachment then in force shall continue for 60 days after entry of such judgment. When a party to a suit dies while the action is pending before the law court, and no suggestion of death has been made upon the docket of the county where the action is pending, at the time when the certificate of decision is received by the clerk of courts in such county, any Justice of the Superior Court may order such action to be continued in order that such death may be suggested upon such county docket, and the proper parties entitled to defend or prosecute such suit may enter their appearance therein; and such justice may further order that any attachment then in force shall continue for such time in excess of 60 days after entry of judgment as in his discretion he deems necessary to protect the interests of the plaintiff.'

Sec. 63. R. S., c. 103, § 19, repealed and replaced. Section 19 of chapter 103 of the Revised Statutes is repealed and the following section enacted in place thereof:

'Sec. 19. Attachments continue on 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.'

Sec. 64. R. S., c. 106, § 5, repealed and replaced. Section 5 of chapter 106 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 5. Jurisdiction; powers. The Superior Court, exclusive of the Supreme Judicial Court, shall have and exercise jurisdiction and have and exercise all of the powers, duties and authority necessary for exercising the jurisdiction in any and all matters either original or appellate, which were, prior to January 1, 1930, within the jurisdiction of the Supreme Judicial Court or any of the Superior Courts, whether cognizable at law or in equity, except as concurrent jurisdiction is vested in the several municipal courts, and except as provided in chapter 107, section 1 it shall have and exercise none of the jurisdiction, powers, duties and authority of the Supreme Judicial Court sitting as a law court. A single Justice of the Supreme Judicial Court also shall have and exercise jurisdiction, and have and exercise all of the powers, duties and authority necessary for exercising the same jurisdiction as the Superior Court, to hear and determine, with his consent, any civil action in the Superior Court in which the parties have no right to trial by jury or in which the right to trial by jury has been waived, except action for divorce or annulment.'

Sec. 65. R. S., c. 106, § 9, repealed and replaced. Section 9 of chapter 106 of the Revised Statutes is repealed and the following enacted in place thereof:

‘Sec. 9. Seal; form of summonses, writs and processes; facsimile signature of clerk. The Justices of the Superior Court shall establish a seal for said court. All summonses, writs and other processes of said court shall be in the name of the state under the seal of said court. They shall be signed by any one of the clerks and obeyed and executed throughout the state. The clerk in any county may sign and issue any such summons, writ or other process for an action in the Superior Court in any other county in which the action might legally be brought. A facsimile of the signature of the clerks of the Superior Courts imprinted by or at their direction upon any writ, summons, subpoena, order or notice or order of attachment, except executions and criminal process, shall have the same validity as their written signature.’

Sec. 66. R. S., c. 106, § 14, amended. Section 14 of chapter 106 of the Revised Statutes is amended to read as follows:

‘Sec. 14. Exceptions in criminal cases; motions for new trial; appeals in civil cases. When the court is held by one justice, a party aggrieved by any of his opinions, directions or judgments in any ~~civil or~~ criminal proceeding may, during the term, present written exceptions in a summary manner signed by himself or counsel, and when found true they shall be allowed and signed by such justice; ~~provided, however, that in.~~ In all cases, such exceptions shall be presented within 30 days after the verdict is rendered or the opinion, direction or judgment is announced in the case in which such verdict, opinion, direction or judgment is made; but if he deems them frivolous and intended for delay, he may so certify on motion of the party not excepting; ~~and such.~~ Such exceptions may then be transmitted at once by such justice to the Chief Justice and shall be argued in writing on both sides within 30 days thereafter, unless the presiding justice for good cause enlarges the time, and they shall be considered and decided by the justices of said court as soon as may be and the decision certified to the clerk of the county where the case is pending. The provisions of this section apply to exceptions filed in any ~~civil or~~ criminal proceedings in the Superior Court. If the Justice of the Supreme Judicial Court or of the Superior Court disallows or fails to sign and return the exceptions or alters any statement therein, in ~~either civil or~~ criminal proceedings, and either party is aggrieved, the truth of the exceptions presented may be established before the Supreme Judicial Court sitting as a court of law, upon petition setting forth the grievance, and thereupon, the truth thereof being established, the exceptions shall be heard and the same proceedings had as if they had been duly signed and brought up to said court with the petition. The Supreme Judicial Court shall make and promulgate rules for settling the truth of exceptions alleged and not allowed. All motions for new trials **in criminal cases**, as against law or evidence, shall be filed during the term at which verdict is rendered, but in no case later than 30 days after verdict rendered.

For all purposes for which an exception has heretofore been necessary in civil cases, it is sufficient that a party, at the time the order or ruling of the court is made or sought, makes known to the court the action which he desires

the court to take or his objection to the action of the court and his grounds therefor. If a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him. In any civil case a defendant aggrieved by any judgment, ruling or order may appeal therefrom to the law court within 30 days or such further time as may be granted by the court pursuant to a rule of court.'

Sec. 67. R. S., c. 106, § 19, amended. Section 19 of chapter 106 of the Revised Statutes is amended to read as follows:

'Sec. 19. Trial to proceed when dilatory pleas overruled. When a dilatory plea is overruled and exceptions taken in a criminal case, the court shall proceed and close the trial, and the action shall then be continued and marked "law," subject to the provisions of section 14.'

Sec. 68. R. S., c. 107, § 4, amended. The first paragraph of section 4 of chapter 107 of the Revised Statutes is amended to read as follows:

'The ~~supreme judicial court and the~~ Superior Court shall have jurisdiction ~~as a court of equity~~ to grant appropriate equitable relief in the following cases:'

Sec. 69. R. S., c. 107, § 4, sub-§ VIII, amended. Subsection VIII of section 4 of chapter 107 of the Revised Statutes is amended to read as follows:

'VIII. Of bills of interpleader notwithstanding the complainant is a common carrier and as such has a lien for carriage or storage upon the property which is described in the bill. No complainant in interpleader shall be denied relief by reason of any interest in the fund or other subject matter in dispute. ~~Nothing herein contained shall be construed to dispense with any of the other requisites for a bill of interpleader.'~~

Sec. 70. R. S., c. 107, § 4, sub-§ XII, repealed. Subsection XII of section 4 of chapter 107 of the Revised Statutes is repealed, as follows:

'~~XII. In cases where the power is specifically given by statute and for discovery when a discovery may be lawfully required according to the course of chancery proceedings.'~~

Sec. 71. R. S., c. 107, § 10, repealed and replaced. Section 10 of chapter 107 of the Revised Statutes, as amended by section 2 of chapter 392 of the public laws of 1955, is repealed and the following section enacted in place thereof:

'Sec. 10. Petition for assignment of another justice on a matter. Within 10 days after the service of a complaint or other application in which equitable relief is sought, the defendant, prior to the filing of his answer, may petition in writing for good cause shown to the Chief Justice of the Supreme Judicial Court for the assignment of a justice to preside on the matter other than the justice to whom the original complaint or application was presented. Upon the receipt of such petition the Chief Justice may assign another justice to hear the matter.'

Sec. 72. R. S., c. 107, § 31, amended. The first sentence of section 31 of chapter 107 of the Revised Statutes is repealed, as follows:

'All evidence before the court below, or an abstract thereof approved by the justice hearing the case, shall on appeal be reported.'

Sec. 73. R. S., c. 107, § 35, amended. The last sentence of section 35 of chapter 107 of the Revised Statutes is repealed and the following sentence enacted in place thereof:

'No appeal lies from any order or decree for such punishment, save upon questions of jurisdiction; nor shall such appeal suspend the enforcement of any such order or decree unless the court so directs.'

Sec. 74. R. S., c. 107, § 51, repealed and replaced. Section 51 of chapter 107 of the Revised Statutes is repealed and the following section enacted in place thereof:

'Sec. 51. Proceedings in case of death or disability of presiding justice. If in any criminal case the justice before whom the defendant has been tried is, by reason of death, resignation, sickness, removal or other disability, unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other Justice of the Superior Court may perform those duties, but if such other justice is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.'

Sec. 75. R. S., c. 107, § 52, repealed and replaced. Section 52 of chapter 107 of the Revised Statutes is repealed and the following section enacted in place thereof:

'Sec. 52. Appeal found to be frivolous. If an appeal to the law court is found by that court to have been frivolous and intended for delay, treble costs may be allowed to the prevailing party.'

Sec. 76. R. S., c. 108, § 4, amended. Section 4 of chapter 108 of the Revised Statutes, as amended by chapter 115 of the public laws of 1957, is further amended to read as follows:

'Sec. 4. Jurisdiction. A municipal court shall not have jurisdiction in any civil matter unless a defendant resides within the county in which such court is established, or is a nonresident of the State and has personal service within the county, or a party summoned as trustee resides within the county, or property of the defendant is attached within the county in which such court is established; but in case of such personal service, trustee or attachment, such court shall have jurisdiction concurrent with the Superior Court and with all other municipal courts in the same county wherein it is established of all civil actions in which ~~the debt or damages demanded do not exceed \$600~~ **neither equitable relief nor damages in excess of \$600 is demanded.** Any action in which the judge of such municipal court may be interested, either by relationship, as counsel or otherwise, may be brought by such judge before any other court,

superior or municipal, in the same county in the same manner and with like effect as other actions therein.'

Sec. 77. R. S., c. 108, § 5, amended. Section 5 of chapter 108 of the Revised Statutes is amended to read as follows:

'**Sec. 5. Summonses.** ~~Writs~~ **Summonses** in civil actions before any municipal court may be made returnable at any term thereof, to be held not less than 7 nor more than 65 days from their date.'

Sec. 78. R. S., c. 108, § 6, amended. The first paragraph of section 6 of chapter 108 of the Revised Statutes is amended to read as follows:

'The signature of the recorder or clerk of any municipal court to a complaint, warrant, mittimus, **summons**, writ or other document, purporting to come from the court of which he is recorder or clerk, shall be sufficient evidence of his authority to issue the same, without in any way accounting for the absence or presence of the judge of said court.'

Sec. 79. R. S., c. 108, § 7, amended. Section 7 of chapter 108 of the Revised Statutes is amended to read as follows:

'**Sec. 7. Summonses returnable to any municipal court in county.** ~~Writs~~ **Summonses** issued from any municipal court may be made returnable to any other municipal court in any county, but nothing in ~~the provisions of~~ this section shall be construed as permitting a defendant in one county to be summoned into a municipal court in another county unless one or more trustees of the principal defendant reside in a county other than the county in which said defendant resides as provided in ~~section 84 of~~ chapter 114, **section 84.**'

Sec. 80. R. S., c. 108, § 10, amended. Section 10 of chapter 108 of the Revised Statutes, as amended by section 9 of chapter 334 of the public laws of 1957, is further amended to read as follows:

'**Sec. 10. Costs and fees; overcharging costs.** The costs and fees taxed and allowed in all the municipal and trial justice courts shall be as follows:

Costs in civil actions. Costs to parties and attorneys in civil actions shall be:

To plaintiffs who prevail:

I. Where the damages recovered amount to \$20 or more;

Writ Summons	\$3.50
Entry	1.00
Officers' fees for serving summons and writ of attachment , as allowed by the court	—
Attendance, each term	3.50
Travel, each term	.66
Witness fees, as allowed by the court	—

II. Where the damages recovered amount to less than \$20;

Writ Summons	\$2.00
Entry	1.00
Officers' fees for serving summons and writ of attachment , as allowed by the court	—
Attendance, each term	2.00
Travel, each term	.66
Witness fees, as allowed by the court	—
To defendants who prevail:	
Pleadings	\$2.00
Witness fees, as allowed by the court	—
Attendance, each term	2.00
Travel, each term	.66
To trustees who make disclosure at the return term:	
Disclosure	\$1.00
Attendance, each term	2.00
Travel, each term	.66
Witness fees, as allowed by the court	—

If the prevailing party actually travels more than 10 miles for the special purpose of attending court in any such action, he may be allowed by the court for every 10 miles so traveled, but not exceeding 40 miles .33.

The allowance for travel and attendance to parties recovering costs shall be limited to 2 terms, except that the court for good and sufficient cause may order allowance for additional terms.

Copies of papers for removal or appeal to the Superior Court, to be paid by the appellant to the municipal court and taxed in his cost by the Superior Court if he finally prevails 2.00

If any attorney at law or other person demands or takes for a writ of attachment with a summons or for an original summons ~~with the declaration and complaint~~, returnable before a trial justice, judge or recorder of a municipal court, more than the costs and fees allowed in the preceding paragraphs of this section from the defendant; or, in the taxation of costs, such justice, judge or recorder taxes or allows more than that sum for the same, he forfeits to the defendant not less than \$5 nor more than \$10, to be recovered in an action ~~of debt~~, but nothing herein contained shall be so construed as to reduce the fees of municipal courts otherwise established by law.

Every attorney shall pay the municipal court an entry fee of \$1 for each civil ~~writ~~ action entered. There shall be no charge to any attorney by said court for blank writs, for issuing any execution, any execution renewal, any writ of possession or for taxing costs.

Fees in criminal cases.

Receiving a complaint and issuing a warrant \$5.00

The aforesaid fees when received shall be disposed of as provided by the public laws or by the acts establishing the respective courts.'

Sec. 81. R. S., c. 110, § 3, amended. Section 3 of chapter 110 of the Revised Statutes is amended to read as follows :

'**Sec. 3. Jurisdiction in civil actions.** Every trial justice may hold a court in his county, as provided in this chapter, and have original and exclusive jurisdiction of all civil actions, including prosecutions for penalties in which his town is interested, when ~~neither equitable the debt or damages demanded do not exceed \$20~~ relief nor damages in excess of \$20 is demanded, except those in which the title to real estate, according to the pleadings ~~or brief statement~~ filed in the case of either party, is in question ; and except that in those towns in which a municipal court is established, his jurisdiction is restricted to those cases in which jurisdiction was given to justices of the peace, in the act establishing such court, and to cases wherein jurisdiction is given to trial justices in like manner.'

Sec. 82. R. S., c. 110, § 4, repealed and replaced. Section 4 of chapter 110 of the Revised Statutes is repealed and the following enacted in place thereof :

'**Sec. 4. Summons, form and service; attachment and trustee process.** Civil actions before a trial justice shall be commenced by a summons signed by the justice and returnable before him at a stated time and place not less than 7 nor more than 60 days after the service thereof. The summons, together with a complaint stating in simple and concise language the nature of the case, shall be served in the same manner as process in the Superior Court. In connection with the commencement of any such action, attachment and trustee process may be used in the manner and to the extent provided by law upon procedure as near to that in the Superior Court as the nature of the tribunal admits.'

Sec. 83. R. S., c. 110, § 6, amended. Section 6 of chapter 110 of the Revised Statutes is amended to read as follows :

'**Sec. 6. When parties live in different counties.** When the parties reside in different counties, such actions shall be commenced before any disinterested trial justice residing in the county where any defendant resides ; but all trustee actions, returnable before such justice, shall be commenced within the county where some trustee named in the ~~writ~~ summons resides.'

Sec. 84. R. S., c. 110, § 7, amended. Section 7 of chapter 110 of the Revised Statutes is amended to read as follows :

'**Sec. 7. Summons returnable before another in same county.** ~~Writs~~ A summons issued by any trial justice may be made returnable before any other trial

justice of the same county and shall have the same effect as if signed by the latter justice.'

Sec. 85. R. S., c. 110, § 8, amended. Section 8 of chapter 110 of the Revised Statutes is amended to read as follows:

'Sec. 8. Summons, when returnable; justice to be present with summons. No ~~writ~~ summons shall be made returnable before any trial justice at an earlier hour than 9 o'clock in the forenoon nor later than 4 o'clock in the afternoon. No judgment of such justice is valid if he is not present with the plaintiff's ~~writ~~ **summons** at the place within one hour after the time therein named unless the case is continued by some other justice, as provided in section 10.'

Sec. 86. R. S., c. 110, § 9, amended. Section 9 of chapter 110 of the Revised Statutes is amended to read as follows:

'Sec. 9. Dismissal or default after one hour; stricken off. The justice may enter judgment on ~~nonsuit~~ dismissal or default against the party failing to appear at the end of one hour after the time of return set forth in the ~~writ~~ **summons**; but may in his discretion, on motion of either party, strike off the same within 24 hours thereafter, upon such terms as he deems reasonable.'

Sec. 87. R. S., c. 110, § 10, amended. Section 10 of chapter 110 of the Revised Statutes is amended to read as follows:

'Sec. 10. When justice cannot attend, another may continue proceedings. When a trial justice fails to attend at the time and place appointed by him for the trial of any suit already entered or at which a ~~writ~~ **summons** is returnable before him, any other trial justice who might legally try the same or any justice of the peace residing in the same or an adjoining town may attend and continue such action, once, to a day certain, not exceeding 30 days, and note the fact on the ~~writ~~ **summons** and on his own docket; ~~and it.~~ If said trial justice, who so appointed such time and place or before whom such ~~writ~~ **summons** is returnable, fails to attend at the time and place fixed in such continuance, such action may then and there be entered before and tried by some other trial justice of the same town or, if none such resides therein, then before some trial justice of the same county who may render judgment and issue execution as if the action had been originally returnable before him.'

Sec. 88. R. S., c. 110, § 11, amended. Section 11 of chapter 110 of the Revised Statutes is amended to read as follows:

'Sec. 11. Where court held; pleadings; limitation of costs. A trial justice may hold a court at his dwelling house, office or other suitable place and the ~~writ~~ **summons** shall be made returnable accordingly. He may adjourn his court by proclamation, from time to time, as justice requires. In actions before him the defendant shall ~~plead the general issue and need not file any brief statement~~ **not be required to file any responsive pleading**, except where the title to real estate is in question. When an action in which the defendant does not appear is continued at the request of the plaintiff, only one travel and attendance shall be taxed for him unless the defendant agrees, in writing, to such continuance.'

Sec. 89. R. S., c. 110, § 12, amended. Section 12 of chapter 110 of the Revised Statutes is amended to read as follows:

'Sec. 12. Judgment on default or trial. If a person served with process does not appear and answer thereto, his default shall be recorded and the charge in the ~~declaration~~ **complaint** taken to be true; ~~and on.~~ **On** such default and when on trial the action is maintained, the justice shall enter judgment for such sum, not exceeding \$20, as he finds due to the plaintiff, with costs, and issue execution.'

Sec. 90. R. S., c. 110, § 14, amended. Section 14 of chapter 110 of the Revised Statutes is amended to read as follows:

'Sec. 14. Hear actions in certain cases. Every trial justice may ~~issue writs of seise facias~~ **hear actions** against executors or administrators, upon a suggestion of waste, after judgment against them; against bail in civil actions and indorsers ~~of writs for costs~~; and enter judgment and issue execution as any court might do in like cases.'

Sec. 91. R. S., c. 110, § 16, amended. Section 16 of chapter 110 of the Revised Statutes is amended to read as follows:

'Sec. 16. Execution issued on transcribed record. On such transcribed record, the justice may issue executions as if the judgment was rendered by himself, changing the form as the case requires; but no such first execution shall issue after one year from the time when the judgment was rendered, unless ~~on seise facias~~ **the debtor after notice has failed to show cause why execution should not issue.**'

Sec. 92. R. S., c. 110, § 18, amended. The first sentence of section 18 of chapter 110 of the Revised Statutes is amended to read as follows:

'If any trial justice dies or removes from the State without recording and signing a judgment by him rendered in an action before him, and his docket, original ~~writ~~ **summons** and papers pertaining thereto, and execution if any issued, are so deposited in the office of the clerk, the clerk shall, on payment of the usual fees, make out and certify copies of all the papers in such cause and all facts appearing in such docket; ~~and such.~~ **Such** copies are legal evidence.'

Sec. 93. R. S., c. 110, § 21, amended. Section 21 of chapter 110 of the Revised Statutes is amended to read as follows:

'Sec. 21. Justice not to be of counsel; dismissal of action. No trial justice shall be of counsel for or give advice to either party in a suit before him or be subsequently employed as counsel or attorney in any case tried before him; nor hear or determine any civil action commenced by himself; and every action so commenced shall ~~abate~~ **be dismissed.**'

Sec. 94. R. S., c. 111, § 1, amended. Section 1 of chapter 111 of the Revised Statutes is amended to read as follows:

'Sec. 1. When title to real estate is in question. In actions in a municipal court or before a trial justice when it appears by the pleadings or brief state-

ment that the title to real estate is in question, the cause shall on request of either party be removed to the Superior Court in the County; ~~and such.~~ Such party shall recognize to the other in a reasonable sum, with sufficient sureties, to enter the case ~~at the next term thereof; and if in the Superior Court within 30 days.~~ If he does not so recognize, the trial justice or municipal court judge shall hear and decide the case as if such request had not been made.'

Sec. 95. R. S., c. 111, § 2, amended. Section 2 of chapter 111 of the Revised Statutes is amended to read as follows:

'**Sec. 2. Copy and papers produced at appellate court; proceedings if not entered.** The party so recognizing shall produce at said court a copy of the record and all such papers as are required to be produced by an appellant; ~~and if.~~ If he fails to do so or to enter the action as ~~before~~ provided, ~~he~~ it shall on complaint of the adverse party be ~~dismissed~~ ~~or defaulted,~~ as the case may be; ~~and such.~~ Such judgment shall be rendered as law and justice require.'

Sec. 96. R. S., c. 111, § 4, amended. The first sentence of section 4 of chapter 111 of the Revised Statutes is amended to read as follows:

'Any party aggrieved by the judgment of the judge or the trial justice, whether after trial or upon default, may appeal to the ~~next~~ Superior Court in the same county and may enter such appeal at any time within 5 days after the judgment, Sunday not included.'

Sec. 97. R. S., c. 111, § 9, amended. Section 9 of chapter 111 of the Revised Statutes is amended to read as follows:

'**Sec. 9. Actions and executions, when directed into other counties.** In ~~cases of seire facias actions~~ against bail, indorsers ~~of writs for costs, and proceedings after judgment against~~ executors or administrators, and in all ~~trustee processes or original writs actions~~ against 2 or more defendants before a trial justice or a judge of a municipal court, where the defendant or trustee resides out of the county where the proceedings are had, the justice or judge may direct the ~~summons,~~ writ or execution to any proper officer of the county where such defendant or trustee resides, who shall charge fees of travel from the place of his residence to the place of service only, and postage paid by him.'

Sec. 98. R. S., c. 112, § 2, amended. Section 2 of chapter 112 of the Revised Statutes is amended by repealing the first paragraph, as follows:

'All civil actions, except seire facias and other special writs, shall be commenced by original writs; which, in the superior court, may be issued by the clerk in term time or vacation and 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.'

Sec. 99. R. S., c. 112, § 5, amended. Section 5 of chapter 112 of the Revised Statutes is amended to read as follows :

'Sec. 5. Unknown defendant sued by assumed name. When the name of a defendant is not known to the plaintiff, the ~~writ~~ **summons** may issue against him by an assumed name; ~~and if~~. If duly served, it shall not be ~~abated~~ **dismissed** for that cause but may be amended on such terms as the court orders.'

