

MAINE STATE LEGISLATURE

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L A W S

OF THE

STATE OF MAINE;

TO WHICH ARE PREFIXED

THE

CONSTITUTION OF THE U. STATES

AND OF SAID STATE,

IN TWO VOLUMES,

WITH AN APPENDIX.

.....
VOL. I.
.....

Published according to a resolve of the State, passed
March 8, 1821.

BRUNSWICK.

Printed by J. Griffin, for the State.

.....
1821.

newspapers, or in the newspaper of the printer of the General Court, for the time being, such notice instead of being given in said Boston newspaper, or in the newspaper of the printer to the General Court, for the time being, shall hereafter, be given by advertising in one of the newspapers printed in Portland, and in one of the newspapers printed in the county where such real estate lies, or the the next adjoining county, if any such newspaper there be.

[Approved June 17, 1820.]

CHAPTER L.

An Act for giving Remedies in Equity.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That the Justices of the Supreme Judicial Court shall have power and authority to hear and determine in equity all cases of trust arising under deeds, wills or in the settlement of estates; and all cases of contract in writing, where a party claims the specific performance of the same, and in which there may not be a plain, adequate, and complete remedy at law. And the bill or complaint in such cases may be inserted in a writ of attachment or original summons, returnable to the same Court; and such writ be served on the adverse party as other writs of attachment, or original summons are by law to be served. And the said Justices of the Supreme Judicial Court shall have authority to issue all such writs and processes as may be necessary or proper to carry into effect the powers hereby granted: and to make from time to time all necessary rules and orders for the convenient and orderly conducting of the said business: *Provided*, the same be not repugnant to the constitution and laws of this State; and provided also that the cases of contract, to which this Act shall apply, shall be such only as shall be hereafter made in writing, or which have so been made since the tenth day of February in the year eighteen hundred and eighteen.

Equity powers given to Sup. Jud. Court as to trusts under deeds, wills, &c.

What kind of process to be used.

S. J. Court may use all necessary process to carry the powers granted into effect,

and make rules, not repugnant to Constitution and laws.

Limitation as to contracts within this Act.

SEC. 2. *Be it further enacted*, That in all causes brought before the Supreme Judicial Court of this State or before

Courts may exercise chan-

cery powers as to forfeitures, &c. and enter judgment for what is equitably due.

any Circuit Court of Common Pleas to recover the forfeiture annexed to any articles of agreement, covenant, contract, or charter party, bond, obligation or other specialty or for forfeiture of real estate upon condition, by deed of mortgage, or bargain and sale with defeasance, when the forfeiture, breach or non-performance shall be found by Jury, by the default or the confession of the defendant, or upon demurrer, the Court before which the action is, shall make up judgment therein for the plaintiff to recover so much as is due according to equity and good conscience.

In case of penalties forfeited, Courts to enter judgment for the whole penalty and issue execution for sum due.

SEC. 3. *Be it further enacted,* That when any action shall be brought and prosecuted on any bond or other specialty, with penalties, for the payment of sums of money, performance of covenants, contracts, agreements, matters or things to be done at several times, and the plaintiff recover the forfeiture of such penalty; the Court shall enter up judgment for the whole of such forfeiture, and award execution only for so much of the debt or damage as is due or sustained at that time, so always that the said judgment shall stand and be a security to the plaintiff, his executors and administrators for any further and after payment or damages he or they may have just right to, by the non-performance or breach of the covenants, contracts, agreements or things in such bonds or other specialties contained; and who may have a writ or writs of scire facias on said judgment from such Court, where the same was obtained, against the defendant, his heirs, executors or administrators, suggesting other and further damages sustained by non-performance or breach of such covenants, contracts and agreements, and to summon him or them to show cause why execution should not be awarded upon said judgment for other and further damages, as set forth in the writ and made out to the Court; upon which the Court shall proceed as aforesaid, as often as such damage shall accrue, and be sued for as aforesaid; or may have his action of debt, or on the case, as the case may require for such payment or damages as aforesaid.

Further damages in part of penalty, to be recovered on scire facias—

Proceedings in such cases.

In scire facias State vs. persons as princi-

SEC. 4. *Be it further enacted,* That in all actions of scire facias brought in the name and on behalf of the State, either in the Supreme Judicial Court or any Circuit Court of Com-

mon Pleas, to recover the penalty or forfeiture of any recognisance taken or entered into in criminal prosecutions, either by principal or sureties, or by witnesses to appear at either of the aforesaid Courts, and give evidence on the part of the State, when the forfeiture, breach or non-performance of the condition of such recognisance shall be found by the default or confession of the party, or by verdict of a Jury, or upon demurrer, the Court before which such action may be brought, may render judgment therein for the State according to the circumstances of the case, and the situation of the party, and may remit either the whole, or any part of the penalty of such recognisance, upon such terms and conditions as to them shall seem reasonable and just; any law or usage to the contrary notwithstanding.

pal, sureties or witnesses—
Courts may remit all or part of the penalty.

[Approved February 20, 1821.]

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CHAPTER LI.

An Act to regulate the jurisdiction and proceedings of the Courts of Probate.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That a Court of Probate shall be held within the several counties of the State: and there shall be in the manner the Constitution directs, some able and learned person in each county in the State, appointed or to be appointed Judge, for taking the probate of wills, and granting administrations on the estates of persons deceased, being inhabitants of, or resident in the same county at the time of their decease; or having died without the State, and leaving estate of any kind within the same; for appointing guardians to minors and other persons; for examining and allowing the accounts of executors, administrators, or guardians, and for such other matters and things as the Courts of Probate within the several counties aforesaid, shall by law, have cognizance and jurisdiction of. And the said Judges of Probate shall have full power and authority to make out such process or processes as may be needful for the discharge of the trust reposed in them; and all Sheriffs, Deputy Sheriffs, Coroners and Constables, are required duly to serve and execute all legal warrants, or other pro-

Courts of Probate established.

Judge of Probate—powers and jurisdiction.