Sec. 100. R. S., c. 112, § 6, repealed and replaced. Section 6 of chapter 112 of the Revised Statutes is repealed and the following enacted in place thereof :

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

Sec. 101. R. S., c. 112, § 9, amended. Section 9 of chapter 112 of the Revised Statutes is amended to read as follows :

'Sec. 9. Personal and transitory actions; transfer from one county to another. Personal and transitory actions, except process of foreign attachment and except as provided in ~~the 7 following~~ sections **10 to 16**, shall be brought, when the parties live in the State, in the county where any plaintiff or defendant lives; and when no plaintiff lives in the State, in the county where any defendant lives; ~~and when not so brought, they shall on motion or inspection by the court be abated and the defendant allowed double costs.~~ **Improper venue may be raised by the defendant by motion or by answer, and if it is established that the action was brought in the wrong county, it shall be dismissed and the defendant allowed double costs.** When the plaintiff and defendant live in different counties at the commencement of any such action, except process of foreign attachment, and during its pendency one party moves into the same county with the other, it may, on motion of either, be transferred to the county where both then live if the court thinks that justice will thereby be promoted; and be tried as if originally commenced and entered therein; ~~provided, however, that suits~~. **Suits** by the assignee of a nonnegotiable chose in action, when brought in the Superior Court or in a municipal court, shall be commenced in the county in which the original creditor might have maintained his action; and when brought before a trial justice, the ~~writ~~ **summons** shall be made returnable before a magistrate who would have had jurisdiction had the chose in action not been assigned.'

Sec. 102. R. S., c. 112, § 12, amended. Section 12 of chapter 112 of the Revised Statutes is amended to read as follows:

'Sec. 12. Jurisdiction obtained by attachment. In all actions commenced in any court proper to try them, jurisdiction shall be sustained if goods, estate, effects or credits of any defendant are found within the State and attached ~~on the original writ; and service shall be made as provided in section 21.~~

Sec. 103. R. S., c. 112, § 15, amended. Section 15 of chapter 112 of the Revised Statutes is amended to read as follows:

'Sec. 15. Certain actions in behalf of State. An action in behalf of the State to enforce the collection of state taxes upon any corporation or to recover of any person or corporation moneys due the State, public funds or property belonging to the State, or the value thereof, may be brought in any county; ~~provided that on.~~ On motion of the defendant, any Justice of the Superior Court ~~holding the term at which such action is returnable~~ may, for sufficient reasons shown, remove the same to the docket of said court in any other county for trial and may, upon such removal, award costs to the defendant for one term, to be paid by the Treasurer of State on presentation of the certificate of the amount thereof from the clerk of courts of the county from which said action is transferred.'

Sec. 104. R. S., c. 112, § 16, amended. Section 16 of chapter 112 of the Revised Statutes is amended to read as follows:

'Sec. 16. Justice actions, service. An action against 2 or more defendants residing in different counties, to be tried before a trial justice or municipal court, may be brought in the county where either resides; ~~and the writ and execution shall be directed to and executed.~~ The process shall be served and the execution levied by the proper officers in each of such counties; ~~but if.~~ If there is only one defendant, such action shall be commenced in the county where he resides.'

Sec. 105. R. S., c. 112, § 21, repealed and replaced. Section 21 of chapter 112 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 21. Service of process.

I. Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated in this section, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of said acts:

A. The transaction of any business within this State;

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

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

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

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

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

IV. Nothing contained in this section limits or affects the right to serve any process in any other manner now or hereafter provided by law.'

Sec. 106. R. S., c. 112, § 27, amended. The first sentence of section 27 of chapter 112 of the Revised Statutes is amended to read as follows:

'When any personal property is attached which by reason of its bulk or other special cause cannot be immediately removed, the officer may within 5 days thereafter file in the office of the clerk of the town in which the attachment is made an attested copy of so much of his return on the writ **of attachment** as relates to the attachment, with the value of the defendant's property which he is thereby commanded to attach, the names of the parties, the date of the writ **of attachment** and the court to which it is returnable, and such attachment is as effectual and valid as if the property had remained in his possession and custody.'

Sec. 107. R. S., c. 112, § 28, amended. Section 28 of chapter 112 of the Revised Statutes is amended to read as follows:

'**Sec. 28. Attachment of shares in a corporation.** When the share or interest of any person in an incorporated company is attached on mesne process, an attested copy of the writ **of attachment** with a notice thereon of the attachment, signed by the officer, shall be left with the clerk, cashier or treasurer of the company; ~~and such.~~ **Such** attachment is a lien on such share or interest and on all accruing dividends; ~~and if.~~ **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 on the case~~ by the creditor.'

Sec. 108. R. S., c. 112, § 29, repealed and replaced. Section 29 of chapter 112 of the Revised Statutes is repealed and the following enacted in place thereof:

'**Sec. 29. Attachment of franchise and other property of corporation.** The franchise and all right to demand and take toll and all other property of a corporation may be attached on mesne process, and the attaching officer shall serve

an attested copy of the writ of attachment upon the corporation in the same manner as other process.'

Sec. 109. R. S., c. 112, § 30, amended. The first sentence of section 30 of chapter 112 of the Revised Statutes is amended to read as follows:

'Successive attachments in one or more counties may be made upon the same writ by the same or different officers before service of the summons upon the person whose property is attached; but none after such service **except on order of the court on motion without notice and for cause shown.**'

Sec. 110. R. S., c. 112, § 45, amended. The next to last paragraph of section 45 of chapter 112 of the Revised Statutes is repealed and the following enacted in place thereof:

'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

v.

C.D., Defendant

E.F., Claimant

} Summons

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

Sec. 111. R. S., c. 112, § 45, amended. The next to last sentence of section 45 of chapter 112 of the Revised Statutes is amended to read as follows:

'Service in either case shall be by copy of such summons ~~attested~~ by the officer serving the same.'

Sec. 112. R. S., c. 112, § 63, amended. Section 63 of chapter 112 of the Revised Statutes is amended to read as follows:

‘Sec. 63. Attachment not valid unless recorded and claim specified; seizure on execution; lien. No attachment of real estate on mesne process creates any lien thereon, unless the nature and amount of plaintiff’s demand is set forth in proper counts, or a specification thereof is annexed to the writ 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, if before the entry of the action, although it is after service on the defendant 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 suit 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 sections 242 to 242, inclusive, of chapter 89, sections 212 to 242. All recorded deeds take precedence over unrecorded attachments.’

Sec. 113. R. S., c. 112, § 64, repealed and replaced. Section 64 of chapter 112 of the Revised Statutes is repealed and the following enacted in place thereof:

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

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

II. A certificate setting forth the names of the parties, the date of the complaint and the filing thereof and a description of the real estate in litigation as described in said complaint, duly certified by the clerk of courts in and for the county where said complaint is pending is recorded in the registry of deeds in the county or district in which such real estate is situated.’

Sec. 114. R. S., c. 112, § 72, amended. Section 72 of chapter 112 of the Revised Statutes is amended to read as follows:

Sec. 72. Attachment continues for 60 days after judgment; expiration of real estate attachment. An attachment of real or personal estate continues ~~for 30 days and no longer after final judgment in the original suit, and not in review or error during the time within which an appeal may be taken from the judgment and during the pendency of any appeal.~~ When a judgment for the plaintiff has become final by expiration of the time for appeal, by dismissal of an appeal, or on certificate of decision from the law court, any such attachment shall continue for 60 days; except attachments of real estate taken on execution; or equities of redemption sold on execution; or an obligee's conditional right to a conveyance of real estate sold on execution; or property attached and replevied; or property attached belonging to a person dying thereafter, or specially provided for in any other case; ~~but an.~~ 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.' (1959, c. 93, § 1)

Sec. 115. R. S., c. 112, § 73, amended. Section 73 of chapter 112 of the Revised Statutes is amended to read as follows:

Sec. 73. Attachments dissolved. ~~All attachments of real or personal estate are dissolved by final judgment for the defendant.~~ 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 suit 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 ~~declaration~~ **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 ~~writ~~ **complaint.**

Sec. 116. R. S., c. 112, § 74, amended. The first sentence of section 74 of chapter 112 of the Revised Statutes is amended to read as follows:

'When an attachment is dissolved by judgment for the defendant, or if the ~~writ upon which the attachment is made is not entered in the court to which it was returnable within the first 5 days of the return term,~~ the clerk of the court shall give any person **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.'

Sec. 117. R. S., c. 112, § 76, repealed and replaced. Section 76 of chapter 112 of the Revised Statutes is repealed and the following enacted in place thereof:

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

Sec. 118. R. S., c. 112, § 77, amended. Section 77 of chapter 112 of the Revised Statutes is amended to read as follows:

'Sec. 77. Debtor may petition for a valuation and release. Any defendant, whose interest in real estate is attached on mesne process, may petition a Justice of the Superior Court ~~in term time or vacation~~, setting forth the names of the parties to the suit, the court and county in which it is returnable or pending, the fact of the attachment, the particular real estate and his interest therein, its value and his desire to have it released from the attachment. Such justice shall issue a written notice which shall be served on all parties to the suit living in the State, including trustees mentioned in section 82, and on the plaintiff's attorney, 10 days at least before the time fixed therein for a hearing.'

Sec. 119. R. S., c. 112, § 78, amended. Section 78 of chapter 112 of the Revised Statutes is amended to read as follows:

'Sec. 78. Valuation and release on bond of debtor. If, at the hearing, such justice finds that such interest is worth as much as the amount ordered in the writ to be attached, he shall order such defendant to give bond to the plaintiff, with sufficient sureties, conditioned ~~to pay 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, within 30 days after judgment~~ such bond, except as ~~hereinafter~~ otherwise provided, to be in an amount equal to the amount ordered in the writ to be attached; but, if he finds that such interest is worth less than the amount ordered in the writ to be attached, such bond, except as ~~hereinafter~~ otherwise provided, shall be in an amount equal to the value of such interest; ~~provided, however, that if.~~ If, in either event the justice shall find that the value of the interest attached is in excess of the amount of any judgment which the plaintiff may reasonably be expected to recover, with his costs on the petition, he may fix the amount of such bond at such sum, not exceeding the amount ordered to be attached and not exceeding the value of the interest attached, as he may deem adequate to protect the plaintiff in the collection of any judgment recovered by him, with his costs on the petition.'

Sec. 120. R. S., c. 112, § 84-A, additional. Chapter 112 of the Revised Statutes is amended by adding a new section 84-A, to read as follows:

'Sec. 84-A. Attachment made by party bringing counterclaim, cross-claim or third-party complaint. Attachment of real estate, goods and chattels, or other property may be made by a party bringing a counterclaim, a cross-claim or a third-party complaint in the same manner as upon an original claim. For

purposes of applicable statutes, the word "plaintiff" shall refer to the party to the action who makes the attachment and the word "defendant" shall refer to the party to the action whose property is attached.'

Sec. 121. R. S., c. 112, § 90, repealed and replaced. Section 90 of chapter 112 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 90. Actions to be commenced within 6 years. All civil actions shall be commenced within 6 years after the cause of action accrues and not afterwards, except actions on a judgment or decree of any court of record of the United States, or of any state, or of a municipal court, trial justice or justice of the peace in this State, and except as otherwise specially provided.'

Sec. 122. R. S., c. 112, § 92, amended. Section 92 of chapter 112 of the Revised Statutes is amended to read as follows:

'Sec. 92. Suits against sheriff for escape; for misconduct. Actions for escape of prisoners committed on execution shall be actions on the case and be commenced within one year after the cause of action accrues; but actions against a sheriff, for negligence or misconduct of himself or his deputies, shall be commenced within 4 years after the cause of action accrues.'

Sec. 123. R. S., c. 112, § 94, amended. Section 94 of chapter 112 of the Revised Statutes is amended to read as follows:

'Sec. 94. Actions against bail, sureties in criminal recognizances and trustees, in one year. No scire facias shall be served on bail action shall be commenced against bail unless within one year after judgment was rendered against the principal; nor ~~on~~ against sureties in recognizances in criminal cases unless within one year after default of the principal; nor against any person adjudged trustee, unless within one year from the expiration of the first execution against the principal and his goods, effects and credits in the hands of the trustee. No action of debt in behalf of the State against sureties and recognizances in criminal cases shall be brought unless within one year after default of principal.'

Sec. 124. R. S., c. 112, § 95, repealed. Section 95 of chapter 112 of the Revised Statutes is repealed as follows:

'Sec. 95. Not applicable to witnessed notes, bank bills, etc. The foregoing limitations do not apply to actions on promissory notes signed in the presence of an attesting witness, or on the bills, notes or other evidences of debt issued by a bank; nor to any case or suit limited by statute to be commenced within a different time.'

Sec. 125. R. S., c. 112, § 96, amended. Section 96 of chapter 112 of the Revised Statutes is amended to read as follows:

'Sec. 96. Mutual and open accounts current. In actions of debt or assumption contract actions to recover the balance due, where there have been mutual dealings between the parties, the items of which are unsettled, whether kept or proved by one party or both, the cause of action shall be deemed to accrue at the time of the last item proved in such account.'

Sec. 126. R. S., c. 112, § 97, amended. Section 97 of chapter 112 of the Revised Statutes is amended to read as follows:

'Sec. 97. Minors, etc., may sue after disability removed. If a person entitled to bring any of the ~~aforsaid~~ actions **under sections 90 to 96** is a minor ~~or married woman~~, insane, imprisoned or without the limits of the United States when the cause of action accrues, the action may be brought within the times limited herein after the disability is removed.'

Sec. 127. R. S., c. 112, § 98, repealed and replaced. Section 98 of chapter 112 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 98. General limitation of 20 years. Personal actions on contracts or liabilities under seal, promissory notes signed in the presence of an attesting witness, or on the bills, notes or other evidences of debt issued by a bank shall be commenced within 20 years after the cause of action accrues.'

Sec. 128. R. S., c. 112, § 99, amended. Section 99 of chapter 112 of the Revised Statutes is amended to read as follows:

'Sec. 99. When summons fails of service or defeated, new suit in 6 months. When a ~~writ~~ summons fails of sufficient service or return by unavoidable accident, or default, or negligence of the officer to whom it was delivered or directed, ~~or is abated~~ or the action is otherwise defeated for any matter of form, or by the death of either party; ~~or if a judgment for the plaintiff is reversed on a writ of error~~ the plaintiff may commence a new action on the same demand within 6 months after the ~~abatement or~~ determination of the original suit ~~or reversal of the judgment~~; and if he dies and the cause of action survives, his executor or administrator may commence such new action within said 6 months.'

Sec. 129. R. S., c. 112, § 103, repealed and replaced. Section 103 of chapter 112 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 103. When suit is commenced. A suit is commenced when the complaint is either filed with the clerk, deposited in the mail addressed to the clerk, delivered to an officer for service or deposited in the mail addressed to such officer.'

Sec. 130. R. S., c. 112, § 105, amended. Section 105 of chapter 112 of the Revised Statutes is amended to read as follows:

'Sec. 105. Renewal of promise in writing. In actions ~~of debt or on the case~~ founded on any contract, no acknowledgment or promise takes the case out of the operation hereof, unless the acknowledgment or promise is express in writing, and signed by the party chargeable thereby. No such acknowledgment or promise made by one joint contractor affects the liability of the others.'

Sec. 131. R. S., c. 112, § 107, amended. Section 107 of chapter 112 of the Revised Statutes is amended to read as follows:

'Sec. 107. When nonjoinder of defendants is pleaded. In an action on a contract, if the defendant pleads ~~in abatement~~ that another person ought to

have been jointly sued and issue is joined thereon, and it appears on the trial that the action was barred by the provisions hereof against such person, the issue shall be found for the plaintiff.'

Sec. 132. R. S., c. 112, § 109, amended. Section 109 of chapter 112 of the Revised Statutes is amended to read as follows:

'**Sec. 109. Presumption of payment after 20 years.** Every judgment and decree of any court of record of the United States, or of any state, or of a **municipal court**, trial justice or justice of the peace in this State shall be presumed to be paid and satisfied at the end of 20 years after any duty or obligations accrued by virtue of such judgment or decree.'

Sec. 133. R. S., c. 112, § 110, repealed and replaced. Section 110 of chapter 112 of the Revised Statutes is repealed and the following enacted in place thereof:

'**Sec. 110. Application of the statutes of limitation to counterclaims.** All the provisions hereof respecting limitations apply to any counterclaim by the defendant. The time of such limitation shall be computed as if an action had been commenced therefor at the time the plaintiff's action was commenced.'

Sec. 134. R. S., c. 113, § 5, repealed and replaced. Section 5 of chapter 113 of the Revised Statutes is repealed and the following section enacted in place thereof:

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

Sec. 135. R. S., c. 113, § 6, amended. Section 6 of chapter 113 of the Revised Statutes is amended to read as follows:

'**Sec. 6. Bond left with clerk.** The bond shall be deposited with the clerk, who shall decide upon the sufficiency of the sureties, subject to an appeal to a justice of the court ~~and if the review of right is not so prosecuted, the defendant may, within a year after he first has notice of the judgment, petition the court for a review and the court may grant it on such terms as it deems reasonable.~~

Sec. 136. R. S., c. 113, § 7, amended. Section 7 of chapter 113 of the Revised Statutes is amended to read as follows:

'Sec. 7. Executions issued upon judgment on default, without deposit of bond, valid after one year. Whenever through accident, inadvertence or mistake an execution has been issued by the clerk, judge or recorder of any court in any county upon a judgment rendered on default of an absent defendant in a personal action, within one year after the rendition of such judgment, without deposit of the bond specified in sections 5 and 6, all proceedings upon or by virtue of such execution or judgment shall, after one year from the rendition of such judgment, have the same effect and validity as if the bond had been duly given, deposited and approved unless ~~a petition for review has been brought within said year, and in case such judgment is not reversed on review if brought within said year, all such proceedings shall be valid as aforesaid after final judgment for the defendant in review relief from the judgment has been sought within said year.~~ If such relief from the judgment is denied, all such proceedings shall be valid as aforesaid after such dismissal.'

Sec. 137. R. S., c. 113, § 20, repealed and replaced. Section 20 of chapter 113 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 20. Subsequent attachment. 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.'

Sec. 138. R. S., c. 113, § 21, repealed and replaced. Section 21 of chapter 113 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 21. Testimony of witnesses in civil actions taken orally in open court. In all civil actions the testimony of witnesses shall be taken orally in open court, unless otherwise provided by rule.'

Sec. 139. R. S., c. 113, § 24, amended. Section 24 of chapter 113 of the Revised Statutes is amended to read as follows:

'Sec. 24. Change of venue. Any Justice of the Superior Court ~~while holding a nisi prius term,~~ on motion of either party, shall, for cause shown, order the transfer of any civil action or criminal case pending in said court to the docket thereof in any other county for trial, preserving all attachments.'

Sec. 140. R. S., c. 113, § 30, amended. Section 30 of chapter 113 of the Revised Statutes is amended to read as follows:

'Sec. 30. Actions by unincorporated societies. Any organized unincorporated society or association may sue in the name of its trustees for the time being and may maintain an action ~~at law~~ though the defendant or defendants or some of them are members of the same society or association.'

Sec. 141. R. S., c. 113, § 31, amended. Section 31 of chapter 113 of the Revised Statutes is amended to read as follows:

'Sec. 31. Civil action for penalties. Penalties may be recovered by ~~action of debt~~ **civil action** when no other mode of recovery is provided.'

Sec. 142. R. S., c. 113, § 32, amended. Section 32 of chapter 113 of the Revised Statutes is amended to read as follows:

'Sec. 32. Assignee of grantee may sue on real covenants of first grantor. The assignee of a grantee or his executor or administrator after eviction by an older and better title may maintain an action on a covenant of seizin or freedom from encumbrance contained in absolute deeds of the premises between the parties, and recover such damages as the first grantee might have recovered on eviction, upon filing, ~~at the first term in court with his complaint or such later time as the court permits,~~ for the use of his grantor, a release of the covenants of his deed and of all causes of action thereon. The prior grantee cannot, in such case, release the covenants of the first grantor to the prejudice of his grantee.'

Sec. 143. R. S., c. 113, § 39, repealed and replaced. Section 39 of chapter 113 of the Revised Statutes is repealed and the following section enacted in place thereof:

'Sec. 39. Power of court in existence or expiration of a term of court. The existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action.'

Sec. 144. R. S., c. 113, § 40, amended. The first sentence of section 40 of chapter 113 of the Revised Statutes is amended to read as follows:

'In all actions at law on insurance policies, a ~~declaration in indebitatus assumpsit~~ complaint on an account annexed, with an allegation that the plaintiff has complied with all conditions of the policy of insurance mentioned in the account annexed, shall be deemed sufficient.'

Sec. 145. R. S., c. 113, § 41, amended. Section 41 of chapter 113 of the Revised Statutes is amended to read as follows:

'Sec. 41. Trespass on land; tender. In actions ~~of~~ **for** trespass on lands, the defendant may file ~~a brief statement disclaiming~~ **by answer disclaim** all title to the land described, and alleging that the trespass was involuntary, or by negligence or mistake, or in the prosecution of a legal right, and that before action brought he tendered sufficient amends therefor or that he brings money into court to satisfy the damages with costs to that time; ~~and if.~~ **If** on trial he establishes the truth of his allegations, he recovers costs.'

Sec. 146. R. S., c. 113, § 44, amended. Section 44 of chapter 113 of the Revised Statutes is amended to read as follows:

'Sec. 44. Town may make an offer of judgment. ~~A tender, with the costs then accrued, may be made after action brought and before its entry to the~~

~~plaintiff or his attorney with the same effect as if made before action brought. In actions against towns for injury to the person or damage to property from defect in ways, a town may make a tender before commencement or entry of the action or offer to be defaulted for a specified sum with the same effect as in actions on contract an offer of judgment in the same manner and with the same effect as defendants in other civil actions.'~~

Sec. 147. R. S., c. 113, § 48, amended. Section 48 of chapter 113 of the Revised Statutes is amended to read as follows:

'Sec. 48. Mitigation of damages in action for libel. The defendant in an action for libel may prove ~~under the general issue~~ in mitigation of damages that the charge was made by mistake or through error or by inadvertence and that he has in writing, within a reasonable time after the publication of the charge, retracted the charge and denied its truth as publicly and as fully as he made the charge; ~~and~~ ~~he~~. He may ~~also~~ prove in mitigation of damages that the plaintiff has already recovered or has brought action for damages for, or has received or has agreed to receive compensation for, substantially the same libel as that for which said action was brought.'

Sec. 148. R. S., c. 113, § 58, repealed and replaced. Section 58 of chapter 113 of the Revised Statutes is repealed and the following section enacted in place thereof:

'Sec. 58. Guardian of incompetent party entitled to compensation. A guardian appointed to prosecute or defend an action for an incompetent party is entitled to a reasonable compensation and is not liable for costs.'

Sec. 149. R. S., c. 113, § 69, repealed and replaced. Section 69 of chapter 113 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 69. When judgment in prior suit rendered, petition to seek relief. When judgment in such prior suit has been rendered, the plaintiff in such subsequent suit may petition for leave to seek relief from the judgment, first giving bond to each party as provided in section 66 and such leave may or may not be granted.'

Sec. 150. R. S., c. 113, § 76, amended. Section 76 of chapter 113 of the Revised Statutes, as amended by section 53 of chapter 397 of the public laws of 1957, is further amended to read as follows:

'Sec. 76. Counterclaim for unpaid taxes. ~~A demand originally payable to the defendant in his own right, founded on a judgment or contract express or implied, for the price of real or personal estate sold, for money paid or had and received, for services done, for a liquidated sum or for one ascertainable by calculation may be set off.~~ A city or town in an action by a delinquent taxpayer may ~~set off~~ **assert by counterclaim** for any unpaid taxes against any properly authorized payment to which the taxpayer is entitled, provided prior to trial the amount shall have been paid to the tax collector and a receipt in writing shall have been given to the person taxed, as prescribed in ~~section 106 of chapter 91-A,~~ **section 106.**

Sec. 151. R. S., c. 113, § 82, amended. Section 82 of chapter 113 of the Revised Statutes is amended to read as follows :

'Sec. 82. Demands due from deceased person, counterclaim. Demands against a person belonging to a defendant at the time of the death of such person may be ~~set off~~ **asserted by counterclaim** against claims prosecuted by his executor or administrator; ~~and if.~~ If a balance is found due to the defendant, judgment shall be in like form and of like effect as if he had commenced a suit therefor; ~~but if.~~ If the estate is insolvent, it must be presented to the commissioners or added to the list of claims like other judgments.'

Sec. 152. R. S., c. 113, § 83, amended. Section 83 of chapter 113 of the Revised Statutes is amended to read as follows :

'Sec. 83. Counterclaim in actions against persons in a representative capacity. In actions against executors, administrators, trustees or others in a representative capacity, they may ~~set off~~ **assert by counterclaim** such demands as those whom they represent might have ~~set off~~ **so asserted** in actions against them; but no demands due to or from them in their own right can be ~~set off~~ **asserted by counterclaim** in such actions.'

Sec. 153. R. S., c. 113, § 84, amended. Section 84 of chapter 113 of the Revised Statutes is amended to read as follows :

'Sec. 84. Counterclaim in actions brought by executors or administrators of insolvent estates. In joint or several actions by the executor or administrator of an estate represented insolvent against 2 or more persons having joint or several demands against such estate, the demands may be ~~filed in setoff~~ **asserted by counterclaim** by either of the defendants ~~at the first term of the court or at the first term after such representation of insolvency if made after the commencement of such actions;~~ ~~and if.~~ If, on trial, a balance is found due to the defendants jointly or to either of them, judgment shall be entered for such balance as the jury finds or the court orders, and it shall be treated and disposed of as other judgments against insolvent estates.'

Sec. 154. R. S., c. 113, § 93, repealed and replaced. Section 93 of chapter 113 of the Revised Statutes, as amended by chapter 182 of the public laws of 1957, is repealed and the following section enacted in place thereof :

'Sec. 93. Referees, masters and auditors. In all cases in the Supreme Judicial or in the Superior Court in which the court appoints one or more persons, not exceeding 3, as referees, masters or auditors, to hear the same, their fees and necessary expenses, including stenographic services upon a per diem basis, shall be paid by the county on presentation of the proper certificate of the clerk of courts for that county, and the amount thereof shall be fixed by the court upon the coming in of the report. They shall notify the parties of the time and place of hearing and have power to adjourn; witnesses may be summoned and compelled to attend and may be sworn by the referees, masters or auditors. When there is more than one referee, master or auditor, all must hear, but a majority may report, stating whether all did hear. Their report may be recommitted. They may be discharged and others appointed.

No fee or compensation other than his necessary expenses shall be paid any Justice of the Supreme Judicial or of the Superior Court for his services as referee, master or auditor, but this provision shall not apply to an active retired justice.'

Sec. 155. R. S., c. 113, § 104, amended. Section 104 of chapter 113 of the Revised Statutes is amended to read as follows:

'**Sec. 104. Justice to charge jury on matters of law but not to express opinion on issues of fact.** During a jury trial the presiding justice shall rule and charge the jury, orally or in writing upon all matters of law arising in the case but shall not, during the trial, including the charge, express an opinion upon issues of fact arising in the case, and such expression of opinion is sufficient cause for a new trial if either party aggrieved thereby and interested desires it; and the same shall be ordered accordingly by the law court upon exceptions in a criminal case or on appeal in a civil case.'

Sec. 156. R. S., c. 113, § 132, amended. The first sentence of section 132 of chapter 113 of the Revised Statutes is amended to read as follows:

'In all actions brought on an itemized account annexed to the writ complaint, the affidavit of the plaintiff, made before a notary public using a seal, that the account on which the action is brought is a true statement of the indebtedness existing between the parties to the suit with all proper credits given and that the prices or items charged therein are just and reasonable shall be prima facie evidence of the truth of the statement made in such affidavit and shall entitle the plaintiff to the judgment unless rebutted by competent and sufficient evidence.'

Sec. 157. R. S., c. 113, § 149, repealed and replaced. Section 149 of chapter 113 of the Revised Statutes is repealed and the following section enacted in place thereof:

'**Sec. 149. Certificate of record.** An official record or an entry therein, when admissible for any purpose in any civil or criminal case, may be evidenced by a document purporting to be an official publication thereof, or by a copy attested as a correct copy by a person purporting to be an officer or a deputy of an officer having the legal custody of the record. If the office in which the record is kept is without the State, the copy shall be accompanied by a certificate that such officer or deputy has the custody of the record, which certificate shall be made as follows:

- I. By a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court;
- II. By any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the court; or
- III. By any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office.

If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in a foreign state or country in which the record is kept, and authenticated by the seal of his office.'

Sec. 158. R. S., c. 113, § 150, repealed and replaced. Section 150 of chapter 113 of the Revised Statutes is repealed and the following enacted in place thereof:

'**Sec. 150. Proof of lack of record.** A written statement signed by a person purporting to be an officer or a deputy of an officer, having the official custody of specified official records, that he has made diligent search of the records of the office and has found therein no record or entry of a specified tenor, is admissible as evidence that the records of his office contain no such record or entry, provided that where the record is kept is without the State, the statement shall be accompanied by a certificate as provided in section 149.'

Sec. 159. R. S., c. 113, § 156, amended. The last paragraph of section 156 of chapter 113 of the Revised Statutes is amended to read as follows:

'The allowance for travel and attendance to parties recovering costs in the Superior Court shall be limited to 2 terms and every other term at which a trial is had ~~except in addition thereto in case a demurrer, plea in abatement or motion to dismiss is filed by the defendant, the prevailing party in such 3 last named proceedings shall be allowed travel and attendance in such action for not exceeding 2 additional terms.~~ The court may for good and sufficient cause order such allowance for additional terms in all actions before it. No referee shall allow costs in any proceedings in excess of the above provisions.'

Sec. 160. R. S., c. 113, § 161, amended. Section 161 of chapter 113 of the Revised Statutes is amended to read as follows:

'**Sec. 161. When damages reduced by counterclaim, full costs.** When an account is filed in ~~setoff~~ a counterclaim and the plaintiff recovers not exceeding \$20, he is entitled to full costs if the jury certify in their verdict that the damages were reduced to that sum by reason of the amount allowed in ~~setoff~~ the counterclaim.'

Sec. 161. R. S., c. 113, § 163, amended. Section 163 of chapter 113 of the Revised Statutes is amended to read as follows:

'**Sec. 163. On petitions for relief, etc.** On application of a private person for ~~a writ of review~~ relief from a judgment or for a writ of certiorari, mandamus or quo warranto, or like process, the court may or may not allow costs to a person appearing on notice as respondent.'

Sec. 162. R. S., c. 113, § 164, repealed and replaced. Section 164 of chapter 113 of the Revised Statutes is repealed and the following section enacted in place thereof:

'**Sec. 164. If plaintiff's action dismissed, defendant recovers costs.** When a plaintiff's action is voluntarily or involuntarily dismissed, the defendant re-

covers costs against him, and in all actions, as well as those of *qui tam* as others, the party prevailing is entitled to his legal costs.'

Sec. 163. R. S., c. 113, § 165, amended. Section 165 of chapter 113 of the Revised Statutes is amended to read as follows:

'Sec. 165. **Suitor in name of State liable for costs.** When a suit is brought in the name of the State for the benefit of a private person, his name and place of residence shall be indorsed on the ~~writ~~ **and if summons.** If the defendant prevails, judgment for his costs shall be rendered against such person and execution issued as if he were plaintiff.'

Sec. 164. R. S., c. 113, § 174, amended. Section 174 of chapter 113 of the Revised Statutes is amended to read as follows:

'Sec. 174. **In divers actions against same party at same term, or in case of division of an account, only one bill of costs allowed plaintiff.** When a plaintiff ~~at the same term of a court~~ brings divers suits which might have been joined in one against the same party **and which are first in order for trial at the same term of court,** or divides an account which might all have been sued for in one action and commences successive suits upon parts of the same or brings more than one suit on a joint and several contract, he recovers costs in only one of them; ~~and on.~~ **On** only one of the judgments shall execution run against the body of the same defendant, unless the court, after notice to the defendant and hearing, ~~certifies that there was good cause for commencing them~~ **shall order costs or execution for cause shown.'**

Sec. 165. R. S., c. 113, § 179, repealed and replaced. Section 179 of chapter 113 of the Revised Statutes is repealed and the following section enacted in place thereof:

'Sec. 179. **Hearing on costs; appeal.** When an action is dismissed or defaulted, or judgment rendered on a verdict, or a report of referees is accepted, either party on application to the court within 10 days thereafter may have the costs recoverable taxed by the clerk and passed upon by the court, and any party aggrieved by the decision may appeal therefrom; but if no application is made, the clerk shall determine the costs and either party dissatisfied with his taxation may appeal to the court, from whose decision no appeal shall be taken, and all attachments shall continue in force for 60 days after such appeal is decided. The costs shall be taxed within 30 days from the rendition of judgment.'

Sec. 166. R. S., c. 113, § 180, amended. Section 180 of chapter 113 of the Revised Statutes is amended to read as follows:

'Sec. 180. **Action for damages when judgment obtained by perjury.** When a judgment has been obtained against a party by the perjury of a witness introduced at the trial by the adverse party, the injured party may bring an action ~~in the case~~ within 3 years after such judgment ~~or after final judgment in any proceedings for a review thereof~~ **or after final disposition of any motion for relief from the judgment** against such adverse party, or any perjured witness or confederate in the perjury, to recover the damages sustained by him by reason of such perjury; and the judgment in the former action is no bar thereto.'

Sec. 167. R. S., c. 113, § 181, repealed and replaced. Section 181 of chapter 113 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 181. Executions issued and returned. Executions may be issued on a judgment of the Supreme Judicial Court or the Superior Court after 24 hours from the time the judgment has become final by the expiration of the time for appeal, by dismissal of an appeal, or on certificate of decision from the law court, unless the court has pursuant to rule ordered execution at an earlier time, and shall be returnable within 3 months after issuance.'

Sec. 168. R. S., c. 113, § 182, repealed and replaced. Section 182 of chapter 113 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 182. Not after one year; exception. No first execution shall be issued after one year from the time the judgment has become final by the expiration of the time for appeal, by dismissal of an appeal, or on certificate of decision from the law court, except in cases provided for by section 5 in which the first execution may be issued within not less than one year nor more than 2 years from the time of judgment.'

Sec. 169. R. S., c. 113, § 184, amended. Section 184 of chapter 113 of the Revised Statutes is amended to read as follows:

'Sec. 184. When execution not so issued, motion against debtor. When execution is not issued within the times prescribed by ~~the 2 preceding~~ sections 182 and 183, a writ of scire facias against the debtor may be motion against the debtor may be made to show cause why execution on the judgment should not be issued, and if no sufficient cause is shown, execution may be issued thereon.'

Sec. 170. R. S., c. 113, § 187, amended. The 2nd sentence of section 187 of chapter 114 of the Revised Statutes is amended to read as follows:

'The application shall be entered on the docket of the court if in session, otherwise on the docket of the preceding term.'

Sec. 171. R. S., c. 114, § 1, repealed and replaced. Section 1 of chapter 114 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 1. Actions in which trustee process used. In connection with the commencement of any personal action except actions only for specific recovery of goods and chattels, for malicious prosecution, for slander by writing or speaking, or for assault and battery, trustee process may be used in the Superior Court; or, when the amount demanded in damages is not less than \$5 nor more than \$20, before a municipal court or a trial justice unless otherwise limited in the act creating such court.'

Sec. 172. R. S., c. 114, § 5, amended. Section 5 of chapter 114 of the Revised Statutes is amended to read as follows:

'Sec. 5. County in which action must be brought; action for divorce; banking institution as trustee. If all the trustees live in the same county, the action

shall be brought there; if they reside in different counties, in any county in which one of them resides; and in a trustee process against a corporation, its residence shall be deemed to be in the county in which it has its established or usual place of business, held its last annual meeting or usually hold its meetings; except in a suit in which a railroad corporation is named and alleged as trustee, the action may be brought in any county in which said railroad corporation runs and operates its road; except in a suit in which a banking institution is named and alleged as trustee, the action may be brought in any county in which said banking institution maintains a place of business. Service may be made on the manager of such banking institution in the county having jurisdiction over the parties named in the action.

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

Sec. 173. R. S., c. 114, § 6, repealed and replaced. Section 6 of chapter 114 of the Revised Statutes is repealed and the following enacted in place thereof:

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

Sec. 174. R. S., c. 114, § 7, repealed and replaced. Section 7 of chapter 114 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 7. When trustees may appear for principal. When the principal is out of the State at the time of service and has no agent therein and does not appear in his own person or by attorney, any one or more of the trustees having goods, effects or credits in their hands, and being adjudged trustees, may appear in his behalf and in his name plead and defend the cause.'

Sec. 175. R. S., c. 114, § 8, amended. Section 8 of chapter 114 of the Revised Statutes is amended to read as follows:

'Sec. 8. Corporations summoned as trustees; answer and disclosure. All domestic corporations and all foreign or alien companies or corporations estab-

lished by the laws of any other state or country and having a place of business or doing business within this State may be summoned as trustees, and trustee ~~writs summons~~ may be served on them as other ~~writs are~~ process is served on such companies or corporations ~~except that the service shall be by the summons described in section 3; and they.~~ They may answer by attorney or agent and make disclosures, which shall be signed and sworn to by such attorney or agent or such other person upon whom legal service of the ~~writ summons~~ may be made; ~~and the.~~ The same proceedings shall thereupon be had throughout except necessary changes in form, as in other cases of foreign attachment.'

Sec. 176. R. S., c. 114, § 10, amended. The first sentence of section 10 of chapter 114 of the Revised Statutes is amended to read as follows:

'When a person summoned as trustee is about to depart from the State or go on a voyage and not return before ~~the term of the court where he is summoned to appear~~ his disclosure under oath is required to be served, he may apply to a justice of the peace of the county where he resides for a notice to the plaintiff to appear before said justice at a place and time appointed for taking his disclosure.'

Sec. 177. R. S., c. 114, § 11, amended. Section 11 of chapter 114 of the Revised Statutes is amended to read as follows:

'**Sec. 11. Commissioner to take disclosure.** The court ~~before whom a trustee is summoned in which the action is pending~~ may appoint a commissioner to take ~~his the trustee's~~ examination and disclosure when any reasonable cause appears and may prescribe the notice to be given to the plaintiff of the time and place thereof; ~~and upon.~~ Upon return of such service, the examination and disclosure shall be taken and sworn to before the commissioner, and being certified by him and returned to court, the same proceedings may be had thereon as if it had been in court.'

Sec. 178. R. S., c. 114, § 13, amended. Section 13 of chapter 114 of the Revised Statutes is amended to read as follows:

'**Sec. 13. Nonresident adjudged trustee.** A person summoned as trustee may be adjudged trustee by the court although he was not then and never had been an inhabitant of the State; ~~and the.~~ The ~~writ may be made returnable~~ action may be brought in the county in which either the plaintiff or principal defendant resides.'

Sec. 179. R. S., c. 114, § 14, amended. Section 14 of chapter 114 of the Revised Statutes is amended to read as follows:

'**Sec. 14. Trustee entitled to costs; payment.** If any supposed trustee ~~comes into court at the first term and submits himself to an examination, on oath, after having in writing declared~~ serves within the time required therefor a disclosure under oath declaring that at the time of the service of the trustee process upon him he had no goods, effects or credits of the principal in his possession ~~and submitting himself to an examination, on oath,~~ he is entitled to his costs as in civil actions where issue is joined for trial; ~~and, if.~~ If adjudged a trustee, he may deduct his costs from the goods, effects and credits in his hands and he shall be chargeable for the balance only to be paid on the execution. If such goods,

effects and credits are not of sufficient value to discharge the costs taxed in his favor, he shall have judgment and execution against the plaintiff for the balance of such costs, after deducting the sum disclosed, in the same manner as if he had been discharged.'

Sec. 180. R. S., c. 114, § 17, amended. Section 17 of chapter 114 of the Revised Statutes is amended to read as follows :

'Sec. 17. Discharge of trustees; effect upon principal. If all the persons summoned as trustees are discharged or the suit against them is discontinued, the plaintiff shall not proceed against the principal defendant unless there was sufficient personal service of the ~~writ~~ **summons** on him; but he may assume the defense of the suit.'

Sec. 181. R. S., c. 114, § 18, amended. Section 18 of chapter 114 of the Revised Statutes is amended to read as follows :

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

Sec. 182. R. S., c. 114, § 19, amended. Section 19 of chapter 114 of the Revised Statutes is amended to read as follows :

'Sec. 19. Liability of trustee for not serving a disclosure. If a person resident in the county in which the ~~writ is returnable~~ **action is commenced** is summoned and neglects to ~~appear and submit~~ **serve a disclosure under oath submitting** to examination ~~at the return term~~ **within the time required therefor** without reasonable excuse, he is liable for all costs afterwards arising in the suit, to be paid out of his own goods or estate if judgment is rendered for the plaintiff, unless paid out of the goods or effects in his hands belonging to the principal.'

Sec. 183. R. S., c. 114, § 21, amended. Section 21 of chapter 114 of the Revised Statutes is amended to read as follows :

'Sec. 21. Exception in favor of trustees out of their county and those residing out of State. Persons summoned as trustees, residing out of the county where the suit is pending, are not liable for any costs arising on the original process; ~~and if.~~ **If** the person summoned as trustee is out of the State at the time the ~~writ~~ **summons** is served on him and appears ~~at the first term after his return~~ **within 20 days after his return**, he shall be allowed for his costs and charges as if he had appeared at the ~~return term~~ **time otherwise required therefor.**'

Sec. 184. R. S., c. 114, § 23, amended. Section 23 of chapter 114 of the Revised Statutes is amended to read as follows :

'Sec. 23. No costs for trustee unless he appears. When a person, summoned as trustee does not come into court and declare that he had no property or credits of the principal in his hands when the ~~writ~~ **summons** was served and sub-

mit himself to examination on oath, the court shall not award costs in his favor although the suit is ~~discontinued~~ **voluntarily dismissed.**'

Sec. 185. R. S., c. 114, § 24, amended. Section 24 of chapter 114 of the Revised Statutes is amended to read as follows:

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

Sec. 186. R. S., c. 114, § 35, repealed and replaced. Section 35 of chapter 114 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 35. Time extended for trustee to disclose. The plaintiff and supposed trustee may by agreement entered on the docket extend the time within which the supposed trustee may make disclosure, preserving all the advantages that he would have on appearing and disclosing within the time required.'

Sec. 187. R. S., c. 114, § 37, amended. Section 37 of chapter 114 of the Revised Statutes is amended to read as follows:

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

Sec. 188. R. S., c. 114, § 40, amended. Section 40 of chapter 114 of the Revised Statutes is amended to read as follows:

'Sec. 40. If he does not pay, plaintiff may proceed on motion. If the executor or administrator in the case last mentioned does not voluntarily pay the amount in his hands, the plaintiff may proceed ~~by writ of seire facias on motion~~ as if the judgment in the first suit had been against him as trustee, but if he is discharged, he may recover costs or not at the discretion of the court.'

Sec. 189. R. S., c. 114, § 42, amended. Section 42 of chapter 114 of the Revised Statutes is amended to read as follows:

'Sec. 42. Manner of issuing execution, if administrator is adjudged trustee. When an executor or administrator is adjudged trustee on account of goods, effects or credits in his hands or possession merely as executor or administrator in a suit originally commenced against him as a trustee, or against the deceased, ~~or in the original suit or on a writ of seire facias~~ the execution shall not be served on his own goods or estate or on his person; but he is liable for the amount in his hands, in like manner and to the same extent only, as he would have been to the principal defendant if there had been no trustee process.'

Sec. 190. R. S., c. 114, § 45, amended. Section 45 of chapter 114 of the Revised Statutes is amended to read as follows:

'Sec. 45. Remedy if trustee refuses. If the trustee neglects or refuses to deliver them, or sufficient to satisfy the execution, the judgment creditor has his remedy on ~~a seire facias motion~~ as provided in sections 67 to 72; and the debtor has his remedy for an overplus belonging to him as at common law.'

Sec. 191. R. S., c. 114, § 51, amended. Section 51 of chapter 114 of the Revised Statutes is amended to read as follows:

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

Sec. 192. R. S., c. 114, § 55, sub-§§ IV and VI, amended. Subsections IV and VI of section 55 of chapter 114 of the Revised Statutes are amended to read as follows:

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

VI. By reason of any amount due from him to the principal defendant as wages for his personal labor or that of his wife or minor children, for a time not exceeding one month next preceding the service of the process and not exceeding \$30 of the amount due and payable to him as wages for his personal labor, and \$10 shall be exempt in all cases; ~~moreover.~~ **Moreover,** wages of minor children and of women are not, in any case, subject to trustee process on account of any debt of parent or husband; ~~if.~~ **If,** after wages for personal labor or services have been attached and before ~~entry of the writ~~ the trustee's disclosure under oath is required to be served, the defendant tenders to the plaintiff or to his attorney the whole amount due and recoverable in the action and the fees of the officer for serving the ~~writ~~ summons, the plaintiff shall recover no costs except the fees of the officer; ~~and if.~~ **If** the defendant is defaulted without an appearance or if he files an offer of judgment ~~on the return day of the writ~~ before his disclosure under oath is required to be filed and the plaintiff accepts such offer or fails to secure more than the amount thereof and of the interest thereon from its date, the plaintiff shall recover no costs except the entry fee and the officers' fees. The trustee shall pay to the defendant the amount exempt from attachment at the same time and in the same manner as if no process had been served;'

Sec. 193. R. S., c. 114, § 65, repealed and replaced. Section 65 of chapter 114 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 65. Amount chargeable to trustee. When a person is adjudged trustee on disclosure in the original suit, the amount for which he is chargeable shall be

fixed by the court, subject to appeal, and be conclusive in proceedings after judgment unless, for cause shown, an additional disclosure is allowed. On default, the amount need not be expressed in the judgment. In all proceedings after judgment, if he is adjudged trustee, the amount for which he is chargeable shall be set forth.'

Sec. 194. R. S., c. 114, § 67, repealed and replaced. Section 67 of chapter 114 of the Revised Statutes is repealed and the following enacted in place thereof:

'**Sec. 67. Motion by plaintiff against trustee.** When a person adjudged a trustee in the original action does not, on demand of the officer holding the execution, pay over and deliver to him the goods, effects and credits in his hands and the execution is returned unsatisfied, the plaintiff may on motion in the original suit require the trustee to show cause why judgment and execution should not be awarded against him and his own goods and estate for the sum remaining due on the judgment against the principal defendant. A trustee who has not appeared shall be given such notice as the court may direct.'

Sec. 195. R. S., c. 114, § 68, amended. Section 68 of chapter 114 of the Revised Statutes is amended to read as follows:

'**Sec. 68. Judgment rendered against trustee.** After such writ notice of such motion has been served on him, if he neglects to appear and answer thereto, he shall be defaulted; ~~and if.~~ If he was not examined in the original suit, judgment shall be rendered against him for the whole sum remaining due on the judgment against the principal defendant.'

Sec. 196. R. S., c. 114, § 69, amended. Section 69 of chapter 114 of the Revised Statutes is amended to read as follows:

'**Sec. 69. Judgment when all trustees defaulted.** When all the ~~defendants in a writ of seire facias~~ trustees are defaulted in proceedings after judgment, not having been examined in the original suit, the court may enter up joint or several judgments, as the case requires, and issue execution in common form.'

Sec. 197. R. S., c. 114, § 70, amended. Section 70 of chapter 114 of the Revised Statutes is amended to read as follows:

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

Sec. 198. R. S., c. 114, § 71, amended. Section 71 of chapter 114 of the Revised Statutes is amended to read as follows:

'**Sec. 71. Liability for costs, if discharged in proceedings after judgment.** If the trustee appears and answers ~~to the seire facias in the proceedings after judg-~~

ment and was not examined in the original suit, he may be examined as he might have been in the original suit; ~~and if.~~ If, on such examination, he appears not chargeable, the court shall render judgment against him for costs only, if resident in the county where the original process was returnable; but if not resident in such county, he shall not pay or recover costs.'

Sec. 199. R. S., c. 114, § 72, amended. Section 72 of chapter 114 of the Revised Statutes is amended to read as follows:

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

Sec. 200. R. S., c. 114, § 78, amended. Section 78 of chapter 114 of the Revised Statutes is amended to read as follows:

'**Sec. 78. Trustee exempt from costs in proceedings after judgment.** If a person summoned as trustee is prevented from appearing in the original suit by absence from the State or any other reason deemed sufficient by the court and a default is entered against him, he is not liable for costs ~~on the scire facias in the proceedings after judgment;~~ but, on his disclosure, the court may allow him his reasonable costs and charges, to be retained or recovered as if he had appeared in the original suit.'

Sec. 201. R. S., c. 114, § 79, repealed and replaced. Section 79 of chapter 114 of the Revised Statutes is repealed and the following enacted in place thereof:

'**Sec. 79. On appeal, whole case reexamined by law court.** Whenever objections are made to the ruling and decision of a justice as to the liability of a trustee, the whole case may be reexamined and determined by the law court on appeal and remanded for further disclosure or other proceedings, as justice requires.'

Sec. 202. R. S., c. 114, § 80, amended. Section 80 of chapter 114 of the Revised Statutes is amended to read as follows:

'**Sec. 80. Form and service of trustee summons for inferior courts.** When a trustee process is issued by a municipal court or a trial justice, the ~~writ~~ summons shall be in the form ~~now in use used in the Superior Court~~ and may contain a direction to attach property of the principal in his own hands as well as in the hands of the person named as trustee, and be served as a trustee ~~process~~ summons issued by the Superior Court 7 days before the return day; and shall be brought in the county where either of the supposed trustees resides; ~~and if.~~ If not so brought, it shall be dismissed and the trustees shall recover their costs.'

Sec. 203. R. S., c. 114, § 81, amended. Section 81 of chapter 114 of the Revised Statutes is amended to read as follows:

'**Sec. 81. Default if trustee does not appear; costs.** When the person summoned does not appear and answer to the suit, he shall be defaulted, adjudged

trustee and be liable to costs ~~on seire facias; if~~. If he appears at the return day and submits to an examination on oath and is discharged, he shall be allowed his legal costs; ~~but if~~. If he is charged, he may retain the amount of his costs; ~~and when~~. When the plaintiff ~~discontinues~~ ~~dismisses~~ his suit against him or the principal, the trustee shall be allowed his costs.'

Sec. 204. R. S., c. 114, § 82, amended. Section 82 of chapter 114 of the Revised Statutes is amended to read as follows:

'**Sec. 82. Subsequent proceedings; discharge of trustee if judgment is less than \$5, save in counterclaim.** All subsequent proceedings in such causes shall be the same as in the Superior Court, varying the forms as circumstances require; ~~but when~~. When, in a trustee process before such municipal court or trial justice, the debt recovered against the principal is less than \$5, the trustee shall be discharged unless the judgment is so reduced by means of a ~~setoff~~ **counterclaim** filed.'

Sec. 205. R. S., c. 114, § 84, amended. Section 84 of chapter 114 of the Revised Statutes is amended to read as follows:

'**Sec. 84. If trustee living in another county is discharged.** When an action is brought against a trustee in a county where he resides but where neither the plaintiff nor defendant resides, and the trustee is discharged or the action is ~~discontinued~~ ~~dismissed~~ as to him, the action shall still proceed if there was legal service on the principal defendant, unless it ~~appears by plea in abatement is set forth by motion or answer and established on hearing~~ that the trustee was collusively included in the ~~writ~~ **action** for the purpose of giving the court in such county jurisdiction.'

Sec. 206. R. S., c. 114, § 85, amended. Section 85 of chapter 114 of the Revised Statutes is amended to read as follows:

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

Sec. 207. R. S., c. 115, § 4, amended. Section 4 of chapter 115 of the Revised Statutes is amended to read as follows:

'**Sec. 4. Surrender of principal.** Any bail may, before the ~~action is entered~~ **defendant's answer is required to be filed**, exonerate himself from all liability by surrendering his principal to the jail in the county where the arrest was made or in the county where the writ is returnable and, within 15 days thereafter, leaving with the jailer an attested copy of the writ of process whereby the arrest was made, of the return indorsed thereon and of the bail bond; and notifying, in writing, the plaintiff or his attorney of the time and place of the commitment; ~~and the~~. The jailer shall receive him into custody as if committed by the officer making the arrest.'

Sec. 208. R. S., c. 115, § 8, amended. Section 8 of chapter 115 of the Revised Statutes is amended to read as follows:

'Sec. 8. In case of avoidance, officer's duty; liability of bail. In case of the avoidance of the principal and return on the execution by the officer that he had had it in his hands at least 30 days before its expiration and that the principal was not found, his bail shall satisfy the judgment with interest thereon from the time when it was rendered, unless they discharge themselves by surrendering the principal before final judgment ~~against them on the writ of scire facias~~ **in an action against them as bail** or by some other sufficient defense.'

Sec. 209. R. S., c. 115, § 9, amended. Section 9 of chapter 115 of the Revised Statutes is amended to read as follows:

'Sec. 9. When an action against bail may issue. When the principal so avoids and his property cannot be found to satisfy the execution, the original creditor may have ~~a writ of scire facias an action~~ **an action** in his own name ~~from~~ in the same court against the bail, ~~in vacation or in term time~~ to be sued out within one year from the rendition of judgment against the principal, and he need not declare on the bail bond but may merely allege that the defendants became bail in the original action.'

Sec. 210. R. S., c. 115, § 10, repealed and replaced. Section 10 of chapter 115 of the Revised Statutes is repealed and the following section enacted in place thereof:

'Sec. 10. Pleadings and defense by bail. The bail may plead, jointly or severally, any matter in defense or discharge.'

Sec. 211. R. S., c. 115, § 11, amended. Section 11 of chapter 115 of the Revised Statutes is amended to read as follows:

'Sec. 11. Surrender of principal; exoneration of bail in civil action after entry of action. The bail may surrender the principal in court before final judgment ~~on the scire facias in the action against them,~~ and on paying all the costs ~~on the scire facias in that action,~~ they shall be discharged; ~~and the.~~ **The principal shall be committed to jail to remain for 15 days; and if.** If the creditor does not within that time take him in execution, the sheriff shall discharge him on payment of the legal prison fees.

Any bail may, after the action is entered and before final judgment in the original suit, exonerate himself from all liability by surrendering his principal to the jail in the county where the writ is returnable, and within 5 days thereafter leaving with the jailer an attested copy of the writ of process whereby the arrest was made, of the return indorsed thereon and of the bail bond, and notifying, in writing, the clerk of the court of the time and place of the commitment; ~~and the.~~ **The jailer shall receive him into custody as if committed by the officer making the arrest.'**

Sec. 212. R. S., c. 115, § 12, amended. Section 12 of chapter 115 of the Revised Statutes is amended to read as follows:

'Sec. 12. When bail taken in an action. When bail is taken on mesne process in an action returnable before a trial justice and there is a return on the execu-

tion issued on the judgment therein that the principal is not found, the justice creditor may ~~issue a scire facias thereon~~ maintain an action against the bail before the justice, to be served 7 days before the day of trial; ~~and if~~. If no sufficient cause is shown to the contrary, he may render judgment for the debt and costs recovered, with interest thereon from the rendition of judgment, against the principal and issue execution accordingly, notwithstanding the debt and costs on the original judgment exceed \$20.'

Sec. 213. R. S., c. 115, § 13, amended. Section 13 of chapter 115 of the Revised Statutes is amended to read as follows:

'Sec. 13. Surrender of principal before trial justice. If the bail, at any time before final judgment in the original suit or ~~on scire facias in the action against them~~, bring the principal before the justice and procure the attendance of an officer to receive him, the justice shall make a record of the surrender and order him into the custody of the officer to be committed to jail, to be proceeded with as mentioned in the preceding sections 1 to 12; ~~and on~~. On payment of costs ~~on the scire facias in the action against them~~, the bail shall be fully discharged.'

Sec. 214. R. S., c. 117, § 1, repealed and replaced. Section 1 of chapter 117 of the Revised Statutes is repealed and the following section enacted in place thereof:

'Sec. 1. When depositions used. In prosecutions for the maintenance of bastard children, in trials before probate courts, arbitrators, referees under chapter 121, and county commissioners, and in cases of contested senatorial or representative elections, depositions may, upon order of the tribunal before which the matter is pending and on good cause shown, be taken and used in the manner provided by rule for depositions in the Superior Court. Depositions or affidavits may also be taken in applications for pensions, bounties or arrears of pay under any law of the United States.'

Sec. 215. R. S., c. 117, § 24, repealed and replaced. Section 24 of chapter 117 of the Revised Statutes is repealed and the following section enacted in place thereof:

'Sec. 24. Record in registry of deeds. Any deposition to perpetuate testimony taken before action or pending appeal together with the verified petition therefor and certificate of the officer before whom it was taken shall, within 90 days after the taking, be recorded in the registry of deeds in the county where the land or any part of it lies, if the deposition relates to real estate; if not, in the county where the parties or any of them reside.'

Sec. 216. R. S., c. 120, § 2, amended. Section 2 of chapter 120 of the Revised Statutes is amended to read as follows:

'Sec. 2. Debtor about to leave State arrested. Any person, whether a resident of the State or not, may be arrested and held to bail or committed to prison on mesne process ~~on a contract express or implied in any action~~, if the sum demanded amounts to \$10, ~~or on a judgment on contract if the debt originally recovered and remaining due is \$10 or more, exclusive of interest~~ when he is about to depart and reside beyond the limits of the State with property or means of his own exceeding the amount required for his immediate support, if the

creditor, his agent or attorney makes oath before a justice of the peace, to be certified by such justice on said process, that he has reason to believe and does believe that such debtor is about so to depart, reside and take with him property or means as aforesaid, and that the demand or principal part thereof, amounting to at least \$10, is due to him.'

Sec. 217. R. S., c. 120, § 8, amended. Section 8 of chapter 120 of the Revised Statutes is amended to read as follows:

'Sec. 8. Disclosure before judgment; notice. When a person is served with ~~an original writ a summons~~ or other mesne process ~~founded on such contract or judgment in any action~~, in any other manner than by arrest of the body, he may, at any time before final judgment, appear before the court or justice before whom such writ or process is pending or a disinterested commissioner or commissioners appointed by said court or justice and submit himself to examination; ~~and such.~~ **Such** court, justice or commissioner shall give notice and proceed to take his disclosure as provided in sections 4, 5 and 6 and with like effect; ~~and the.~~ **The** court may continue the cause to permit such disclosure to be taken.'

Sec. 218. R. S., c. 120, § 12, amended. Section 12 of chapter 120 of the Revised Statutes is amended to read as follows:

'Sec. 12. Disclosure on mesne process by consent of parties. At any time ~~before or after the return day of such writ or process~~, the parties to the suit, by a written agreement, may appear before a justice of the peace in the county where the suit is pending; ~~and the.~~ **The** defendant shall make the disclosures and submit to the examinations and proceedings required in section 8, and the record thereof shall, before final judgment, be returned to the court or justice before which the suit is pending, where the proceedings shall be the same as if the disclosure had been before a commissioner appointed for the purpose.'

Sec. 219. R. S., c. 120, § 15, amended. Section 15 of chapter 120 of the Revised Statutes is amended to read as follows:

'Sec. 15. Debtor arrested, may give bond to disclose after judgment. When a person is arrested or imprisoned on mesne process in a civil action, he may disclose as provided in sections 3 ~~4, 5, 6 and to~~ 7 or he may be released by giving bond to the plaintiff in a sum not exceeding the ~~ad damnum of the writ amount~~ **prayed for in the complaint** upon which he is arrested or imprisoned, with surety or sureties, said bond to be approved by him or by 2 or 3 justices of the peace of the county where the arrest or imprisonment is made, and selected and proceeding as prescribed in section 68, conditioned that within 15 days after ~~rendition of judgment or after the adjournment of the court in which it is rendered~~ **a judgment for the plaintiff has become final by expiration of the time for appeal, by dismissal of an appeal, or certificate of decision from the law court**, he will notify the creditor, his agent or attorney to attend at a certain place in the county at a time not less than 15 days nor more than 30 days after such notice, for the purpose of disclosure and examination; that he will then and there submit himself to examination; make true disclosure of his business affairs and property on oath, and abide the order of the justices thereon; and if the officer serving the writ takes such bond, he shall return it to the court or justice where the suit is pending.'

Sec. 220. R. S., c. 120, § 16, amended. Section 16 of chapter 120 of the Revised Statutes is amended to read as follows:

'Sec. 16. Proceedings, if debtor has given bond on mesne process. After such final judgment, the debtor may apply in writing to a justice of the peace of the county where he was arrested, who shall issue a citation to the creditor, his agent or attorney; ~~and an.~~ An examination and disclosure may be had before 2 justices of the peace within the time specified in the bond; ~~and the.~~ The same proceedings shall be had and the same results shall follow as in disclosures on bonds given on execution, except as provided in ~~the following~~ section 17.'

Sec. 221. R. S., c. 120, § 53, amended. Section 53 of chapter 120 of the Revised Statutes is amended to read as follows:

'Sec. 53. Citation; service. The citation shall be served on the creditor, or one of them if there is more than one, or the attorney of record in the suit, or any known authorized agent of the creditor, by any officer qualified to serve civil process between the same parties ~~by reading it to him, or leaving an attested copy thereof at his place of last and usual abode, or by giving an attested copy of it thereof to him in hand.~~ Service shall be made in the manner provided for service of other civil process 15 days at least before the time appointed for ~~the~~ examination, if the creditor is alive; otherwise, it shall be so served on his executor or administrator, if found in the State, and if not, such copy shall be left in like time with the clerk of the court or magistrate who issued the execution.'

Sec. 222. R. S., c. 121, § 5, amended. Section 5 of chapter 121 of the Revised Statutes is amended to read as follows:

'Sec. 5. Action on report; appeal. The court may accept, reject or recommit the report ~~and either party may file exceptions thereto.~~ If recommitted, the referees shall notify the parties of the time and place for a new hearing. When the report is accepted, judgment shall be entered thereon as in case of submissions by rule of court ~~and either party may bring a writ of error to reverse such judgment.~~ Either party may appeal from such judgment or from rejection of the report.'

Sec. 223. R. S., c. 122, § 4, amended. Section 4 of chapter 122 of the Revised Statutes is amended to read as follows:

'Sec. 4. How commenced; recognizance when plaintiff lives out of State. The process of forcible entry and detainer shall be commenced ~~by inserting the substance of the complaint, as a declaration, in a writ of attachment, to be indorsed and served like other writs; and when~~ and service made in the same manner as other civil actions. When the plaintiff lives out of the State and a recognizance is required of him, any person may recognize in his behalf and shall be personally liable.'

Sec. 224. R. S., c. 122, § 6, repealed and replaced. Section 6 of chapter 122 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 6. When defendant claims title. When the defendant claims title in himself or in another person under whom he claims the premises, he shall, except

as otherwise provided, recognize in a reasonable sum to the claimant, with sufficient sureties, conditioned to pay all intervening damages and costs and a reasonable rent for the premises. The claimant shall in like manner recognize to the defendant, conditioned to enter the action in the Superior Court within 30 days and to pay all costs adjudged against him. If either party neglects so to recognize, judgment shall be rendered against him.'

Sec. 225. R. S., c. 122, § 7, amended. Section 7 of chapter 122 of the Revised Statutes is amended to read as follows:

'**Sec. 7. Claimant may allege that defendant's claim of title frivolous.** The claimant may make a written allegation that the ~~brief statement of the defendant and~~ defendant's claim of title is frivolous and intended for delay and the magistrate shall then examine the case so far as to ascertain the truth of such allegation, and if satisfied of the truth thereof, he shall proceed to try the cause ~~upon the plea of not guilty~~, and if it is determined in favor of the claimant, he may issue a writ of possession for removal of the defendant; but this shall not prevent an appeal as provided in ~~the following~~ section 8.'

Sec. 226. R. S., c. 122, § 8, amended. Section 8 of chapter 122 of the Revised Statutes is amended to read as follows:

'**Sec. 8. Appeal.** Either party may appeal from a judgment to the Superior Court ~~next to be held in the county as in other civil actions~~. When the claimant appeals, he shall recognize in manner aforesaid to the defendant, except as ~~hereinafter~~ provided, conditioned to enter the suit and to pay all costs adjudged against him. When the defendant appeals, he shall recognize in like manner to the claimant, conditioned to enter the suit and to pay all intervening costs and such reasonable rent of the premises, as the magistrate shall adjudge, if the judgment is not reversed.'

Sec. 227. R. S., c. 122, § 10, amended. Section 10 of chapter 122 of the Revised Statutes is amended to read as follows:

'**Sec. 10. Sums due for rent and damages.** Sums due for rent on leases under seal or otherwise and claims for damages to premises rented may be recovered in an action ~~of assumpsit on account annexed to the writ~~, specifying the items and amount claimed, but no action ~~or suit at law in assumpsit, debt, covenant broken or otherwise~~ shall be maintained for any sum or sums claimed to be due for rental or for any claim for damages for the breach of any of the conditions claimed to be broken on the part of the lessee, his legal representatives, assigns or tenant, contained in a lease or written agreement to hire or occupy any building, buildings or part of a building, during a period when such building, buildings or part of a building, which the lessee, his assigns, legal representatives or tenant may occupy or have a right to occupy, shall have been destroyed or damaged by fire or other unavoidable casualty so that the same shall be thereby rendered unfit for use or habitation; ~~and no. No~~ agreement contained in a lease of any building, buildings or part of a building or in any written instrument shall be valid and binding upon the lessee, his legal representatives or assigns to pay the rental stipulated in said lease or agreement during a period when the building, buildings or part of a building described therein

shall have been destroyed or damaged by fire or other unavoidable casualty so that the same shall be rendered unfit for use and habitation.'

Sec. 228. R. S., c. 124, § 1, amended. Section 1 of chapter 124 of the Revised Statutes is amended to read as follows:

'**Sec. 1. Remedy, if tenant commits waste.** If a tenant in dower, by curtesy, for life or for years commits or suffers any waste on the premises, the person having the next immediate estate of inheritance may recover the place wasted and the damages done to the premises in an action ~~of waste against him; and an.~~ **An** heir may recover in the same action for waste done in his own time and in the time of his ancestor.'

Sec. 229. R. S., c. 124, § 2, amended. Section 2 of chapter 124 of the Revised Statutes is amended to read as follows:

'**Sec. 2. Damages.** Any issue of fact shall be tried by a jury, with or without a view of the premises, as the court orders; ~~and the.~~ **The** jury that inquires of the waste shall assess the damages. ~~An action on the case in the nature of waste may be substituted for the action of waste.'~~

Sec. 230. R. S., c. 124, § 3, amended. Section 3 of chapter 124 of the Revised Statutes is amended to read as follows:

'**Sec. 3. Remainder man or reversioner may sue.** The remainder man or reversioner for life or for years only or in fee simple or fee tail, after an intervening estate for life, may maintain such action ~~of waste~~ and recover the damages which he has suffered by the waste.'

Sec. 231. R. S., c. 124, § 4, amended. Section 4 of chapter 124 of the Revised Statutes is amended to read as follows:

'**Sec. 4. Action lies against executor, etc.** Such action ~~of waste~~ may be originally commenced against the executors or administrators of the tenant, or if commenced against him, it may be prosecuted against them after his death.'

Sec. 232. R. S., c. 124, § 7, amended. Section 7 of chapter 124 of the Revised Statutes is amended to read as follows:

'**Sec. 7. Injunction to prevent waste, pending a process for the recovery of lands, and on lands attached.** If a defendant in an action to recover possession of real estate or a person whose real estate is attached in a civil action commits any act of waste thereon, or threatens or makes preparations to do so, any Justice of the Supreme Judicial Court or of the Superior Court ~~in vacation or term time~~ may issue an injunction to stay such waste; but notice shall first be given to the adverse party to appear and answer, unless the applicant files a bond with sufficient sureties to respond to all damages and costs; ~~and the.~~ **The** court may enforce obedience by such process as may be employed in ~~an equity case other cases~~ and dissolve it when deemed proper.'

Sec. 233. R. S., c. 124, § 19, amended. Section 19 of chapter 124 of the Revised Statutes is amended to read as follows:

'**Sec. 19. Judgment for damage; execution for plaintiffs' share.** The court shall enter judgment for the whole amount of the injury proved; but shall award

execution only for the proportion thereof sustained by the plaintiffs; ~~and the. The remaining cotenants may afterwards jointly or severally sue out a scire facias on such judgment, and execution shall be thereupon awarded for their proportion of the damages adjudged in the original suit intervene in the suit and on motion obtain execution for their proportion of the damages adjudged therein.~~

Sec. 234. R. S., c. 124, § 20, amended. Section 20 of chapter 124 of the Revised Statutes is amended to read as follows:

'Sec. 20. If one or more joint tenants take whole rent, others may recover. If any one or more of the joint tenants or tenants in common take the whole rents or income in the joint estate or more than their share, without the consent of their cotenants, and refuse for a reasonable time after demand to pay such cotenants their share thereof, any one or more of them may have an action ~~of special assumpsit~~ against the refusing cotenants to recover their proportion thereof.'

Sec. 235. R. S., c. 125, § 7, amended. Section 7 of chapter 125 of the Revised Statutes is amended to read as follows:

'Sec. 7. Certain causes transferred to Superior Court. When it appears that the sum demanded as damages exceeds \$20, or that the property in the beasts is in question and their value exceeds \$20, or that the title to real estate is in question, at the request of either party, the case, if originally brought before any trial justice or judge of any municipal court, shall be transferred to the Superior Court to be there disposed of like actions brought before a trial justice in which the title to real estate is brought in question; but the party requesting such transfer shall recognize in such reasonable sum as the justice orders, to enter the action ~~at the next term of said court~~ in the Superior Court within 30 days, prosecute it with effect and pay all intervening damages and costs.'

Sec. 236. R. S., c. 125, § 16, amended. Section 16 of chapter 125 of the Revised Statutes is amended to read as follows:

'Sec. 16. Continuance of attachment, if goods replevied. If the goods replevied had been attached, they shall, in case of judgment for a return, be held by the attachment until 30 days after judgment in the suit in which they were attached; ~~and if~~ has become final as provided in chapter 112, section 72. If such final judgment is rendered before the return of the goods or if the goods when replevied had been seized on execution, they shall be held by the same attachment or seizure for 30 days after the return and may be taken and disposed of as if they had not been replevied.'

Sec. 237. R. S., c. 125, § 19, repealed and replaced. Section 19 of chapter 125 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 19. Limitation of surety's liability on replevin bond. No action shall be maintained against any surety on a replevin bond unless it is commenced within one year after final judgment in replevin or, if the complaint is not filed with the court by the plaintiff, within one year after the replevin of the goods.'

Sec. 238. R. S., c. 129, § 16, repealed and replaced. Section 16 of chapter 129 of the Revised Statutes is repealed and the following section enacted in place thereof:

'Sec. 16. Limitation of applications. No application for a writ of certiorari shall be sustained unless made within 6 years next after the proceedings complained of; but if the person entitled to apply for such writ is a minor, insane, imprisoned or not in the United States when becoming so entitled, then he, his heirs, executors or administrators may apply for the writ within 5 years after the removal of such disability.'

Sec. 239. R. S., c. 129, § 17, amended. Section 17 of chapter 129 of the Revised Statutes is amended to read as follows:

'Sec. 17. Presentation of petition; questions of law reserved; issue and return. A petition for a writ of mandamus may be presented to a Justice of the Supreme Judicial Court or of the Superior Court in any county, in term time or vacation, who may, upon notice to all parties, hear and determine the same, or may reserve questions of law arising thereon, upon ~~exceptions appeal~~ or otherwise, for the determination of the law court, which may hear and determine the same as ~~hereinafter~~ provided; but in all cases where ~~exceptions are alleged objections are made~~ to any rulings, findings or decrees made upon such petition, the case shall be proceeded with as if no ~~exceptions had been taken objections are made~~, until a decision shall be had and the peremptory writ shall have been ordered ~~or denied~~, so that ~~the overruling of such exceptions an affirmance on appeal~~ would finally dispose of the case, which shall then be certified to the Chief Justice of the Supreme Judicial Court as provided in ~~the following~~ section 18. If on such hearing such writ is ordered, it may be issued from the clerk's office in any county and be made returnable as the court directs.'

Sec. 240. R. S., c. 129, § 18, amended. Section 18 of chapter 129 of the Revised Statutes is amended to read as follows:

'Sec. 18. Return to writ; answer; judgment and peremptory writ; costs; no action for false return. When a writ of mandamus issues, the person required to make return thereto shall make his return to the first writ, and the person suing the writ may by an answer ~~traverse deny~~ any material facts contained in such return or may ~~demur~~ **move to dismiss for insufficiency in law.** If the party suing the writ maintains the issue on his part, his damages shall be assessed and a judgment rendered that he recover the same with costs, and that a peremptory writ of mandamus be granted; otherwise the party making the return shall recover costs. No action shall be maintained for a false return to a writ of mandamus. After judgment and decree that the peremptory writ be granted ~~or denied~~, the justice of the court before which the proceedings are pending shall forthwith certify to the Chief Justice for decision ~~all exceptions which may be filed and allowed any appeal based on objections~~ to any rulings, findings or decrees made at any stage of the proceedings. **Notice of such appeal shall be given within 5 days after judgment and decree.** The ~~excepting~~ **appealing** party shall, within 15 days thereafter, forward to the Chief Justice his written argument upon such ~~exceptions appeal~~ and shall, within said 15 days, furnish the adverse party or his attorney with a copy of such argument; ~~the.~~ **The ad-**

verse party shall, within 15 days after receipt of such copy, forward to the Chief Justice his written argument in reply; ~~and thereupon.~~ **Thereupon** the justices of said court shall consider said cause immediately and decide thereon and transmit their decision to the clerk of the court where the petition is pending, and final judgment shall be entered accordingly. If the judgment is in favor of the petitioner, the peremptory writ of mandamus shall thereupon be issued.'

Sec. 241. R. S., c. 141, § 20, amended. Section 20 of chapter 141 of the Revised Statutes is amended to read as follows:

'Sec. 20. Warrant stayed, if defendant gives security to discontinue nuisance. Instead of issuing the warrant required by ~~the preceding~~ section 19, the court or trial justice may order it to be stayed on motion of the defendant, and on his entering into recognizance in such sum and with such surety as the court or justice directs, in case of an indictment, to the State, or in case of a complaint or action, to the plaintiff, conditioned that the defendant will either discontinue said nuisance, or that within a time limited by the court and not exceeding 6 months, he will cause it to be abated and removed, as may be directed by the court; ~~and on.~~ **On** failing to perform such condition, the recognizance shall be deemed forfeited, and the court, or any justice thereof, in term time or in vacation, or said trial justice on being satisfied of such default, may forthwith issue the warrant and ~~seize facies on~~ **entertain an action to enforce** the recognizance.'

Sec. 242. R. S., c. 153, § 32, amended. The 3rd paragraph of section 32 of chapter 153 of the Revised Statutes is repealed and the following enacted in place thereof:

'By agreement of parties only, appeal may be taken to the law court either on agreed statements of facts or upon evidence reported by the judge of probate, in all matters determinable by the several judges of probate, as in the Superior Court. The law court shall have the same jurisdiction of all questions of law arising on said appeals as if they had come from the supreme court of probate. All provisions of law and rules of court relative to appeals from the Superior Court shall apply to such cases. Decisions of the law court in all such cases appealed directly from the probate court to said law court shall be certified to the register of probate of the county from which such appeal originated, with the same effect as if said appeal had originated in the supreme court of probate of said county.'

Sec. 243. R. S., c. 153, § 33, amended. Section 33 of chapter 153 of the Revised Statutes is amended to read as follows:

'Sec. 33. Bond and reasons of appeal; service on other parties; service on resident attorney of record sufficient. Within the time limited for claiming an appeal, the appellant shall file in the probate office his bond to the adverse party or to the judge of probate for the benefit of the adverse party, with sufficient sureties resident in the State or with a surety company authorized to do business in the State as surety, in such sum as the judge approves, conditioned to prosecute his appeal with effect, and to pay all intervening costs and damages and such costs as the supreme court of probate taxes against him, and he shall also file in the probate office the reasons of appeal; and, ~~14 days at least before the sitting of the appellate court~~ **within 34 days from the date of the proceed-**

ing appealed from, he shall serve all the parties who appeared before the judge of probate on the case that have entered or caused to be entered their appearance in the docket of said court, with a copy of such reasons, attested by the register. When a party appears by an attorney residing in this State before the judge of probate in any case and an appeal is taken, the service of a copy of the reasons of appeal upon such attorney shall be sufficient. In case of controversy between a person under guardianship and his guardian, the supreme court of probate may sustain an appeal on the part of the ward without such bond.'

Sec. 244. R. S., c. 153, § 34, amended. Section 34 of chapter 153 of the Revised Statutes is amended to read as follows:

'Sec. 34. Court may allow appeal accidentally omitted. If any such person from accident, mistake, defect of notice or otherwise without fault on his part omits to claim or prosecute his appeal as aforesaid, the supreme court of probate, if justice requires a revision, may, upon reasonable terms, allow an appeal to be entered and prosecuted with the same effect as if it had been seasonably done; but not without due notice to the party adversely interested nor unless the petition therefor is filed with the clerk of said county without one year after the decision complained of was made; ~~and said petition shall be heard at the next term after the filing thereof.~~

Sec. 245. R. S., c. 153, § 37, amended. Section 37 of chapter 153 of the Revised Statutes is amended to read as follows:

'Sec. 37. Appeal, when heard. Such appeal ~~shall be cognizable at the next term of the supreme court of probate held after the expiration of 31 days from the date of the proceeding appealed from to the supreme court of probate shall, unless the court otherwise directs, be in order for hearing at the first term of court held not less than 10 days after the service of the notice of appeal,~~ and said appellate court may reverse or affirm, in whole or in part, the sentence or act appealed from, pass such decree thereon as the judge of probate ought to have passed, remit the case to the probate court for further proceedings or make any other therein that law and justice require; ~~and if.~~ If, upon such hearing, any question of fact occurs proper for a trial by jury, an issue may be framed for that purpose under the direction of the court and so tried.'

Sec. 246. R. S., c. 164, § 7, amended. Section 7 of chapter 164 of the Revised Statutes is amended to read as follows:

'Sec. 7. In suit against surety, principal made party. If the principal in any such bond resides in the State when an action is brought thereon, and is not made a party thereto, or if at the trial thereof, or on ~~scire facias proceedings~~ on a judgment against the sureties only, he is in the State, the court, at the request of any such surety, may postpone or continue the action long enough to summon or bring him into court.'

Sec. 247. R. S., c. 164, § 11, amended. Section 11 of chapter 164 of the Revised Statutes is amended to read as follows:

'Sec. 11. Suit on bond. Any person interested personally or in any official capacity in a probate bond, or in a judgment rendered thereon, whose interest

has been specifically ascertained by a decree of the judge of probate or by judgment of law, ~~as hereinafter provided~~ may originate a suit on such bond or ~~seire facias proceedings~~ on such judgment without applying to the judge whose name was used in the bond or judgment, or to his successor; and 2 of more such persons may unite in the prosecution of the action, but the ~~original writ~~ **complaint** shall allege the name and addition of such person, and that the same is sued out by him, "in the name of the Honorable; judge of probate for the County of;" otherwise it shall abate.'

Sec. 248. R. S., c. 165, § 3, amended. Section 3 of chapter 165 of the Revised Statutes is amended to read as follows:

'**Sec. 3. Execution against estate of deceased, if returned unsatisfied.** When a proper officer makes his return on an execution issued under ~~the provisions of~~ section 1 that he cannot find personal property of the deceased, or other means to satisfy it, ~~a writ of seire facias, suggesting waste, may be issued an action, suggesting waste, may be brought against the executor or administrator; and it.~~ If he does not show cause to the contrary, execution shall issue against him for the amount of the judgment and interest, not exceeding the amount of waste, if proved.'

Sec. 249. R. S., c. 165, § 5, amended. Section 5 of chapter 165 of the Revised Statutes is amended to read as follows:

'**Sec. 5. Administrator de bonis non substituted as party on motion.** When an executor or administrator ceases to be such after judgment against him, ~~a writ of seire facias may be issued against the administrator de bonis non, and after due notice the administrator de bonis non may be substituted as a party on motion, notice of which shall be served in the same manner as original process, and an execution may issue as provided in the preceding section 4;~~ but the costs for which the executor or first administrator was personally liable may be enforced against his executor or administrator.'

Sec. 250. R. S., c. 165, § 8, repealed and replaced. Section 8 of chapter 165 of the Revised Statutes is repealed and the following enacted in place thereof:

'**Sec. 8. Actions which survive.** No personal action or cause of action shall be lost by the death of either party, but the same shall survive for and against the executor or administrator of the deceased, except that actions or causes of action for the recovery of penalties and forfeitures of money under penal statutes and proceedings in bastardy cases shall not survive the death of the defendant. An executor or administrator may seek relief from a judgment in an action to which the deceased was a party to the same extent that the deceased might have done so.'

Sec. 251. R. S., c. 165, § 12, amended. Section 12 of chapter 165 of the Revised Statutes is amended to read as follows:

'**Sec. 12. Damages in actions sounding in tort; goods returned in replevin not assets.** When an action of trespass, ~~or trespass on the case~~ **sounding in tort** is commenced or prosecuted against an executor or administrator, the plain-

tiff can recover only the value of the goods taken or damage actually sustained; ~~and when.~~ **When** judgment is rendered against an executor or administrator in an action of replevin for a return of goods, those returned shall not be considered assets and such return discharges him.'

Sec. 252. R. S., c. 166, § 29, amended. Section 29 of chapter 166 of the Revised Statutes is amended to read as follows :

'**Sec. 29. Proceedings after verdict.** If, on such issue, the jury finds the respondent not guilty, he shall be discharged; but if they find him guilty or the facts in the declaration filed are admitted by default or ~~on demurrer~~ otherwise, he shall be adjudged the father of said child; stand charged with its maintenance, with the assistance of the mother, as the court orders; and shall be ordered to pay the complainant her costs of suit and for the expense of her delivery and of her nursing, medicine and medical attendance during the period of her sickness and convalescence, and of the support of such child to the date of rendition of judgment; and shall give a bond, with sufficient sureties approved by the court, or by the clerk of said court, in term time or in vacation, to the complainant to perform said order, and a bond, with sufficient sureties so approved, to the town liable for the maintenance of such child, and be committed until he gives them. The latter bond shall be deposited with the clerk of the court for the use of such town. If the respondent does not comply with that part of the order relative to payment of expenses and costs of suit, execution may issue therefor as in actions of tort.'

Sec. 253. R. S., c. 166, § 52, amended. Section 52 of chapter 166 of the Revised Statutes is amended to read as follows :

'**Sec. 52. Illegal marriages annulled.** When the validity of a marriage is doubted, either party may file a ~~libel~~ **complaint** as for divorce, and the court shall ~~decree order~~ it annulled or affirmed according to the proof; but no such ~~decree order~~ affects the rights of the ~~libelee~~ **defendant** unless he was ~~personally~~ **actually notified to answer or did answer to the libel of the action or answered to the complaint.**

Sec. 254. R. S., c. 166, § 55, amended. Section 55 of chapter 166 of the Revised Statutes is amended to read as follows :

'**Sec. 55. Causes for divorce; jurisdiction.** A divorce from the bonds of matrimony may be decreed in the county where either party resides at the commencement of proceedings, for causes of adultery, impotence, extreme cruelty, utter desertion continued for 3 consecutive years next prior to the filing of the ~~libel~~ **complaint**, gross and confirmed habits of intoxication from the use of intoxicating liquors, opium or other drugs, cruel and abusive treatment or, on the ~~libel~~ **complaint** of the wife, where the husband being of sufficient ability or being able to labor and provide for her, grossly or wantonly and cruelly refuses or neglects to provide suitable maintenance for her; provided ~~that~~ the parties were married in this State or cohabited here after marriage, or if the ~~libelant~~ **plaintiff** resided here when the cause of divorce accrued, or had resided here in good faith for 6 months prior to the commencement of proceedings, or if the ~~libelee~~ **defendant** is a resident of this State. When both parties have been guilty of adultery, or there is collusion between them to procure a divorce, it shall not

be granted. Either party may be a witness. The Superior Court ~~or any justice thereof in vacation~~ has jurisdiction of ~~libel~~ actions for divorce in all counties.'

Sec. 255. R. S., c. 166, § 56, repealed and replaced. Section 56 of chapter 166 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 56. Attachment or trustee process used in commencement of action for divorce. Attachment of real or personal property or on trustee process may be used in connection with the commencement of an action for divorce.'

Sec. 256. R. S., c. 166, § 64, amended. Section 64 of chapter 166 of the Revised Statutes, as amended by chapters 142 and 308, both of the public laws of 1955, is further amended to read as follows:

'Sec. 64. Payment of alimony; attorney's fees; support of minor children; execution. Pending a petition to enforce a decree of alimony, or a decree for payment of money instead thereof, or for the support of minor children, or a decree for support pending ~~libel~~ the divorce action or for payment of counsel fees, or for the alteration of an existing decree for the custody or support of minor children, the court may order the husband or father to pay to the wife or mother, or to counsel for the wife or mother, sufficient money for the prosecution or defense thereof, upon default of which order execution may issue as in actions of tort. Execution for attorney's fees shall not issue until the libel for divorce has been heard. Petition for such execution may be signed by the person seeking same or his attorney of record in such divorce action. At the time of making a final decree in any divorce action, the court may order that execution and such reasonable attorney's fee as the court shall order shall issue against the body of any party to the action charged with the payment of support of minor children or payments of alimony or a specific sum in lieu thereof, upon default of any payment, and the court shall order that the clerk of said court shall issue such execution. When the husband or father is committed to jail on execution issued upon decree of alimony, or for payment of money instead thereof, or for the support of his minor children, or for support pending ~~libel~~ the divorce action, or for payment of counsel fees, the county having jurisdiction of the process shall bear the expense of his support and commitment and he may be discharged from imprisonment by payment of the execution and all costs and expenses of his commitment and support and he shall not be entitled to relief therefrom under the provisions of chapter 120; ~~provided, however, that he.~~ He may petition the court issuing such execution for relief, whereupon a judge of such court after due notice to the wife or mother, and hearing thereon, may order his discharge from imprisonment on such terms and conditions as justice may require.'

Sec. 257. R. S., c. 166, § 65, amended. Section 65 of chapter 166 of the Revised Statutes is amended to read as follows:

'Sec. 65. Provisions for husband in case of divorce for fault of wife. When a divorce is decreed to the husband for the fault of the wife, he shall be entitled to 1/3 in common and undivided of all her real estate, except wild lands, which shall descend to him as if she were dead; ~~and the.~~ The court may allow

him so much of her personal estate as seems reasonable. In all cases the right, title and interest of the ~~libelee defendant~~ in the real estate of the ~~libellant~~ **plaintiff** shall be barred by the decree.'

Sec. 258. R. S., c. 171, § 19, amended. Section 19 of chapter 171 of the Revised Statutes is amended to read as follows:

'**Sec. 19. When title fails after record, alias execution; debtor may convey title by deed.** When the execution has been recorded and the estate levied on does not pass by the levy for causes named in ~~the preceding section 18~~, the creditor may ~~sue out of the office of the clerk issuing the execution, a writ of seire facias, requiring by motion in the court issuing the execution~~ require the debtor to show cause why an alias execution should not be issued on the same judgment; ~~and if~~. If the debtor, after being duly summoned, does not show sufficient cause, the levy may be set aside, and an alias execution issued for the amount then due on the judgment, unless during its pendency the debtor tenders in court a deed of release of the land levied on, and makes it appear that the land, at the time of the levy, was and still is his property, and pays the expenses of the levy and the taxable costs of the suit; ~~and the~~. The judgment shall be satisfied for the amount of the levy.'

Sec. 259. R. S., c. 171, § 20, amended. Section 20 of chapter 171 of the Revised Statutes is amended to read as follows:

'**Sec. 20. Assignee of judgment may bring action, if estate does not pass by levy.** When a judgment has been assigned for a valuable consideration, and bona fide, in writing, and a levy of an execution issued on such judgment has been made, and the estate does not pass by the levy, and the creditor dies after the levy, the assignee may ~~sue out of the office of the clerk issuing such execution, a writ of seire facias~~ bring an action in the court issuing the execution, setting forth the facts aforesaid therein, and requiring the debtor to show cause why another execution should not issue on the same judgment, in the name and for the benefit of ~~the plaintiff in seire facias; and~~ said assignee. If the debtor, after being duly summoned, does not show sufficient cause why it should not be done, the levy may be set aside; ~~and the~~. The court from which said execution issued may order and issue another execution on the same judgment, for the amount of the original debt, interest and costs, in the name and for the benefit of such plaintiff, and against such debtor and his property, in the usual form, with necessary charges.'

Sec. 260. R. S., c. 171, § 26, amended. Section 26 of chapter 171 of the Revised Statutes is amended to read as follows:

'**Sec. 26. If creditor does not release after tender, debtor may recover land.** If the creditor does not release the premises within 10 days after payment or tender of the amount due, the debtor may recover the same by a ~~writ of entry~~ **real action** on his own seizin; but before judgment is entered he must bring into court, for the creditor, the money tendered.'

Sec. 261. R. S., c. 171, § 27, amended. Section 27 of chapter 171 of the Revised Statutes is amended to read as follows:

'**Sec. 27. Debtor may have amount due determined.** The debtor, without tender, may, within one year and in season to have the amount ascertained and

paid or tendered within the year, ~~file a bill in equity, therein offering~~ **bring an action the complaint in which shall offer** to pay the amount due, and the court shall ascertain it and require the debtor to bring it into court for the creditor, and the debtor thereupon shall be entitled to a decree in his favor, and to a writ of possession for the premises.'

Sec. 262. R. S., c. 171, § 28, amended. The 2nd sentence of section 28 of chapter 171 of the Revised Statutes is amended to read as follows:

'When he has tendered such deed to the debtor before his ~~bill was filed~~ **action was amended**, and in his answer relies upon it, and brings the deed into court for the debtor, he shall recover his costs.'

Sec. 263. R. S., c. 171, § 49, amended. Section 49 of chapter 171 of the Revised Statutes is amended to read as follows:

'Sec. 49. When deed given to assignee, right sold; remedy of purchaser. When, during the existence of an attachment, a deed has been given to an assignee, the right of the debtor should be sold on the execution. When the right has been sold, and there has been no previous conveyance to the debtor, the purchaser has the same remedies in his own name against the obligor or contractor as the debtor would have had, by an action ~~at law~~ to recover damages for non-fulfillment, or ~~by bill in equity~~ to compel a specific performance, and when assignment before attachment is alleged, the assignee may be made a party. Upon refusal of the obligor or contractor, on request of the purchaser, to give correct information of the amount due or condition remaining to be performed, the purchaser may maintain his ~~bill action~~ **bill action** without previous payment, performance or tender. Upon a hearing, the court may grant and decree such relief, payment or performance, as is ~~competent in equity~~ **equitable.**'

Sec. 264. R. S., c. 171, § 50, amended. Section 50 of chapter 171 of the Revised Statutes is amended to read as follows:

'Sec. 50. When assignment alleged and contested. When an assignment of the bond or contract is alleged and the plaintiff ~~in equity~~ contests it, the alleged assignee shall be made a party to the ~~bill action~~ **bill action**, and an issue framed to be tried by a jury, which shall find whether such an assignment existed and was valid ~~and if~~. If the assignee does not appear, the assignment is invalid.'

Sec. 265. R. S., c. 171, § 51, amended. Section 51 of chapter 171 of the Revised Statutes is amended to read as follows:

'Sec. 51. Defendant living out of State, defaulted, may after action for relief, redeem real estate. A defendant living out of the State, defaulted in an action without an appearance or other service than a newspaper publication, may, within 6 months after the levy of an execution on his real estate or the sale of a right of redemption, ~~petition for a review of such action~~ **bring an action for relief from the judgment in such action**, and instead of the year allowed in other cases, he may redeem from such levy or sale at any time within 3 months after the ~~review~~ **relief** is denied, or after final judgment ~~on the writ of review in the action if the relief is granted~~. If such judgment is in his favor, the amount thereof shall be allowed towards such redemption, notwithstanding a conveyance

of such estate by the creditor; and if it is larger than the amount of the levy or sale, and interest, he shall have an execution for the balance.'

Sec. 266. R. S., c. 171, § 52, amended. Section 52 of chapter 171 of the Revised Statutes is amended to read as follows:

'**Sec. 52. Waste not permitted; remedy.** No strip or waste shall be made on such estate before or during the pendency of proceedings under the provisions of the preceding section 51; and after. After final judgment in review, the plaintiff in review in the action of relief from the judgment is granted, the plaintiff in such action, besides other remedies, may, within said 3 months, without a tender or demand to account, bring his bill in equity action for the redemption of such estate.'

Sec. 267. R. S., c. 172, § 1, repealed and replaced. Section 1 of chapter 172 of the Revised Statutes is repealed and the following enacted in place thereof:

'**Sec. 1. Recovery of estates by real action.** Any estate in fee simple, in fee tail, for life or for any term of years may be recovered by a real action.'

Sec. 268. R. S., c. 172, § 2, repealed. Section 2 of chapter 172 of the Revised Statutes is repealed, as follows:

'**Sec. 2. Declaration.** The demandant shall declare on his own seizin within 20 years then last past, without naming any particular day or averring a taking of the profits, and shall allege a disseizin by the tenant.'

Sec. 269. R. S., c. 172, § 3, repealed. Section 3 of chapter 172 of the Revised Statutes is repealed, as follows:

'**Sec. 3. Demandant to set forth estate he claims in premises.** The demandant shall set forth the estate which he claims in the premises, whether in fee simple, fee tail, for life or for years; and if for life, then whether for his own life or that of another; but he need not state in the writ the origin of his title, or the deduction of it to himself; but on application of the tenant, the court may direct the demandant to file an informal statement of his title, and its origin.'

Sec. 270. R. S., c. 172, § 4, amended. Section 4 of chapter 172 of the Revised Statutes is amended to read as follows:

'**Sec. 4. Proof of seizin.** The demandant plaintiff need not prove an actual entry under his title; but proof that he is entitled to such an estate in the premises as he claims and that he has a right of entry therein is sufficient proof of his seizin.'

Sec. 271. R. S., c. 172, § 5, amended. Section 5 of chapter 172 of the Revised Statutes is amended to read as follows:

'**Sec. 5. Plaintiff must have right of entry.** No such action shall be maintained unless, at the time of commencing it, the demandant plaintiff had such right of entry; and no. No descent or discontinuance shall defeat any right of entry for the recovery of real estate.'

Sec. 272. R. S., c. 172, § 6, amended. Section 6 of chapter 172 of the Revised Statutes is amended to read as follows:

'Sec. 6. Who considered as disseizor. Every person alleged to be in possession of the premises demanded in such ~~writ action~~, claiming any freehold therein, may be considered a disseizor for the purpose of trying the right; ~~but the defendant may plead in abatement, but not in bar, that he is not tenant of the freehold, or he may plead it by a brief statement under the general issue filed within the time allowed for pleas in abatement; but by leave of court the time therefor may be enlarged or permission to file such disclaimer may afterwards be granted by the court; and he may show that he was not in possession of the premises when the action was commenced, and disclaim any right, title or interest therein, and proof of such fact shall defeat the action; and if he claimed or was in possession of only a part of the premises when the action was commenced, he shall describe such part in a statement signed by him or his attorney and filed in the case, and may disclaim the residue; and if the facts contained in such statement are proved on trial, the demandant shall recover judgment for no more than such part.'~~

Sec. 273. R. S., c. 172, § 7, amended. Section 7 of chapter 172 of the Revised Statutes is amended to read as follows:

'Sec. 7. Defendant ousting plaintiff deemed disseizor. If the person in possession has actually ousted the ~~demandant plaintiff~~ or withheld the possession, he may, at the ~~demandant's plaintiff's~~ election, be considered a disseizor for the purpose of trying the right, although he claims an estate therein less than a freehold.'

Sec. 274. R. S., c. 172, § 8, repealed and replaced. Section 8 of chapter 172 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 8. Proof to entitle plaintiff to recover. If the plaintiff proves that he is entitled to an estate in the premises and had a right of entry therein when he commenced his action, he shall recover the premises, unless the defendant proves a better title in himself.'

Sec. 275. R. S., c. 172, § 10, amended. Section 10 of chapter 172 of the Revised Statutes is amended to read as follows:

'Sec. 10. Plaintiff may recover specific or undivided part. The ~~demandant plaintiff~~ may recover a specific part or undivided portion of the premises to which he proves a title, although less than he demanded.'

Sec. 276. R. S., c. 172, § 11, repealed. Section 11 of chapter 172 of the Revised Statutes is repealed, as follows:

'Sec. 11. May recover damages in same action. ~~When a demandant recovers judgment in a writ of entry, he may therein recover damages for the rents and profits of the premises from the time when his title accrued, subject to the limitation herein contained; and for any destruction or waste of the buildings or other property for which the tenant is by law answerable.'~~

Sec. 277. R. S., c. 172, § 12, amended. Section 12 of chapter 172 of the Revised Statutes is amended to read as follows:

'Sec. 12. Estimation of rents and profits. The rents and profits for which the ~~tenant~~ defendant is liable are the clear annual value of the premises while he was in possession, after deducting all lawful taxes paid by him and the necessary and ordinary expenses of repairs, cultivation of the land or collection of the rents and profits.'

Sec. 278. R. S., c. 172, § 13, amended. Section 13 of chapter 172 of the Revised Statutes is amended to read as follows:

'Sec. 13. Allowance for improvements. In estimating the rents and profits, the value of the use by the ~~tenant~~ defendant of improvements made by him, self or by those under whom he claims shall not be allowed to the ~~demendant~~ plaintiff.'

Sec. 279. R. S., c. 172, § 14, amended. Section 14 of chapter 172 of the Revised Statutes is amended to read as follows:

'Sec. 14. Defendant not liable for over 6 years' rents. The ~~tenant~~ defendant is not liable for the rents and profits for more than 6 years, nor for waste or other damage committed before that time, unless the rents and profits are allowed ~~in setoff~~ as a counterclaim to his claim for improvements.'

Sec. 280. R. S., c. 172, § 15, amended. Section 15 of chapter 172 of the Revised Statutes is amended to read as follows:

'Sec. 15. Recovery of damages against other persons. Nothing herein contained shall prevent the ~~demendant~~ plaintiff from maintaining an action for mesne profits or for damage to the premises against any person except the ~~tenant~~ defendant in a ~~writ of entry~~ real action who has had possession of the premises or is otherwise liable to such action.'

Sec. 281. R. S., c. 172, § 16, repealed. Section 16 of chapter 172 of the Revised Statutes is repealed, as follows:

'Sec. 16. No abatement by death or intermarriage. No real action shall be abated by the death or intermarriage of either party after its entry in court; but the court shall proceed to try and determine such action, after such notice as the court orders has been served upon all interested in his estate, personally, or by publication in some newspaper.'

Sec. 282. R. S., c. 172, § 18, amended. Section 18 of chapter 172 of the Revised Statutes is amended to read as follows:

'Sec. 18. Writs of possession; judgment conclusive. If the ~~demendant~~ plaintiff recovers judgment in any such case, the court may order one or more writs of possession to issue, as may be necessary, against all such as have been so notified, whether they appeared and defended or not; and such judgment is conclusive on them.

Within 30 days after said judgment is recovered, the clerk of the court from which said judgment issues shall forward to the registry of deeds in the county

where the real estate is situated a true copy of the property described in said judgment, together with the names of the parties, the date of judgment and the term of court in which said judgment was rendered, and said register of deeds receiving such copy shall forthwith file the same, minuting thereon the time of the reception thereof ~~as aforesaid~~, and record in the same manner as a deed of real estate, and the fee of the clerk of said court for preparing said copy shall be \$1 and the register of deeds shall be paid \$1 for entering and recording the same. Such sums shall be paid by the ~~demandant~~ **plaintiff** in said judgment.'

Sec. 283. R. S., c. 172, § 19, repealed and replaced. Section 19 of chapter 172 of the Revised Statutes is repealed and the following enacted in place thereof:

'**Sec. 19. Execution; costs.** Execution shall issue as in other cases for such damages as **have been recovered and for full costs to the prevailing party.** The court may order execution for costs to be issued against the goods and estate of a deceased party in the hands of his executor or administrator, or otherwise, according to the legal rights and liabilities of the parties.'

Sec. 284. R. S., c. 172, § 20, amended. Section 20 of chapter 172 of the Revised Statutes is amended to read as follows:

'**Sec. 20. Betterments allowed after 6 years' possession.** When the demanded premises have been in the actual possession of the ~~tenant~~ **defendant** or of those under whom he claims for 6 successive years or more before commencement of the action, such ~~tenant~~ **defendant** shall be allowed a compensation for the value of any buildings and improvements on the premises made by him or by those under him whom he claims, to be ascertained and adjusted as ~~hereinafter~~ provided.'

Sec. 285. R. S., c. 172, § 21, repealed. Section 21 of chapter 172 of the Revised Statutes is repealed, as follows:

'**Sec. 21. Premises clearly defined and described.** In such action, the demanded premises shall be clearly described in the declaration, otherwise the court may direct a nonsuit. If the tenant or person under whom he claims has been in possession of a tract of land lying in one body for 6 years or more before the commencement of the action, and only part of it is demanded, and the tenant alleges that the demandant has as good a title to the whole as to such part, he may request the jury to inquire and decide that fact; and if they so find, they shall proceed no farther; but the court shall enter judgment that the writ abate, unless the declaration is amended so as to include the whole tract, which the court may allow without costs.'

Sec. 286. R. S., c. 172, § 22, repealed and replaced. Section 22 of chapter 172 of the Revised Statutes is repealed and the following enacted in place thereof:

'**Sec. 22. Defendant entitled to costs if successful in defense.** A defendant who by answer defends for a part only and succeeds in his defense as to all of such part shall be entitled to all costs accruing from the time of the answer.'

Sec. 287. R. S., c. 172, § 23, amended. Section 23 of chapter 172 of the Revised Statutes is amended to read as follows:

'Sec. 23. Defendant may have betterments. The ~~tenant~~ defendant shall have the benefit of the provisions ~~in the following sections of this chapter~~ as to the increased value of premises when the cause, including all real actions brought by a reversioner or remainderman, or his assigns, after the termination of a tenancy in dower, or any other life estate, against the assignee or grantee of the tenant of the life estate, or against his heirs or legal representatives, is determined in favor of the plaintiff ~~upon demurrer, default or by verdict.'~~

Sec. 288. R. S., c. 172, § 24, amended. Section 24 of chapter 172 of the Revised Statutes is amended to read as follows:

'Sec. 24. Request of either party for appraisal of improvements. The ~~tenant~~ ~~may file a written claim~~ responsive pleading of the defendant shall state as a counterclaim any claim which he has to compensate for buildings and improvements on the premises and ~~a request for~~ may request an estimation by the jury of the increased value of the premises by reason thereof; ~~and the defendant.~~ **The plaintiff** may file a request, in writing, that the jury would also estimate what would have been the value of the premises at the time of trial if no buildings had been erected, improvements made or waste committed; ~~both.~~ **Both** these estimates they shall make and state in their verdict; ~~and the.~~ **The** jury shall allow for no buildings or improvements, except those that they find were made by the ~~tenant~~ defendant, his grantor or assignor, and were judicious and proper under the circumstances.'

Sec. 289. R. S., c. 172, § 25, amended. Section 25 of chapter 172 of the Revised Statutes is amended to read as follows:

'Sec. 25. Valuation of betterments. If the ~~tenant~~ defendant, so claiming, alleges and proves that he and those under whom he claims have had the premises in actual possession for more than 20 years prior to the commencement of the action, the jury may find that fact; ~~and in.~~ **In** estimating the value of the premises, if no buildings had been erected or improvements made thereon, they shall find and state in their verdict what was the value of the premises when the ~~tenant~~ defendant or those under whom he claims first entered thereon. The sum so found shall be deemed the estimated value of the premises; ~~and in.~~ **In** estimating the increased value by reason of the buildings and improvements, the jury shall find and state in their verdict the value of the premises at the time of the trial, above their value when the ~~tenant~~ defendant or those under whom he claims first entered thereon; ~~and the.~~ **The** sum so found and stated shall be taken for the buildings and improvements.'

Sec. 290. R. S., c. 172, § 26, amended. Section 26 of chapter 172 of the Revised Statutes is amended to read as follows:

'Sec. 26. Election by plaintiff to abandon. If the ~~defendant~~ plaintiff after such verdict, at the same or a subsequent term of the court if the cause is continued, makes his election on record to abandon the premises to the ~~tenant~~ defendant at the value estimated by the jury and files with the clerk for the use of the ~~tenant~~ defendant a bond in the penal sum of 3 times the estimated value

of the premises, with sureties approved by the court, conditioned to refund such estimated value, with interest, to the ~~tenant defendant~~, his heirs or assigns, if they are evicted from the land within 20 years by a title better than that of the ~~demendant plaintiff~~, then judgment shall be rendered against the ~~tenant defendant~~ for the sum so estimated by the jury, and costs.'

Sec. 291. R. S., c. 172, § 27, amended. Section 27 of chapter 172 of the Revised Statutes is amended to read as follows:

'**Sec. 27. Defendant may pay 1/3 value of land, interest and costs first year.** At the end of one year, execution may issue for such sum with one year's interest thereon and costs, unless the ~~tenant defendant~~ shall have deposited with the clerk of the court, or in his office for the ~~demendant's plaintiff's~~ use, one year's interest of said sum, and 1/3 of the principal sum, and all the costs, if taxed and filed, and in that case no execution shall issue at the time.'

Sec. 292. R. S., c. 172, § 28, amended. Section 28 of chapter 172 of the Revised Statutes is amended to read as follows:

'**Sec. 28. At end of 2 years, another 1/3 interest.** If within 2 years after the rendition of judgment, the ~~tenant defendant~~ pays one year's interest on the balance of the judgment due and 1/3 of the original judgment, execution shall be further stayed; ~~otherwise. Otherwise~~ it may issue for 2/3 of the original amount of the judgment and interest thereon.'

Sec. 293. R. S., c. 172, § 29, amended. Section 29 of chapter 172 of the Revised Statutes is amended to read as follows:

'**Sec. 29. At end of 3 years, may pay balance; effect.** If the ~~tenant defendant~~, within 3 years after judgment, pays into the clerk's office the remaining 1/3 and interest thereon, having made the other payments ~~as aforesaid~~, execution shall never issue; ~~otherwise. Otherwise~~, it may issue for the 1/3 ~~aforesaid~~ and one year's interest thereon; ~~and the. The~~ premises shall be held as security for the amount of the judgment, liable to be taken in execution for the amount and interest, until 60 days after an execution might have issued ~~as aforesaid~~, notwithstanding any intermediate conveyance, attachment or seizure upon execution; and such execution may be extended on said land or any part of it; or it may be sold on execution like an equity of redemption; in either case, subject to the right of redemption as in those cases. An execution or writ of possession may issue at any time within 3 months after default of payment by the ~~tenant defendant~~, in cases mentioned in this and ~~the 2 preceding~~ sections 27 and 28, although it is more than a year after the rendition of judgment.'

Sec. 294. R. S., c. 172, § 30, amended. Section 30 of chapter 172 of the Revised Statutes is amended to read as follows:

'**Sec. 30. Defendant's remedy, if evicted.** If the ~~tenant defendant~~ or his heirs are evicted by a better title from the land so abandoned to him, and they had notified the ~~demendant plaintiff~~ or his heirs to aid him in his defense against such title, they, their executors or administrators may recover back the money so paid, with lawful interest, of said ~~demendant plaintiff~~ or his representatives; but if no notice was given, the ~~tenant defendant~~, in an action against the

original ~~demandant~~ plaintiff to recover the price paid for the premises, may show that he was evicted by a title better than that of the ~~demandant~~ plaintiff.'

Sec. 295. R. S., c. 172, § 31, amended. Section 31 of chapter 172 of the Revised Statutes is amended to read as follows:

'**Sec. 31. If plaintiff does not abandon, he pays for improvement.** When the ~~demandant~~ plaintiff does not elect so to abandon the premises, no writ of possession shall issue on his judgment, nor a new action be sustained for the land unless, within one year from the rendition thereof, he pays into the clerk's office or to such person as the court appoints for the use of the ~~tenant~~ defendant, the sum assessed for the buildings and improvements, with interest thereon.'

Sec. 296. R. S., c. 172, § 32, amended. Section 32 of chapter 172 of the Revised Statutes is amended to read as follows:

'**Sec. 32. Restriction of right to betterments.** Nothing contained in this chapter concerning rents and profits, or the estimate and allowance of the value of the buildings and improvements, shall extend to any action between a mortgagor and mortgagee, their heirs and assigns; or to any case where the ~~tenant~~ defendant or the person under whom he claims entered into possession of the premises and occupied under a contract with the owner, which was known to the ~~tenant~~ defendant when he entered.'

Sec. 297. R. S., c. 172, § 33, amended. Section 33 of chapter 172 of the Revised Statutes is amended to read as follows:

'**Sec. 33. Defendant not to commit waste after judgment.** No ~~tenant~~ defendant, after judgment is entered against him for the appraised value of the premises, shall unnecessarily cut wood, take away timber or make any strip or waste on the land until the amount of such judgment is satisfied.'

Sec. 298. R. S., c. 172, § 35, amended. Section 35 of chapter 172 of the Revised Statutes is amended to read as follows:

'**Sec. 35. Defendant may propose value for premises and betterments; effect.** When the ~~tenant~~ defendant, at any stage of such action, files a statement in open court consenting to a sum at which the buildings and improvements and the value of the demanded premises may be estimated, if the ~~demandant~~ plaintiff consents thereto, judgment shall be rendered accordingly, as if such sums had been found by verdict; but if the ~~demandant~~ plaintiff does not consent, and the jury does not reduce the value of the buildings and improvements below the sum offered, nor increase the value of the premises above the sum offered, he shall recover no costs after such offer; but the ~~tenant~~ defendant shall recover his costs after such offer and have judgment and execution therefor, subject to the provisions of the following section 36.'

Sec. 299. R. S., c. 172, § 36, amended. Section 36 of chapter 172 of the Revised Statutes is amended to read as follows:

'**Sec. 36. Costs against improvements asserted by counterclaim.** In all cases where the ~~demandant~~ plaintiff does not abandon the premises to the ~~tenant~~ defendant, the court may, on written application of either party during the term

when judgment is entered, order the costs recovered by the ~~demendant~~ **plaintiff** to be ~~set-off~~ **asserted by counterclaim** against the appraised value of the buildings and improvements on the land; ~~a.~~ **A** record of this order shall be made, and the court shall thereupon enter judgment according as the balance is in favor of one party or the other.'

Sec. 300. R. S., c. 172, § 38, amended. Section 38 of chapter 172 of the Revised Statutes is amended to read as follows:

'**Sec. 38. What constitutes possession and improvement.** A possession and improvement of land by a ~~tenant~~ **defendant** are within the meaning of this chapter, although a portion of it is woodland and uncultivated, and although not wholly surrounded by a fence or rendered inaccessible by other obstructions, if they have been open, notorious, exclusive and comporting with the usual management and improvement of a farm by its owner.'

Sec. 301. R. S., c. 172, §§ 39-40, repealed. Sections 39 and 40 of chapter 172 of the Revised Statutes are repealed.

Sec. 302. R. S., c. 172, § 42, amended. Section 42 of chapter 172 of the Revised Statutes is amended to read as follows:

'**Sec. 42. If life estate demanded.** If the ~~demendant~~ **plaintiff** claims an estate for life only in the premises and pays a sum allowed to the ~~tenant~~ **defendant** for improvements, he or his executor or administrator, at the termination of his estate, is entitled to receive of the remainderman or reversioner the value of such improvements as they then exist; and shall have a lien therefor on the premises as if they had been mortgaged for its payment, and may keep possession until it is paid; ~~and if.~~ **If** the parties cannot agree on the existing value, it may be settled as in case of the redemption of mortgaged real estate.'

Sec. 303. R. S., c. 172, § 43, amended. Section 43 of chapter 172 of the Revised Statutes is amended to read as follows:

'**Sec. 43. If defendant ousted after 6 years' possession, may recover for improvements.** When a person makes entry into lands or tenements of which the ~~tenant~~ **defendant** in possession, or those under whom he claims, have been in actual possession for 6 years or more, and withholds from such ~~tenant~~ **defendant** the possession thereof, the ~~tenant~~ **defendant** may recover of the person so entering, or of his executor or administrator, ~~in an action of assumpsit for money laid out and expended~~ the increased value of the premises by reason of the buildings and improvements made by the ~~tenant~~ **defendant** or by those under whom he claims, to be ascertained by the principles hereinbefore provided; ~~these.~~ **These** provisions extend to the grantee or assignee of the ~~tenant~~ **defendant** in dower and of any life estate; ~~and a.~~ **A** lien is created on the premises in favor of such claim, to be enforced by an action commenced within 3 years after such entry; ~~and it.~~ **It** is no bar to such action if the ~~tenant~~ **defendant**, to avoid cost, yields to the superior title.'

Sec. 304. R. S., c. 172, § 45, amended. Section 45 of chapter 172 of the Revised Statutes is amended to read as follows:

'**Sec. 45. If defendant and his grantors have been in possession for 40 years, no costs for plaintiff.** In all real and mixed actions in which the ~~tenant~~ **de-**

fendant proves that he and those under whom he claims have been in the open, notorious, adverse and exclusive possession of the demanded premises, claiming in fee simple, for 40 years preceding the commencement of the action, and the jury so finds, the ~~demandant~~ **plaintiff** recovers no costs.'

Sec. 305. R. S., c. 172, § 46, amended. Section 46 of chapter 172 of the Revised Statutes is amended to read as follows:

'Sec. 46. Court may appoint and protect surveyors. The court may appoint a surveyor to run lines and make plans of lands demanded in a real or mixed action, or in an action of trespass in which the title to land is involved, as shown by the pleadings filed, on motion of either party; ~~and if.~~ If he is prevented by force, menaces or fear from performing the duties assigned him, the court may issue a warrant to the sheriff, commanding him with suitable aid to prevent such opposition; ~~and in.~~ In the execution of such warrant, he may exercise all the power pertaining to his office; ~~and all.~~ All persons refusing their aid when called for him are liable to the same penalties as in other like cases.'

Sec. 306. R. S., c. 172, § 48, amended. Section 48 of chapter 172 of the Revised Statutes is amended to read as follows:

'Sec. 48. Summary proceedings to quiet title to real estate. A person in possession of real property, claiming an estate of freehold therein or an unexpired term of not less than 10 years, or a person who has conveyed such property or any interest therein with covenants of title or warranty, upon which he may be liable, may, if he or those under whom he claims or those claiming under him have been in uninterrupted possession of such property for 4 years or more, ~~file a petition~~ **bring an action** in the Superior Court setting forth his estate, stating the source of his title, describing the premises, and averring that an apprehension exists that persons named in the ~~petition~~ **complaint**, or persons unknown claiming as heirs, devisees or assigns, or in any other way, by, through or under a person or persons named in the ~~petition~~ **complaint**, claim or may claim some right, title or interest in the premises adverse to his said estate; and that such apprehension creates a cloud upon the title and depreciates the market value of the property; and praying that such persons be summoned to show cause why they should not bring an action to try their title to the described premises. If any such supposed claimants are unknown, the ~~petitioner~~ **plaintiff** or his attorney shall so allege under oath, but the truth of the allegation shall not after decree has been filed be denied for the purpose of defeating the title established thereby. A person in the enjoyment of an easement is in possession of real property within the meaning and for the purposes of this section.'

Sec. 307. R. S., c. 172, § 49, amended. Section 49 of chapter 172 of the Revised Statutes is amended to read as follows:

'Sec. 49. When easement claimed. A person in possession of real property, claiming an estate of freehold therein or an unexpired term of not less than 10 years, or a person who has conveyed such property or any interest therein with covenants of title or warranty, upon which he may be liable, may, if he or those under whom he claims or those claiming under him have been in uninterrupted possession of such property for 4 years or more, ~~file a petition~~ **bring an action** in the Superior Court setting forth his estate, describing the premises and averring that an apprehension exists that persons named in the ~~petition~~ **complaint**, or

persons unknown, claim by continued and uninterrupted use for 20 years or more, by grant, prescription, custom or in any other way, an easement through or on such real property adverse to the estate of the said ~~petitioner~~ plaintiff and that such apprehension creates a cloud upon the title and depreciates the market value of such property; and praying that such persons be summoned to show cause why they should not bring an action to determine their legal rights in and to such easement over or upon said real estate. If such supposed claimants are unknown, the ~~petitioner~~ plaintiff or his attorney shall so allege under oath, but the truth of the allegation shall not after the decree has been filed be denied for the purpose of defeating the title established thereby.'

Sec. 308. R. S., c. 172, § 50, repealed and replaced. Section 50 of chapter 172 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 50. Complaint; grantee may become party. An action under either section 48 or 49 shall be brought in the county where the real estate lies. Service shall be made as in other actions on all supposed known claimants residing either in the State or outside the State, and notice to supposed unknown claimants shall be by publication as in other actions where publication is required unless the court on motion permits posting in such public places as the court may direct in lieu of all or part of the publication ordinarily required. Upon the filing of the complaint the clerk of courts in the county where such proceedings are pending shall file a certificate in the registry of deeds in the county or district where said land is situated, setting forth the names of the parties, the date of the complaint and the filing thereof and the description of the real estate as given in the complaint, which said certificate shall be recorded by the register of deeds, who shall receive therefor the same fee as for recording a deed. The action shall not be abated by the death of any party thereto, nor by the conveyance of the premises by deed recorded after said certificate is recorded. The grantee of any defendant named or described in the complaint, or any person claiming under such grantee, may voluntarily appear and become a party, and make any defense that would have been open to the defendant under whom he claims. If any person who becomes such grantee by conveyance recorded after the filing of the certificate does not voluntarily appear, no such conveyance by the defendant shall be given in evidence, either in the proceedings on the complaint or in any action brought thereunder to try title to the premises as provided in section 51 and the issue shall be determined as though no such conveyance were made.'

Sec. 309. R. S., c. 172, § 51, amended. Section 51 of chapter 172 of the Revised Statutes is amended to read as follows:

'Sec. 51. If claimant appears; record of decree; action by claimant of easement. If any person so summoned appears and claims title or an easement in the premises, or voluntarily appears as aforesaid and claims title or such easement, he shall by answer show cause why he should not be required to bring an action and try such title, or his title to such easement; ~~and the~~. The court shall make such decree respecting the bringing and prosecuting of such action as seems equitable and just; ~~if~~. If any person so summoned appears and disclaims all right and title adverse to the ~~petitioner~~ plaintiff, he recovers his costs. If the court upon hearing finds that the allegations of the ~~petition~~ complaint are true and that notice by publication has been given as ordered, it shall make and

enter a decree that all persons named in the ~~petition~~ **complaint** and all persons alleged to be unknown claiming by, through or under persons so named, and all persons named as grantees in any deed given by the defendant and recorded after the filing of the certificate ~~aforesaid~~, and all persons claiming under such grantee who have not so appeared, or who, having appeared, have disclaimed all right and title adverse to the ~~petitioner~~ **plaintiff**, or who, having appeared, shall disobey the order of the court to bring an action and try their title, shall be forever debarred and estopped from having or claiming any right or title adverse to the ~~petitioner~~ **plaintiff** in the premises described in the ~~petition~~ **complaint**; which decree shall within 30 days after it is finally granted be recorded in the registry of deeds for the county or district where the land lies, and shall be effectual to bar all right, title and interest, and all easements, of all persons, whether adults or minors, upon whom notice has been served, personally or by publication, ~~as herein provided~~ and all persons named as grantees in any deed given by the defendant and recorded after the filing of said certificate and all persons claiming under such grantees. The court may in its discretion appoint agents or guardians ad litem to represent minors or other supposed claimants. If any person appears and claims an easement, however acquired, in such premises, he may bring an action ~~on the case~~ to try the title thereto, alleging in his ~~declaration~~ **complaint** how said easement was acquired and issue shall be framed accordingly. **Any party may at his option assert such title or such easement by counterclaim in the plaintiff's action, but he shall not be required to do so. Proceedings on such counterclaim to try title shall be in all respects the same as in an original action.'**

Sec. 310. R. S., c. 172, § 52, amended. The first sentence of section 52 of chapter 172 of the Revised Statutes is amended to read as follows:

'If, in ~~a suit an action in equity~~ to quiet or establish the title to land situated in this State or to remove a cloud from the title thereto, the plaintiff, or those under whom he claims, has been in uninterrupted possession of the land described in the ~~bill~~ **complaint** for 4 years or more, claiming an estate of freehold therein, and seeks to determine the claims or rights of any persons who are unascertained not in being, unknown or out of the State, or who cannot be actually served with process and made personally amenable to the decree of the court, such persons may be made defendants and, if they are unascertained, not in being or unknown, they may be described generally as the heirs or legal representatives of A. B., or such persons as shall become heirs, devisees or appointees of C. D., a living person, or persons claiming under A. B.'

Sec. 311. R. S., c. 172, § 53, amended. The first sentence of section 53 of chapter 172 of the Revised Statutes is repealed and the following sentence enacted in place thereof:

'Service in such action shall be made as in other actions on all supposed known claimants residing either in the State or outside the State, and notice to persons who are unascertained, not in being or unknown shall be given by publication as in other actions where publication is required and, if the court so orders, by posting in a conspicuous place on the land or in such other manner as the court considers most effectual.'

Sec. 312. R. S., c. 172, § 53, amended. The 3rd sentence of section 53 of the Revised Statutes is amended to read as follows:

'If, after notice has been given or served as ordered by the court and the time limited in such notice for the appearance of the defendants has expired, the court finds that there are or may be defendants who have not been actually served with process ~~within the State~~ and who have not appeared in the suit, it may of its own motion, or on the representation of any party, appoint an agent, guardian ad litem or next friend of any such defendant, and if any such defendants have or may have conflicting interests, it may appoint different agents, guardians ad litem or next friends to represent them.'

Sec. 313. R. S., c. 172, § 55, amended. Section 55 of chapter 172 of the Revised Statutes is amended to read as follows:

'**Sec. 55. Action by owners of wild land.** Any person or persons claiming an estate of freehold in wild lands or in an interest in common and undivided therein, if the plaintiff and those under whom he claims has for 4 years next prior to the filing of the ~~bill~~ **complaint** held such open, exclusive, peaceable, continuous and adverse possession thereof as comports with the ordinary management of wild lands in this State, may maintain ~~a suit in equity~~ **an action** to quiet or establish the title thereto or to remove a cloud from the title thereto, as provided in ~~the 3 preceding~~ sections **52 to 54.**'

Sec. 314. R. S., c. 176, § 1, amended. Section 1 of chapter 176 of the Revised Statutes is amended to read as follows:

'**Sec. 1. Partition, by a civil action.** Persons seized or having a right of entry into real estate in fee simple or for life, as tenants in common or joint tenants, may be compelled to divide the same by ~~writ of partition at common law~~ **a civil action.**'

Sec. 315. R. S., c. 176, § 2, amended. Section 2 of chapter 176 of the Revised Statutes is amended to read as follows:

'**Sec. 2. Form.** Persons entitled as provided in section 1, and those in possession or having a right of entry for a term of years, as tenants in common, may ~~present a petition to commence an action in~~ the Superior Court held in the county where such estate is **by a complaint**, clearly describing it and stating whether it is a fee simple, for life or for years, and the proportion claimed by them, the names of the other tenants in common and their places of residence, if known, and whether any or all of them are unknown.'

Sec. 316. R. S., c. 176, § 3, repealed. Section 3 of chapter 176 of the Revised Statutes is repealed, as follows:

'**Sec. 3. Filing, if all cotenants named; service.** ~~The petition may be filed in the office of the clerk of the court in vacation, if all the cotenants are named in it. A copy thereof, attested by the clerk, left with each or at his last and usual place of abode 20 days before the session of the court to which it is addressed is sufficient service.~~

Sec. 317. R. S., c. 176, § 4, repealed and replaced. Section 4 of chapter 176 of the Revised Statutes is repealed and the following enacted in place thereof.

'Sec. 4. Service of process; notice by publication. Service of process shall be made as in other civil actions and notice by publication to tenants whose identity or whereabouts are unknown shall be given as in other actions where publication is required.'

Sec. 318. R. S., c. 176, § 5, amended. Section 5 of chapter 176 of the Revised Statutes is amended to read as follows:

'Sec. 5. When those not notified may appear; pleadings. A person interested and not named in the ~~petition~~ **complaint**, or out of the State, and not so notified as to enable him to appear earlier, may, in the discretion of the court, be permitted to appear and defend at any time before final judgment on such terms as may be imposed. Any ~~person~~ defendant in an action at law or respondent in a petition for partition may, jointly with others or separately, ~~by~~ **brief statement, without a plea of the general issue allege in his answer** any matter tending to show that partition ought not to be made as prayed for.'

Sec. 319. R. S., c. 176, § 6, repealed. Section 6 of chapter 176 of the Revised Statutes is repealed, as follows:

'Sec. 6. Counter brief statement filed. The plaintiff or petitioner may reply by counter brief statement, alleging that the defendant or respondent has no interest in the premises, or other matter to show the insufficiency of the defense.'

Sec. 320. R. S., c. 176, § 7, amended. Section 7 of chapter 176 of the Revised Statutes is amended to read as follows:

'Sec. 7. Guardian for infant or insane and agent for nonresident. When an infant or insane person, living in the State, has no guardian and appears to be interested, the court shall appoint a guardian ad litem for him and **shall appoint** an agent for persons interested who had been out of the State for one year before the ~~petition was presented~~ **action was commenced** and do not return before judgment for the partition is to be made **and have no actual notice of the actions.**

Sec. 321. R. S., c. 176, § 9, amended. Section 9 of chapter 176 of the Revised Statutes is amended to read as follows:

'Sec. 9. Defendant, claiming specific part, may have separate trial. When it appears from the pleadings that one or more ~~respondents~~ **defendants** claim to be seized of the whole of a specific parcel of the premises of which partition is prayed, there may first be a separate trial of that question only, at the discretion of the presiding ~~judge~~ **justice**. When it appears on trial that any ~~respondent~~ **defendant** has no interest in the estate, he shall be heard no further and the ~~petitioner~~ **plaintiff** shall recover of him the costs of the trial.'

Sec. 322. R. S., c. 176, § 10, amended. Section 10 of chapter 176 of the Revised Statutes is amended to read as follows:

'Sec. 10. Costs. When a ~~petitioner~~ **plaintiff** is found to own a less share than is claimed in his ~~petition~~ **complaint**, he shall have partition of such share, but the ~~respondent~~ **defendant** recovers costs. When found entitled to have partition of the share claimed, he recovers costs of the ~~respondent~~ **defendant**. In

such cases or on default, a judgment that partition be made shall be entered. In all other cases, including default of the ~~respondent defendant~~ or ~~respondents defendants~~, when judgment for partition is given, the court, after notice to all parties in interest, may, in the discretion of the presiding justice, apportion the costs between the ~~petitioner plaintiff~~ and ~~respondent defendant~~ or ~~respondents defendants~~ or allow the ~~petitioner plaintiff~~ to recover costs of the proceedings against the ~~respondent defendant~~ or ~~respondents defendants~~ to be taxed the same as in a civil action, and execution may be issued therefor.'

Sec. 323. R. S., c. 176, § 11, amended. Section 11 of chapter 176 of the Revised Statutes is amended to read as follows:

'**Sec. 11. Owners may join or sever; when plaintiff dies or conveys.** The owners may join or sever in their ~~petitions~~ **complaints**. When they join and one dies or conveys his share, or when a several ~~petitioner plaintiff~~ dies or conveys his share, the ~~petition~~ **complaint**, by leave of court, may be amended by erasing his name and inserting the names of his heirs, devisees or grantees, and they may proceed with the process for their respective shares.'

Sec. 324. R. S., c. 176, § 12, amended. Section 12 of chapter 176 of the Revised Statutes is amended to read as follows:

'**Sec. 12. On death of defendant, heirs or devisees cited in.** The ~~petition~~ **action** is not abated by the death of a party ~~respondent defendant~~. His heirs or devisees or, if the estate is for a term of years, his executor or administrator may be cited to appear, and upon service on them, they shall become parties to the proceedings; ~~and the~~. The court may order such judgment, and with such costs, as the law and facts require.'

Sec. 325. R. S., c. 176, § 18, amended. Section 18 of chapter 176 of the Revised Statutes is amended to read as follows:

'**Sec. 18. Expenses apportioned.** An account of all the charges and expenses attending the partition shall, on request of any ~~petitioner plaintiff~~, be presented to the court, and the presiding justice shall determine, after notice to all concerned, the equitable proportion thereof to be paid by the several owners in the lands of which partition has been made, and execution therefor may be issued against any owner neglecting to pay.'

Sec. 326. R. S., c. 176, § 22, amended. Section 22 of chapter 176 of the Revised Statutes is amended to read as follows:

'**Sec. 22. When unequal share left to person out of State, new partition made.** When a person to whom a share was left was out of the State when ~~notice was served on him and did not return in season to become a party to the proceedings~~ the partition was made and was not notified in season to prevent it, he may, within 3 years after final judgment, apply to the same court for a new partition; ~~and if~~. If it appears that the share left for him was less than he was entitled to, or that it was not equal in value to his proportion of the premises, the court may order a new partition as provided in section 20.'

Sec. 327. R. S., c. 177, § 9, amended. Section 9 of chapter 177 of the Revised Statutes is amended to read as follows:

'Sec. 9. Form of declaration in suit to obtain possession. The mortgagee or person claiming under him in an action for possession may declare on his own seizin, in a ~~writ of entry real action~~, without naming the mortgage or assignment; ~~and if.~~ If it appears ~~on default, demurrer, verdict or otherwise~~ that the plaintiff is entitled to possession and that the condition had been broken when the action was commenced, the court shall, on motion of either party, award the conditional judgment, unless it appears that the tenant is not the mortgagor or a person claiming under him, or that the owner of the mortgage proceeded for foreclosure conformably to sections 5 and 7 before the suit was commenced, the plaintiff not consenting to such judgment; ~~and unless.~~ **Unless** such judgment is awarded, judgment shall be entered as at common law.'

Sec. 328. R. S., c. 177, § 24, amended. The last sentence of section 24 of chapter 177 of the Revised Statutes is amended to read as follows:

'An appeal from any final decree may be taken as ~~provided by section 21 of chapter 107~~ in other civil actions.'

Sec. 329. R. S., c. 177, § 35, amended. Section 35 of chapter 177 of the Revised Statutes is amended to read as follows:

'Sec. 35. Real action against mortgagee in possession, after mortgage paid. When the mortgagee or person claiming under him has taken possession of the mortgaged premises, and the debt secured by the mortgage is paid or released after condition broken and before foreclosure perfected, the mortgagor or person claiming under him may maintain a ~~writ of entry real action~~ to recover possession of said premises, the same as if paid or released before condition broken.'

Sec. 330. R. S., c. 177, § 36, amended. Section 36 of chapter 177 of the Revised Statutes is amended to read as follows:

'Sec. 36. To bar action on undischarged mortgage. When the record title of real estate is encumbered by an undischarged mortgage, and the mortgagor and those having his estate in the premises have been in uninterrupted possession of such real estate for 20 years after the expiration of the time limited in the mortgage for the full performance of the conditions thereof, he or they, or any person having a freehold estate, vested or contingent in possession, reversion or remainder, in the land originally subject to the mortgage or in any undivided or any aliquot part thereof, or any interest therein which may eventually become a freehold estate, or any person who has conveyed such land or any such interest with covenants of title or warranty, may apply to the Superior Court or any Justice of the Superior Court in vacation in the county where the whole or any part of the mortgaged premises is situated, by ~~petition~~ **complaint** setting forth the facts, and asking for a decree as hereinafter provided; ~~and if.~~ **If** after notice to all persons interested as provided in section 39, no evidence is offered of any payment within said 20 years or of any other act within said time, in recognition of its existence as a valid mortgage, the Superior Court or any Justice of the Superior Court in vacation upon hearing may enter a decree setting forth such facts and its findings in relation thereto, which decree shall within 30 days be

recorded in the registry of deeds where the mortgage is recorded; ~~and thereafter. Thereafter~~ no action ~~at law or proceeding in equity~~ shall be brought by any person to enforce a title under said mortgage.'

Sec. 331. R. S., c. 177, § 37, amended. Section 37 of chapter 177 of the Revised Statutes is amended to read as follows:

'**Sec. 37. Two or more persons owning in severalty may join in complaint.** Any 2 or more persons owning in severalty different portions or different interests of the character above described, in the whole or in different portions thereof, may join in one ~~petition~~ **complaint**. Two or more defects arising under different mortgages affecting one parcel of land may be set forth in the same ~~petition; and in~~ **complaint**. In case of a contest the court shall make such order for separate issues as may be proper.'

Sec. 332. R. S., c. 177, § 38, amended. Section 38 of chapter 177 of the Revised Statutes is amended to read as follows:

'**Sec. 38. To bar action on undischarged mortgage given to secure against some contingent liability.** When the mortgagor of such an undischarged mortgage and those having his estate in the premises have been in uninterrupted possession of such real estate for 20 years from the date thereof, and it shall appear that such mortgage was not given to secure the payment of a sum of money or a debt, but to secure the mortgagee against some contingent liability assumed or undertaken by him, and that such conditional liability has ceased to exist and that the interests of no person will be prejudiced by the discharged of such mortgage, the mortgagor or those having his estate in the premises, or any of the persons to whom a similar remedy is granted in section 36 may apply to the Superior Court or any Justice of the Superior Court in vacation in the county where the whole or any part of the mortgaged premises is situated, by ~~petition~~ **complaint** setting forth the facts and asking for a decree as hereinafter provided; ~~and if.~~ If after notice to all persons interested as provided in ~~the following~~ section 39, and upon hear it shall appear that the liability on account of which such mortgage was given has ceased to exist and that such mortgage ought to be discharged, the Superior Court or any Justice of the Superior Court in vacation may enter a decree setting forth the facts proved and its findings in relation thereto, which decree shall within 30 days be recorded in the registry of deeds where the mortgage is recorded; ~~and thereafter. Thereafter~~ no action ~~or proceeding in equity~~ shall be brought to enforce a title under said mortgage.'

Sec. 333. R. S., c. 177, § 39, repealed and replaced. Section 39 of chapter 177 of the Revised Statutes is repealed and the following enacted in place thereof:

'**Sec. 39. Description of unknown mortgagees; service of complaint.** When it is alleged under oath in the complaint that the mortgagees or persons claiming under them are unknown or that their names are unknown, they may be described generally as claiming by, through or under some person or persons named in the complaint. Service shall be made as in other actions on all known defendants residing either in the State or outside the State, and notice by publication to defendants whose identity or whereabouts are unknown shall be given as in other actions where publication is required.'

Sec. 334. R. S., c. 177, § 40, amended. Section 40 of chapter 177 of the Revised Statutes is amended to read as follows:

‘Sec. 40. Court has jurisdiction over all defendants. Upon the service of such notice in accordance with the order of the court, the court shall have jurisdiction of all persons made ~~respondents~~ **defendants** in the manner ~~above~~ provided, and shall upon due hearing make such decree upon the ~~petition~~ **complaint** and as to costs as it shall deem proper.’

Sec. 335. R. S., c. 177, § 41, amended. Section 41 of chapter 177 of the Revised Statutes is amended to read as follows:

‘Sec. 41. Decree effectual to bar claims. The decree of the court determining the validity, nature or extent of any such encumbrance shall operate directly on the land as a proceeding in rem, and shall be effectual to bar all the ~~respondents~~ **defendants** from any claim thereunder contrary to such determination, and such decree so barring said ~~respondents~~ **defendants** shall have the same force and effect as a release of such claims executed by the ~~respondents~~ **defendants** in due form of law. The court may, in its discretion, appoint agents or guardians ad litem to represent minors or other ~~respondents~~ **defendants.**’

Sec. 336. R. S., c. 178, § 14, repealed and replaced. Section 14 of chapter 178 of the Revised Statutes is repealed and the following enacted in place thereof:

‘Sec. 14. Writ for enforcing lien. The form of writ for enforcing such lien shall be in substance as follows:

“State of Maine.

....., ss.

To the sheriff of our county of, or either of his deputies:

We command you to attach the vessel” (here give such a description of the vessel as will identify it,) “in action brought by” (name of plaintiff) “of” (defendant’s place of residence including town and county) “in the Superior Court for said county of, in which action the said” (name of plaintiff) “claims a lien on said vessel for” (here describe briefly the nature of the lien) “to the amount of dollars and cents, and make due return of this writ with your doings thereon.

.....
Clerk of said Superior Court

(Seal of the court)

Dated

The action shall be brought in the county where the vessel is.’

Sec. 337. R. S., c. 178, § 15, repealed and replaced. Section 15 of chapter 178 for said county of, in which action the said” (name of plaintiff)

‘Sec. 15. Plaintiff shall annex account of demand to the complaint; verification by oath. The plaintiff shall annex to the complaint a just, true and particular account of the demand claimed to be due to him with all just credits, the

names of the persons personally liable to him and names of the owners of the vessel if known to him. It shall be verified by the oath of one plaintiff, or of some person in his behalf, that the amount claimed in said account is justly due from the person named in the complaint and account as owing it, and that he believes that by the law of the State he has a lien on such vessel for the whole or a part thereof.'

Sec. 338. R. S., c. 178, § 16, amended. The first and 4th sentences of section 16 of chapter 178 of the Revised Statutes are amended to read as follows: 'If the vessel at the time is on the stocks, the attachment shall be made by filing in the office of the clerk of the town in which such vessel is, within 48 hours thereafter, a copy of so much of his return on the writ of attachment as relates to the attachment, with the name of the plaintiff, the name of the person liable for the debt, the description of the vessel as given in the writ of attachment, the date of the writ of attachment, the amount claimed and the court to which it is returnable, and by leaving a copy of such certificate with one of the owners of the vessel, if known to him and residing within his precinct, or with the master workman thereon; ~~if~~. If the attachment is so made, the officer need not take possession of the vessel before it is launched unless specially directed by the plaintiff or his attorney to do so; but he shall, as soon as may be, afterwards.' 'Whenever a vessel has been attached ~~as aforesaid~~ and the expense of retaining possession of said vessel is great, or the vessel is liable to depreciate in value by reason thereof, any attaching creditor or an owner of said vessel may ~~in term time or vacation~~ petition a Justice of the Superior Court, praying that said vessel attached ~~as aforesaid~~ may be sold, and said Justice may order a hearing thereon; ~~and due~~. Due notice shall be given to all parties in interest of the time and place appointed for said hearing and a hearing on said petition shall be had before a justice of said court.'

Sec. 339. R. S., c. 178, § 17, repealed and replaced. Section 17 of chapter 178 of the Revised Statutes is repealed and the following enacted in place thereof:

'**Sec. 17. Service of summons and complaint on debtors and on owners.** The summons and complaint shall be served, in the same manner as service in other actions, on persons named as personally liable for the plaintiff's claim, or on the owners of the vessel who are known or reside in the county where the vessel is, together with a copy of the writ of attachment and of the return of service thereof; and a copy of the summons, complaint and writ of attachment shall be posted in some conspicuous place on the vessel attached.'

Sec. 340. R. S., c. 178, § 18, amended. Section 18 of chapter 178 of the Revised Statutes is amended to read as follows:

'**Sec. 18. Subsequent writs of attachment served by same officer unless disqualified.** On all writs of attachment made after the first attachment and while any lien attachment is pending, the attachment and services shall be made ~~as aforesaid~~ by the same officer, or, if he is qualified, by any qualified officer, by his giving notice thereof to the first attaching officer.'

Sec. 341. R. S., c. 178, § 19, amended. Section 19 of chapter 178 of the Revised Statutes is amended to read as follows:

'**Sec. 19. Entry of action; who may defend; bond.** ~~At the return term, the~~ The actions shall be entered on the docket as follows: The person claiming

the lien, as plaintiff; the person alleged to be personally liable, as defendant, and the name or other description of the vessel attached; ~~and the~~. The owners or mortgagees of the vessel, or any plaintiff in a suit wherein it is attached for a lien, may appear and defend any action so far as relates to the validity and amount of the lien claim; but no such plaintiff shall so defend until he gives bond, to the satisfaction of the court, to pay the costs awarded against him.'

Sec. 342. R. S., c. 178, § 21, amended. Section 21 of chapter 178 of the Revised Statutes is amended to read as follows:

'**Sec. 21. Court to apportion costs.** The court, except as provided in ~~the preceding~~ section 20, may decide all questions of costs and apportion them as they think proper ~~as in cases of equity.~~'

Sec. 343. R. S., c. 178, § 22, amended. Section 22 of chapter 178 of the Revised Statutes is amended to read as follows:

'**Sec. 22. Issue framed.** At the request of either party, the following questions of fact shall be submitted to a jury: "What amount claimed in the ~~writ~~ **complaint** is due from the defendant to the plaintiff?"/ and "For how much of such amount has the plaintiff a lien on the vessel attached?" The verdict shall be in answer to these questions. If the parties waive a jury trial, these questions shall be decided by the court on a hearing or report of an ~~auditor~~ **referee** appointed by the court.'

Sec. 344. R. S., c. 178, § 24, repealed. Section 24 of chapter 178 of the Revised Statutes is repealed as follows:

'~~Sec. 24. Exceptions, motions, etc. Parties have the same right of exceptions, motions for new trial and writs of error as in other actions.~~'

Sec. 345. R. S., c. 178, § 28, amended. Section 28 of chapter 178 of the Revised Statutes is amended to read as follows:

'**Sec. 28. Vessel under attachment attached on lien claim.** If the vessel has been already attached by a sheriff or his deputy when a writ **of attachment** is issued for such lien claim, such writ **of attachment** shall be served by such officer; ~~if~~. If attached by a constable, he shall give up to the officer having the lien writ **of attachment** the possession and the precept upon which he attached it with his return of the facts thereon; ~~and the~~. The attachment shall hold subject to the legal priorities of the lien claim.'

Sec. 346. R. S., c. 178, § 30, amended. Section 30 of chapter 178 of the Revised Statutes is amended to read as follows:

'**Sec. 30. Sale of vessel, attached on both kinds of claims.** When a vessel attached for liens and also in the ordinary manner is sold by order of the court and the proceeds are more than sufficient to satisfy the lien judgments, the surplus shall be paid to the officer to be held upon the writs **of attachment** not founded on the lien claims.'

Sec. 347. R. S., c. 178, § 38, amended. Section 38 of chapter 178 of the Revised Statutes is amended to read as follows:

'**Sec. 38. Liens preserved and enforced by action.** The liens mentioned in ~~the preceding~~ sections 34 to 37 may be preserved and enforced by ~~bill in~~

equity action against the debtor and owner of the property affected and all other parties interested therein, filed with the clerk of courts in the county where the house, building or appurtenances, wharf, pier or building thereon, on which a lien is claimed, is situated, within 90 days after the last of the labor or services are performed or labor, materials or services are so furnished, and not afterwards, except as provided in ~~the following~~ section 39.

Sec. 348. R. S., c. 178, § 39, amended. Section 39 of chapter 178 of the Revised Statutes is amended to read as follows:

'Sec. 39. Lien extended. When the owner dies, is adjudicated a bankrupt or a warrant in insolvency issues against his estate within the 90 days and before the commencement of a suit, the action ~~in law or equity~~ may be commenced within 60 days after such adjudication, or after notice given of the election or appointment of the assignee in insolvency, executor or administrator, or the revocation of the warrant; ~~and the.~~ The lien shall be extended accordingly.'

Sec. 349. R. S., c. 178, § 40, amended. Section 40 of chapter 178 of the Revised Statutes is amended to read as follows:

'Sec. 40. Necessary allegations of complaint; other lienors may join and be made parties, also mortgagees. The ~~bill~~ **complaint** shall state that the plaintiff claims a lien on the house, building or appurtenances, or on the wharf, pier or building thereon, as the case may be, described therein, and the land on which it stands, for labor or services performed or for labor, materials or services furnished, in erecting, altering, moving or repairing said house, building or appurtenances, or in constructing, altering or repairing said wharf, pier or building thereon, as the case may be; whether it was by virtue of a contract with or by consent of the owner, and if not, that the claimant has complied with ~~the provisions of~~ section 36. The ~~bill~~ **complaint** shall pray that the property be sold and the proceeds applied to the discharge of such lien. Two or more lienors may join in filing and prosecuting such a ~~bill~~ **complaint**. Other lienors may be made parties; ~~other.~~ Other lienors may become parties and preserve and enforce their liens on said property, provided their ~~petitions~~ **complaints** therefor, setting forth their claims in substance as required in a ~~bill~~ **complaint as aforesaid** be filed with the clerk within 90 days after the last labor or services are performed or the last labor, materials or services are furnished by them ~~as aforesaid~~ or within the additional time prescribed in ~~the~~ ~~preceding~~ section 39. The court may consolidate 2 or more ~~bills~~ **actions** claiming liens on the same property into one proceeding, if justice shall so require. Any mortgagee or other person having a claim upon, or interested legally or equitably in, said property may be made a party. The court shall have power to determine all questions of priority of lien or interest, if any, between parties to the proceeding.'

Sec. 350. R. S., c. 178, § 41, amended. Section 41 of chapter 178 of the Revised Statutes is amended to read as follows:

'Sec. 41. Amount determined by jury trial or otherwise. The court shall determine the amount for which each lienor has a lien upon the property by jury trial, if either party so requests in ~~bill~~ ~~petition~~ or ~~complaint~~ answer; otherwise in such manner as the court shall direct. Such determination shall

be conclusive as to the fact and amount of the lien, subject to appeal ~~and exceptions according to the practice in equity as in other actions~~. Any lienor may contest another lienor's claim upon issues framed under direction of the court.'

Sec. 351. R. S., c. 178, § 44, amended. Section 44 of chapter 178 of the Revised Statutes is amended to read as follows:

'**Sec. 44. Clerk shall file certificate with register of deeds.** When any ~~bill or petition~~ **complaint** provided for in this chapter in which a lien is claimed on real estate is filed with the clerk, he shall forthwith file a certificate, setting forth the names of the parties, the date of the ~~bill or petition~~ **complaint** and of the filing thereof, and a description of the said real estate as described in said ~~bill or petition~~ **complaint**, in the registry of deeds for the county or district in which the land is situated.'

Sec. 352. R. S., c. 178, § 45, amended. Section 45 of chapter 178 of the Revised Statutes is amended to read as follows:

'**Sec. 45. Liens mentioned in sections 34-37 enforced by attachment.** In addition to the remedy ~~hereinbefore~~ provided, the liens mentioned in sections 34 ~~35, 36 and to 37~~ may be enforced by attachment in actions ~~at law~~ commenced in any court having jurisdiction in the county where the property on which a lien is claimed is situated, which attachment shall be made within 90 days after the last of the labor or services are performed, or labor, materials or services are furnished, and not afterwards, except as provided in section 39.'

Sec. 353. R. S., c. 178, § 46, amended. Section 46 of chapter 178 of the Revised Statutes is amended to read as follows:

'**Sec. 46. Owner may petition for release.** Any owner of a building, wharf, pier or real estate upon which a lien is claimed may petition in writing a Justice of the Superior Court ~~in term time or vacation~~ setting forth the name of the lienor, the court and county in which the ~~bill in equity or action at law~~ is ~~returnable or~~ pending, the fact that a lien is claimed thereon under ~~the provisions of sections 34 35, 36 and to 37~~, the particular building, wharf, pier or real estate, and his interests therein, its value and his desire to have it released from said lien. Such justice shall issue a written notice which shall be served on the lienor or his attorney 10 days at least prior to the time fixed therein for a hearing. At the hearing, such justice may order such owner to give bond to the lienor in such amount and with such sureties as he may approve, conditioned to pay the amount for which such lienor may be entitled to a lien as determined by the court, with his costs ~~on the petition in the action~~, within 30 days after final decree or judgment. The clerk shall give the ~~petitioner~~ **plaintiff** an attested copy of the ~~petition~~ **complaint** and proceedings, with a certificate under seal of the court attached thereto, that such bond has been duly filed in his office; ~~and the~~. The record of such copy and certificate in the registry of deeds, in the county or district where such real estate or interest therein lies, vacates the lien.'

Sec. 354. R. S., c. 178, § 47, repealed and replaced. Section 47 of chapter 178 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 47. Proceedings pending at same time transferred to one court. When 2 or more proceedings are pending at the same time, in whatever court or courts, to enforce liens on the same house, building or appurtenances, wharf, pier and building thereon, upon petition of any lienor who has commenced such proceedings, or of the owner of the building, wharf, or pier, a Justice of the Superior Court after notice and hearing may, if justice requires it, order all such actions to be transferred to the Superior Court and require the parties in all such proceedings, in what ever court commenced, to plead substantially in the manner prescribed in section 40, and thereafter all the proceedings shall be in accordance with the provisions of said section and sections 48 to 52. While such petition is pending all such actions shall stand continued.'

Sec. 355. R. S., c. 178, § 48, amended. The 2nd sentence of section 48 of chapter 178 of the Revised Statutes is amended to read as follows:

'If 2 or more such judgments are rendered at the same term of the same court, the court shall direct in writing on which execution the property shall be sold, and in that event, and also in the event that the officer holding any execution recovered under the provisions of this chapter shall be notified in writing by any lienor who has caused said property to be attached as aforesaid or who has filed his bill in equity action claiming a lien as herein provided, that he claims a portion of the proceeds of the sale, said officer, unless all owners of such judgments and all lienors so notifying such officer otherwise direct, shall thereupon sell said property as aforesaid and after deducting the fees and expenses of sale, shall return the balance into the court of highest jurisdiction in which any such lien suit is pending or in which such a lien judgment has been rendered, and such court shall distribute such fund pro rata among the lienors who shall satisfactorily prove their right to share in the same.'

Sec. 356. R. S., c. 178, § 53, amended. The first sentence of section 53 of chapter 178 of the Revised Statutes is amended to read as follows:

'The officer making such attachment may pay the boomage thereon, not exceeding the rate per thousand on the quantity actually attached by him, and return the amount paid on the writ of attachment, which shall be included in the damages recovered.'

Sec. 357. R. S., c. 178, § 68, repealed and replaced. Section 68 of chapter 178 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 68. Lien on monumental work. Whoever, under express contract fixing the price to be paid by the other party thereto, sells, erects or furnishes any monument, tablet, headstone, vault, posts, curbing or other monumental work has a lien thereon to secure the payment of such contract price, which continues for 2 years after the completion, delivery or erection of such monument, tablet, headstone, vault, posts, curbing or other monumental work, to be enforced by suit and attachment; such attachment shall be recorded within said 2 years by the clerk of the town in which the property subject to the lien is then situated; or such lien may be enforced by complaint setting forth the names and residences of the parties to the contract, the contract price, the sum due, the description and location of the property on which the lien is claimed and such other facts

as are necessary to make it appear that such plaintiff is entitled to an enforcement of such lien, and praying for judgment for title and possession of the property therein described. Said complaint, before service thereof and within said 2 years, shall be recorded by the clerk of the town in which such property is situated and a certificate of such record indorsed thereon. The sum alleged to be due shall be deemed to be the damage and after the complaint has been recorded, an action may be commenced upon the complaint in any court of proper venue for a transitory action between the parties. Service shall be made as in other actions. If the plaintiff prevails, he shall recover judgment for title and possession of the property on which the lien is claimed, and for his costs, and a possessory execution may issue. By virtue of such judgment the judgment creditor, if unopposed, may take possession and remove the property described in his execution, otherwise any officer qualified to serve civil process, having said execution, may take possession of said property and deliver the same to the judgment creditor, and shall make his return on said execution accordingly. Said lien may be discharged at any time before final judgment by tendering the plaintiff the amount of the debt and costs.'

Sec. 358. R. S., c. 178, § 72, amended. Section 72 of chapter 178 of the Revised Statutes is amended to read as follows:

'**Sec. 72. Lien attachments have precedence; upheld although debtor dies and estate insolvent.** ~~Suits~~ Actions to enforce any of the liens before named have precedence of attachments and encumbrances made after the lien attached and not made to enforce a lien, and may be maintained although the employer or debtor is dead and his estate has been represented insolvent; ~~and his.~~ His executor or administrator may be summoned and held to answer to an action brought to enforce the lien. The ~~declaration~~ **complaint** must show that the ~~suit~~ **action** is brought to enforce the lien; but all the other forms and proceedings therein shall be the same as in ~~ordinary actions of assumpsit~~ **other actions.**'

Sec. 359. R. S., c. 178, § 77, amended. Section 77 of chapter 178 of the Revised Statutes is amended to read as follows:

'**Sec. 77. Complaint filed; contents.** The person claiming the lien may file, in the Superior Court in the county where he resides or in the office of the clerk thereof, a ~~petition~~ **complaint** briefly setting forth the nature and amount of his claim, a description of the article possessed and the names and residences of its owners, if known to him, and a prayer for ~~process to enforce~~ **enforcement of** his lien.'

Sec. 360. R. S., c. 178, § 78, repealed and replaced. Section 78 of chapter 178 of the Revised Statutes is repealed and the following enacted in place thereof:

'**Sec. 78. Service if names of owners set forth in complaint.** If the names of the owners are set forth in the complaint, service shall be made as in other actions.'

Sec. 361. R. S., c. 178, § 79, repealed and replaced. Section 79 of chapter 178 of the Revised Statutes is repealed and the following enacted in place thereof:

'**Sec. 79. Service on owners, when unknown.** If the identity or whereabouts of the owners are not known, notice shall be given by publication as in other actions where publication is required.'

Sec. 362. R. S., c. 178, § 80, amended. The first sentence of section 80 of chapter 178 of the Revised Statutes is repealed and the following sentence enacted in place thereof :

'Any person interested in the article as owner, mortgagee, or otherwise may appear and defend.'

Sec. 363. R. S., c. 178, § 81, amended. Section 81 of chapter 178 of the Revised Statutes is amended to read as follows :

'Sec. 81. Owner required to give bond for costs. If, in the opinion of the court, the article on which the lien is claimed is not of sufficient value to pay the ~~petitioner's~~ **plaintiff's** claim with the probable costs of suit, the court may order the defendant to give bond to the ~~petitioner~~ **plaintiff**, with sufficient sureties approved by the court, to pay such costs as are awarded against him, so far as they are not paid out of the proceeds of the articles on which the lien is claimed.'

Sec. 364. R. S., c. 178, § 82, amended. Section 82 of chapter 178 of the Revised Statutes is amended to read as follows :

'Sec. 82. Court may order property sold to pay lien. After trial and final adjudication in favor of the ~~petitioner~~ **plaintiff**, the court may order any competent officer to sell the article on which the lien is claimed, as personal property is sold on execution, and out of the proceeds, after deducting his fees and the expenses of sale, to pay to the ~~petitioner~~ **plaintiff** the amount and costs awarded him, and the balance to the person entitled to it, if he is known to the court, otherwise into court.'

Sec. 365. R. S., c. 180, § 7, repealed and replaced. Section 7 of chapter 180 of the Revised Statutes is repealed and the following enacted in place thereof :

'Sec. 7. Service of complaint. The complaint shall be filed and service made as in other actions; and if personal service cannot be made, a copy of the summons and of the complaint shall be left at the mill in question or with its occupant.'

Sec. 366. R. S., c. 180, § 8, amended. Section 8 of chapter 180 of the Revised Statutes is amended to read as follows :

'Sec. 8. Defenses. The owner or occupant of such mill or canal may plead ~~in bar~~ that the ~~complainant~~ **plaintiff** has no right, title or estate in the lands alleged to be injured; or that he has a right to maintain such dam, and flow the lands, or divert the water for an agreed price, or without any compensation; or any other matter, which may show that the ~~complainant~~ **plaintiff** cannot maintain the suit; but he shall not plead ~~in bar of the complaint~~ that the land described ~~therein~~ is not injured by such dam or canal.'

Sec. 367. R. S., c. 180, § 9, amended. Section 9 of chapter 180 of the Revised Statutes is amended to read as follows :

'Sec. 9. Trial; costs. When any such plea is filed and an issue in fact or in law is joined, it shall be decided as similar issues are decided at common law; ~~and if.~~ If judgment is for the ~~respondent~~ **defendant**, he shall recover his costs.'

Sec. 368. R. S., c. 180, § 10, amended. The first sentence of section 10 of chapter 180 of the Revised Statutes is amended to read as follows:

'If the issue is decided in favor of the ~~complainant~~ **plaintiff**, or if the ~~respondent~~ **defendant** is defaulted or does not plead or show any legal objection to the proceedings, the court shall appoint 3 or more disinterested commissioners of the same county, who shall go upon and examine the premises and make a true and faithful appraisal, under oath, of the yearly damages, if any, done to the ~~complainant~~ **plaintiff** by the flowing of his lands or the diversion of the water described in the complaint, and determine how far the same is necessary, and ascertain and report for what portion of the year such lands ought not to be flowed, or water diverted, or what quantity of water shall be diverted.'

Sec. 369. R. S., c. 180, § 29, amended. Section 29 of chapter 180 of the Revised Statutes is amended to read as follows:

'**Sec. 29. Judgment no bar to new complaint.** A judgment against a ~~complainant~~ **plaintiff** as not entitled to any compensation is no bar to a new complaint for damages, arising after the former verdict, and for compensation for damages subsequently sustained.'

Sec. 370. R. S., c. 180, § 30, amended. Section 30 of chapter 180 of the Revised Statutes is amended to read as follows:

'**Sec. 30. Tender of damages.** In case of an original complaint, the ~~respondent~~ **defendant** may, with the same advantages to himself, tender and bring money into court, or if the issue is decided in favor of the ~~complainant~~ **plaintiff**, or if the ~~respondent~~ **defendant** is defaulted or does not plead or show any legal objections to the proceedings, the ~~respondent~~ **defendant** may, in writing entered of record with its date, offer to be defaulted for a specific sum for the yearly damages or a sum in gross as reasonable compensation for all damages, as in an action at common law; ~~and if~~. If either is accepted, the judgment has the same effect as if rendered on a verdict. If not accepted within such time as the court orders, it shall not be offered in evidence or have any effect upon the rights of the parties, or the judgment to be rendered except the costs. If the ~~complainant~~ **plaintiff** fails to recover a sum greater than the sum tendered or offered, he recovers such costs only as accrued before the offer, and the ~~respondent~~ **defendant** recovers costs accrued after that time, and his judgment for costs may be set off against the ~~complainant's~~ **plaintiff's** judgment for damages and costs.'

Sec. 371. R. S., c. 180, § 31, amended. Section 31 of chapter 180 of the Revised Statutes is amended to read as follows:

'**Sec. 31. No abatement by death of either party.** No complaint for so flowing lands or diverting water abates by the death of any party thereto; but it may be prosecuted or defended by the surviving ~~complainants or respondents~~ **plaintiffs or defendants**, or the executors or administrators of the deceased.'

Sec. 372. R. S., c. 180, § 32, amended. Section 32 of chapter 180 of the Revised Statutes is amended to read as follows:

Sec. 32. If complaint abates, rights preserved by new complaint. If such complaint is abated or defeated for want of form, or if, a verdict for the ~~com-plainant~~ plaintiff, judgment is reversed, he may bring a new complaint at any time within one year thereafter and thereon recover the damages sustained during the 3 years preceding the institution of the first complaint, or at any time afterwards.'

Sec. 373. R. S., c. 180, § 38, amended. Section 38 of chapter 180 of the Revised Statutes is amended to read as follows :

Sec. 38. Complaint to remove timber, etc., on lands flowed by erection of dam. When any person or corporation shall have decided to erect a dam across a nonnavigable stream under the provisions of this chapter or under special authority granted by the Legislature, and shall have filed the specifications required by ~~section 11 of~~ chapter 44, **section 11**, and it appears that standing timber or other property of value upon the land intended to be flowed will constitute a menace to the safety of such person or corporation or to persons or property upon and along the banks of said stream below the intended location of said dam, ~~the Supreme Judicial Court or the Superior Court shall have jurisdiction in equity, upon petition~~ **complaint** of such person or corporation, to authorize said ~~petitioner~~ **plaintiff** to remove and sell such timber or other property and to order the payment to the owner thereof of the gross proceeds of such sale and such further sum, if any, as said court shall deem just. Said court shall require the ~~petitioner~~ **plaintiff** to furnish security for such payment and for an additional penalty not less than double the amount to be received from such sale and shall include in its decree a condition that such additional sum shall be paid to said owner as damages if the dam is not completed and the land flowed within a time to be therein specified; ~~provided, however, that such.~~ **Such** time may be extended for good cause shown.'

Sec. 374. R. S., c. 103, §§ 12, 16, 17, 20, repealed. Sections 12, 16, 17 and 20 of chapter 103 of the Revised Statutes are repealed.

Sec. 375. R. S., c. 106, §§ 17, 18, repealed. Sections 17 and 18 of chapter 106 of the Revised Statutes are repealed.

Sec. 376. R. S., c. 107, §§ 2, 3, 9, 11, 13-28, 30, 32, 34, 53, 54, repealed. Sections 2, 3, 9, 11, 13 to 28, 30, 32, 34, 53 and 54 of chapter 107 of the Revised Statutes are repealed.

Sec. 377. R. S., c. 112, §§ 1, 3, 4, 17-20, 22, 23, 85, 86, repealed. Sections 1, 3, 4, 17 to 20, 22, 23, 85 and 86 of chapter 112 of the Revised Statutes are repealed.

Sec. 378. R. S., c. 113, §§ 1-4, 8, 9, 11, 12, 14-19, 22, 23, 26-28, 34, 36-38, 42, 43, 50-52, 57, 59, 60, 63, 75, 77-81, 85-92, 94, 106, 168-170, repealed. Sections 1 to 4, 8, 9, 11, 12, 14 to 19, 22, 23, 26 to 28, 34, 36, 37, section 38 as amended by chapter 239 of the public laws of 1955, sections 42, 43, 50 to 52, 59, 60, 63, 75, 77 to 81, 85 to 92, 94, 106 and 168 to 170 are repealed.

Sec. 379. R. S., c. 114, §§ 2, 3, repealed. Sections 2 and 3 of chapter 114 of the Revised Statutes are repealed.

Sec. 380. R. S., c. 117, §§ 2-23, 25-28, repealed. Sections 2 to 23 and 25 to 28 of chapter 117 of the Revised Statutes are repealed.

Sec. 381. R. S., c. 120, § 1, repealed. Section 1 of chapter 120 of the Revised Statutes is repealed.

Sec. 382. R. S., c. 123, repealed. Chapter 123 of the Revised Statutes is repealed.

Sec. 383. R. S., c. 129, §§ 1-10, repealed. Sections 1 to 10 of chapter 129 of the Revised Statutes are repealed.

Sec. 384. R. S., c. 166, §§ 57, 61, repealed. Sections 57 and 61 of chapter 166 of the Revised Statutes are repealed.

Sec. 385. P. L., 1959, c. 93, § 1, repealed; limitation. Section 1 of chapter 93 of the public laws of 1959, heretofore passed by this Legislature, amending section 72 of chapter 112 of the Revised Statutes, is repealed and shall not be printed as part of the session laws of 1959.

Sec. 386. P. L., 1959, c. 44, repealed. Chapter 44 of the public laws of 1959, heretofore passed by this Legislature, amending section 168 of chapter 113 of the Revised Statutes, is repealed and shall not be printed as part of the session laws of 1959.

Sec. 387. Effective date. This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail.