

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.

ERRATA:

**The following leaf is
inserted because one or more pages
in this chapter have errors
noticed and corrected here.**

VOLUME THE FIRST.

Page.	
40	L. 12 of the page for 'preceding' read 'presiding'
54	Sec. 4 L. 14 of Sec. for 'time' read 'term'
55	7 2 for 'a' read 'or'
55	7 9 before the word 'said' insert 'the'
56	9 3 for 'the' read 'her'
57	1 6 for 'to' read 'in'
58	1 5 for 'and' after the word 'house' read 'or'
61	in the title of the act, ch. vi. insert 'the' before the word 'crimes'
62	Sec. 2 L. 9 of S. before the word 'offender' insert 'such'
69	16 8 for 'Treasurer' read 'Treasury'
73	1 15 after the word 'for' insert 'the'
77	13 6 for 'to' read 'of'
78	first line of the page, dele the word 'by'
80	L. 2 of the p. after the word 'willingly' insert 'aid or'
80	17 for 'counterfeited' read 'counterfeit'
82	1 after the word 'in' insert 'all'
82	Sec. 7 L. 4 of Sec. after the word 'devised' dele 'or' and insert ' , '
83	Sec. 7 L. last of S. for 'aggravations' read 'aggravation'
84	10 6 for 'and' read 'or'
90	1st L. of p. for 'Commissioner' read 'Commissioners'
90	L. 20 before the word 'Commissioner' insert 'said'
97	6 for 'assumst' read 'assumpsit'
97	14 for 'cover' read 'covin'
98	at the end of the act for 'January' read 'February'
99	L. 17 of p. after the word 'year' dele ' ; ' & insert ' , and'
100	15 at the end of the line insert 'the'
105	at the end of the Act for '1820' read '1821'
108	L. 14 of page, for 'nuisances' read 'nuisance'
108	20 after the word 'each' insert 'one'
111	25 after the word 'fail' insert 'of'
113	11 for 'on' read 'or'
144	last for 'performance' read 'performing'
145	Sec. 2 L. 9 of Sec. after the word 'of' insert 'the'
147	7 6 before the word 'release' for 'to' read ' a '
150	Sec. 6 L. 2 of Sec. for 'in' read 'is'
151	in the title, before the word 'Lands' insert 'reserved'
153	1st line of the p. for 'whenever' read 'wherever'
155	last before the word 'Court' for 'a' read 'any'
156	Sec. 4 L. 26 of Sec. for 'notification' read 'notifications'
159	9 8 for 'purpose' read 'purposes'
167	14 5 for 'votes' read 'vote'
193	4 10 dele 'such'
199	17 1 for 'when' read 'where'
202	22 6 after the word 'near, dele 'to'
202	23 10 for 'be' read 'he'
203	24 16 for 'of' read 'in'
203	25 16 for 'meeting' read 'meetings'
205	L. 18 of p. before the word 'estate' insert 'other'
210	2 before the word 'tenement' insert 'other'
215	4 before the word 'guardians' insert 'guardian or'
226	Sec. 73 L. 6 of Sec. dele 'a'
229	3 last for 'agreeably' read 'agreeable'
230	7 19 for 'agreeably' read 'agreeable'
231	8 6 for 'resided' read 'reside'
242	2 5 for 'sentence' read 'sentences'
245	7 3 after the word 'herein' insert 'before'
247	L. 7 of the act, ch. 56, after the word 'otherwise' insert 'interested'
247	11 for 'statement' read 'statements'
247	Sec. 1 L. 2 of Sec. for 'whenever' read 'wherever'
248	3 1 for 'whenever' read 'wherever'
248	3 14 for 'Justice' read 'Justices'

Page.	
252	L. 3 of p. for 'where' read 'wherein'
257	5 after the word 'have' insert 'his or'
265	Sec. 39 L. 3 of Sec. for 'when' read 'where'
271	L. 1 and 3 of p. for 'affect' read 'effect'
271	Sec. 6 L. 2 of Sec. before the word 'execution' insert 'the'
278	19 4 for 'on' read 'in'
280	L. 2 of p. for 'have' read 'had'
281	22 for 'of' read 'on'
283	13 for 'lies' read 'lays'
283	last before the word 'defendant' insert 'the'
284	Sec. 32 L. 2 of Sec. for 'a' read 'any'
288	5 18 for 'whenever' read 'wherever'
291	9 4 for 'as' read 'or'
292	L. 4 of p. for 'examinations' read 'examination'
293	Sec. 13 L. 5 of Sec. after the word 'article' insert 'or articles'
297	7 5 for 'and' read 'or'
301	L. 8 of p. for 'he' read 'be'
309	24 between the words 'the' and 'day' should be a ' , '
310	20 for 'debt' read 'debtor'
311	2 for 'with' read 'and of'
312	7 for 'summon' read 'summons'
312	9 between the words 'our' and 'Court' should be a ' , '
318	31 for 'writs' read 'writ a'
328	Sec. 8 L. 4 of Sec. for 'grieved' read 'aggrieved'
353	L. 14 of p. at the end of the line insert 'the'
361	Sec. 1 L. 18 of Sec. for 'cause' read 'case'
370	3 10 for 'to' read 'of'
371	2 7 dele 'to'
373	L. 15 of p. before the word 'require' insert 'to'
376	Sec. 1 L. 10 of Sec. dele 'the' before the word 'payment'
378	at the end of the act, for '17' read '20'
378	in the title, for 'selection' read 'selecting'
379	Sec. 4 L. 5 of Sec. before the word 'divide' insert 'shall'
394	1 9 for 'part' read 'parts'
395	1 8 for 'acceptances' read 'acceptance'
404	1 34 before the word 'authorized' insert 'hereby'
407	7 4 dele 'the'
414	last word of the 1st act on the page, for 'therein' read 'thereon'
423	Sec. 3 L. 15 of Sec. after the word 'assignments' insert 'thereof, and also of the assignments'
424	Sec. 6 L. 13 of S. after the word 'papers' insert 'as'
425	L. 7 of p. before the word 'action' insert 'an'
428	22 for 'twelve' read 'twenty'
431	8 for 'fifteen' read 'fifty'
432	first line of the page should be put after the third
432	L. 5 of the p. dele 'entering'
432	between the 28th and 29th lines of the p. insert 'Every blank writ of attachment, with a summons thereon, fifteen cents'
432	L. 37 of p. for 'judgment' read 'jurymen'
435	9 for 'appear' read 'appears'
435	10 for 'make' read 'makes'
435	18 for 'taking' read 'taxing'
444	Sec. 1 L. 6 of Sec. before the word 'records' insert 'the'
445	1 9 for 'within' read 'of'
445	1 19 after the word 'escape' insert 'sickness'
455	11 1 after the word 'of' insert 'the'

CHAPTER LIX.

An Act regulating Judicial Process and proceedings.

Mode of serving writs of attachment and summoning defendant.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That when the goods or estate of any person shall be attached at the suit of another, in any civil action, a summons in form prescribed by law, shall be delivered to the party whose goods or estate are attached, or left at his or her dwelling house or place of last and usual abode, fourteen days before the day of the sitting of the Court where such attachment is returnable; and if the defendant was not at any time an inhabitant or resident within this State, or has removed therefrom, then such summons shall be left with his tenant, agent or attorney; and such service shall be made by the officer to whom the writ may be directed who shall return the same according to the precept thereof: and if such defendant shall not have a tenant, agent or attorney within the State, and his goods or estate shall be attached as aforesaid, the officer shall return the writ with his doings thereon; and such action being duly entered, the Court may order such notice to the defendant, as justice may require.

Mode of serving original summons, &c.

SEC. 2. *Be it further enacted,* That in all suits wherein the process is by original summons, as against executors, administrators or guardians, in ejectment, dower, scire facias, error, review, and all other civil actions wherein the law does not require a separate summons to be left with the defendant, the service thereof by the proper officer shall be good and valid in law, either by his reading the writ or original summons to the defendant, or by leaving a certified copy thereof at his or her house or place of last and usual abode, fourteen days before the same is returnable; and in all real actions, where the defendant or defendants in review live out of the State, so that the writ of review cannot be served upon him or them, the service of such writ upon the tertenant or person in possession shall be deemed a good and sufficient service, and the defendant or defendants shall be held to answer thereupon accordingly.

in writs of review, where defendants are out of State.

SEC. 3. *Be it further enacted,* That in all actions where-
in the process shall be by original summons as aforesaid,
and the defendant was at no time an inhabitant or resident
within this State, or has removed therefrom, then the ser-
vice thereof shall be in like manner by the proper officer's
reading the same to, or leaving a like copy duly attested
with the tenant, agent or attorney of the defendant, the like
number of days before the day of the sitting of the Court
whereto the same process shall be returnable; and if such
defendant shall not have a tenant, agent or attorney within
the State, the Plaintiff or demandant may enter his action
and the Court may order notice to the defendant in the
manner provided in the first section of this Act.

Mode of ser-
vice, when de-
fendant was
never an in-
habitant of
State, &c.

SEC. 4. *Be it further enacted,* That in actions of dower
and other real actions, wherein the possession of land or
buildings shall not be demanded in the writ of the tenant in
the actual possession or occupancy thereof, in addition to a
service on the defendant in the writ or summons as afore-
said, there shall be a service on such tenant the like num-
ber of days before the day of the sitting of the Court by the
proper officer's reading to him or her the same writ or orig-
inal summons, or leaving a like certified copy at his or her
house or place of usual abode on the premises, which shall
also be certified by the proper officer; or the writ shall
abate.

In actions of
dower and
other real ac-
tions, sum-
mons to be
also served on
~~tertenants.~~

SEC. 5. *Be it further enacted,* That when two or more are
jointly obligated by act of law or agreement, and one or
more of them are without the State, having property or es-
tate, but no tenant, agent, trustee or attorney within the same,
the property or estate of those so without the State, may be
attached, and the summons being left by the officer serving
the writ, with those within the State, shall be deemed a le-
gal service on those without the same: *Provided,* one con-
tinuance shall be granted, unless the plaintiff can show that
notice has been given to the person so out of the State, in
which case the Court may proceed at their discretion, with-
out granting a continuance.

Mode of ser-
vice of process
on joint con-
tracts, when
one or more
defendants live
out of the
State.

Continuance
to be granted
in case—

SEC. 6. *Be it further enacted,* That when a suit shall be
brought against any town, parish, or against the proprietors
of any common or undivided lands or other estate, the plain-

Mode of ser-
vice on towns,
proprietors,
&c.

tiff shall cause the Clerk of such town, parish or proprietors, or one or more of the Selectmen of such town, or assessors of such parish, to be served with a copy of the writ of summons, at least thirty days before the day of the sitting of the Court to which the same shall be returnable.

SEC. 7. *Be it further enacted,* That when a suit shall be brought, and no one of the defendants named in the writ, shall, at the time of the service thereof, be an inhabitant or resident within this State, or then be present within the same, and shall not return before the time of trial; or if the action shall be grounded on a tort, and any one of the defendants shall so be absent or not inhabitant or resident, and not return; then the court wherein such suit shall be pending, shall continue the same to the next term, on a suggestion of the fact being made on the record. And if the defendant, whose absence was noted on the record, shall not then appear by himself or attorney and be so remote that the notice of such suit pending could not probably be conveyed to him or her during the vacation, the said Court may further continue the action to the next term, and no longer. And in such cases where judgment shall be entered up by default after one or two continuances as aforesaid, execution or writ of seizin shall be stayed and not issue until the plaintiff or demandant shall have given bond with sufficient sureties in double the value of the estate or sum recovered by such judgment, to make restitution, and to refund and pay back such sum as shall be given in debt or damages; or so much as shall be recovered upon a suit therefor, to be brought in one year next after entering up the first judgment; if upon such suit the judgment shall be reversed, annulled or altered; the security aforesaid to be no further answerable than for the recovery that shall be made on such suit, to be had within one year as aforesaid: *Provided nevertheless,* If any plaintiff or plaintiffs in any such suit shall at any time after the service of the original writ or summons as aforesaid, and thirty days before the term of said Court, in which judgment may be rendered in manner aforesaid, cause the defendant or defendants in the case (being out of this State) to be notified of such suit by serving him or them with an attested copy of such writ or summons, and the offi-

When none of the defendants are in the State at the time of service, nor return before the time of trial; what proceedings are to be had—

as to continuance—

judgment,

and execution.

Proviso as to plaintiffs giving personal notice to defendants, &c.

cer's return thereon, and shall file in said Court the deposition of one witness, being an inhabitant of this State; that such copy of said writ or summons was left with said defendant or defendants, or at his or their last and usual place of abode, in such case the plaintiff or plaintiffs may have their writ of execution or seizin, in the same manner as though the said defendant or defendants had appeared in said Court and made answer in said action, without such bond being given in manner aforesaid: *Provided also*, That no real estate taken in execution, granted upon such first judgment shall be conveyed by such plaintiff or demandant, until the expiration of the said one year, or after a new trial brought within the said space of one year.

SEC. 8. *Be it further enacted*, That all original writs issuing out of the Supreme Judicial Court, or Circuit Court of Common Pleas, or from a Justice of the Peace, shall before they are served, be endorsed on the back thereof by the plaintiff or plaintiffs, or one of them, with his christian and surname, if he or they are inhabitants of this State, or by his or their agent or attorney, being an inhabitant thereof; and where the plaintiff is not an inhabitant of this State, then his writ shall be endorsed in manner aforesaid, by some responsible person who is an inhabitant of this State, provided that the Court may upon motion in consideration that the agent or attorney who endorsed the writ, is not of ability for the purposes hereafter mentioned, order that the plaintiff shall procure a new endorser, and such new endorser shall be held in the same manner as if the endorsement had been made before the writ was served, and unless the plaintiff shall procure such new endorser when directed thereunto by the Court, he shall become nonsuit, but no costs shall be awarded against him. And the plaintiff's agent or attorney who shall so endorse his name upon an original writ, shall be liable in case of the avoidance or inability of the plaintiff to pay the defendant all such costs as he shall recover, and to pay all prison charges that may happen where the plaintiff shall not support his action.

All original writs to be endorsed, &c.

New endorser in certain cases may be required.

Liability of endorsers.

SEC. 9. *Be it further enacted*, That when the plaintiff and defendant both live within the State, all personal or transitory actions shall be brought in the county where one of

In what counties actions must be commenced.

the parties lives. And when an action shall be commenced in any other county than as above directed, the writ shall abate, and the defendant shall be allowed double costs.

Where actions against county may be brought,

and where actions in favor of county may be brought.

Where actions between corporations and counties are to be brought.

Where actions by plaintiffs against their own counties are to be brought.

Where actions by inhabitants of one county against inhabitants of another, shall be brought.

Actions to be entered at C. Com. Pleas first day of term.

SEC. 10. *Be it further enacted,* That any local or transitory action against the inhabitants of any county in this State, in their corporate capacity may be commenced and prosecuted to final judgment and execution, either in the county where the plaintiff in such action lives, or in the county against which the action shall be brought, at the plaintiff's election, and any local or transitory action in which the inhabitants of any county shall be plaintiffs, may be commenced and prosecuted to final judgment and execution, in the county where the defendant in such action shall live, unless the defendant shall be an inhabitant of the same county, in which case the action may be commenced and prosecuted in either of the adjoining counties.

SEC. 11. *Be it further enacted,* That when any corporation shall be a party in any action commenced by or against the inhabitants of any county in this State, in their corporate capacity the action shall be commenced and prosecuted to final judgment and execution, in one of the counties adjoining the county interested in the same.

SEC. 12. *Be it further enacted,* That any local or transitory action against the inhabitants of any county by any plaintiffs belonging to such county, shall be commenced and prosecuted to final judgment and execution in such county, or in an adjoining county at the plaintiff's election.

SEC. 13. *Be it further enacted,* That any local or transitory action by the inhabitants of one county against the inhabitants of another county shall be commenced and prosecuted to final judgment and execution in an adjoining county.

SEC. 14. *Be it further enacted,* That no action shall be entered at any Circuit Court of Common Pleas after the first day of the sitting thereof: *Provided nevertheless,* That where, by any inevitable misfortune or accident, the plaintiff shall be prevented from entering his action upon the first day of the sitting of the Court, he may upon making the same appear to the Court, enter his action at any time before judgment is given for cost to the defendant.

SEC. 15. *Be it further enacted,* That when any defendant shall be duly served with process, and return thereof shall be made into the Court where the same is returnable, and he shall not appear by himself, or his attorney, his default shall be recorded, and the charge in the declaration shall be taken and deemed to be true, and the Court shall thereupon give such damages as they shall find upon inquiry that the plaintiff shall have sustained, unless the plaintiff shall move to have a Jury to inquire into the damages, in which case the Court shall enter up judgment for such damages as the Jury shall assess: *Provided nevertheless,* That if the defendant shall come into Court at any time before the Jury is dismissed, and shall pay down to the adverse party the costs he has been at, thus far, or so much thereof as the Court shall judge reasonable, then the Court may admit the defendant to have the same day in Court, as if his default had never been recorded.

Defendant not appearing to be defaulted and damages assessed.

Default may be taken off, in case, on payment of costs.

SEC. 16. *Be it further enacted,* That no summons, writ, declaration, plea, process, judgment or other proceedings in the Courts or course of justice, shall be abated, arrested, quashed, adjudged insufficient or reversed, for any kind of circumstantial errors or mistakes, when the person and case may be rightly understood by the Court, nor through defect or want of form only; and the Court, on motion made, may order amendments, but shall not allow costs, or grant a continuance in consequence thereof.

Circumstantial errors, &c. may be amended on motion, &c.

SEC. 17. *Be it further enacted,* That when any plaintiff shall in any stage of his action become nonsuit, or discontinue his suit, the defendant shall recover his costs against him, and in all actions, as well those of qui-tam as others, the party prevailing shall be entitled to his legal costs.

On nonsuit, &c. party prevailing entitled to his costs.

SEC. 18. *Be it further enacted,* That in all actions of trespass, quare clausum fregit hereafter brought wherein the defendant shall in his plea disclaim all right, title and interest to the land in which the trespass is by the declaration supposed to be done, and the trespass be involuntary or by negligence, the defendant shall be admitted to plead a disclaimer, and that the trespass was done involuntarily or by negligence, and a tender or offer of sufficient amends for such trespass before the action brought; or the defendant

On plea of disclaimer, and that trespass was involuntary, defendant may tender amends,

or bring money into Court.

Proceedings in such case. may have leave to bring money into Court to satisfy the damage the plaintiff has sustained; and in case the Jury shall not assess greater damages for the trespass than the money tendered, or brought into Court, the defendant shall recover of the plaintiff his reasonable costs.

In certain actions defendant may file account in offset;

time when and place where.

Defendant may recover any balance due him.

Regulation as to costs in certain cases.

In real actions defendant may disclaim in part or whole.

proceedings in such cases.

Heirs may join or sever in actions for inheritance descended from a common ancestor.

SEC. 19. *Be it further enacted,* That when an action shall be brought to recover a debt due on book accounts, an account stated by the parties, a quantum meruit, quantum valebat or for services done upon an agreed price, or upon simple contract or promise in writing not under seal, the defendant may file any account he hath in the Clerk's office seven days before the sitting of the Circuit Court of Common Pleas, where the action is brought, or if the suit is before a Justice of the Peace, the accounts shall be filed before the Justice four days before the day of trial, and upon the general issue give the same in evidence against the plaintiff's demand. And if upon the trial it shall appear that there is a balance due to the defendant he shall recover the same in the same manner as if he had brought his action therefor. And where a plaintiff shall at the same Court bring divers actions upon demands which might have been joined in one, he shall recover no more costs than in one action only.

SEC. 20. *Be it further enacted,* That when any person or persons shall be sued in ejectment, or other real action, for any lands, tenements or hereditaments, they shall be holden to answer for so much or such part of the premises demanded as they then hold or are in possession of which they shall distinguish and set forth by their plea, and disclaim the rest; and if any of them disclaim the whole, and the plaintiff cannot prove the defendant's possession of the premises, or any part thereof the defendant shall recover his costs.

SEC. 21. *Be it further enacted,* That in actions of waste, ejectment, or other real actions, where possession of the inheritance alleged to have descended, is the object of the suit, the heirs claiming under a common ancestor, may all or any two or more of them join therein, or each may prosecute for his particular share of such inheritance, and the same rule shall extend to joint tenants who are or may be disseized.

SEC. 22. *Be it further enacted,* That in all actions now depending or that may be hereafter depending in any Court within this State wherein the defence intended to be set up by the defendant, is or may be, that he was a Justice of the Peace, Sheriff, Deputy Sheriff, or Coroner or a town or parish officer, or some other officer, civil or military, and that the act or thing for which he is or may be sued, is or may be any act or thing done by him by virtue, or in the execution of his office, the defendant may plead the general issue, and give the special matter in evidence upon filing in the cause a brief statement of such special matter of defence within such time as the Court shall order, of which statement the plaintiff shall be entitled to a copy, or he may plead specially at his election.

Justices, Sheriffs, Coroners, &c. may in certain cases, on filing a brief statement, give special matter in evidence.

SEC. 23. *Be it further enacted,* That upon a judgment rendered in any Circuit Court of Common Pleas, that the defendant shall account, it shall be in the power of the party against whom such judgment shall hereafter be given, to appeal therefrom, if such party shall think proper, before the same Court proceed to appoint auditors; and in case no appeal shall be made from the first judgment, that the defendant shall account, an appeal from the final judgment after the cause has been before auditors, shall not entitle the original defendant to try the issue of bailiff or not bailiff before the Supreme Judicial Court, but the first judgment that the defendant shall account shall remain in full force, and he shall account accordingly; and in case the defendant shall not enter and prosecute his appeal from the first judgment the same upon complaint may be affirmed; and auditors may thereupon be appointed in the same manner they would have been in the Circuit Court of Common Pleas, had no appeal been made from the first judgment.

In actions of account defendant may appeal from interlocutory judgment, before appointment of auditors.

Proceedings when he does not so appeal.

SEC. 24. *Be it further enacted,* That when any person against whom judgment shall be given, that he shall account, shall unreasonably refuse or neglect to appear at the time and place assigned by the auditors, or after appearing, shall refuse or neglect to render an account, the auditors may certify such refusal or neglect to the Court from which their appointment issued; and the same Court may thereupon cause damages to be assessed, by a jury and enter up judgment for the damages so assessed, with reasonable costs,

When defendant shall refuse to appear before auditors—what proceedings may be had.

or they may render judgment against the defendant as upon default.

Auditors may be appointed in any action, when Courts deem it proper;

SEC. 25. *Be it further enacted,* That whenever in any action before the Supreme Judicial Court, or any Circuit Court of Common Pleas, it shall appear to said Courts that an investigation of accounts, or an examination of vouchers is necessary for the purposes of Justice between the parties, it shall be lawful for the said Courts to appoint an auditor or auditors, to state the accounts between the parties, and to make report thereof to the Court as soon as may be; and the report so made shall under the direction of said Court, be given in evidence to the Jury; subject, however, to be impeached by evidence from either party; and the said Court shall award reasonable compensation to such auditor or auditors, which shall be taxed in the bill of costs to be recovered by the party prevailing in the suit, as in other cases.

their report to be given in evidence to the Jury.

State Treasurer, or, county, town and parish Treasurers may sue and prosecute actions, &c.

SEC. 26. *Be it further enacted,* That the Treasurer of this State, the Treasurers of counties, towns, parishes, and other corporations, for the time being, be and hereby are authorized and empowered, in their own names and capacities, respectively to commence, and prosecute to final judgment and execution, any suit or suits at law upon any bonds, notes or other securities, which have been or shall be given to them or their predecessors in said capacity; and to prosecute to final judgment and execution, any suits which have been or shall be commenced by their said predecessors in said capacity during their continuance in office, and pending at the time of their removal therefrom.

Writ of review pending, if either party die, what proceedings are to be had.

SEC. 27. *Be it further enacted,* That if pending a writ of review between the original parties whether in a real or personal action, either of them shall die, his death shall, at the request of the attorney for either party, be entered upon the records of the Court, and the cause shall thereupon be continued, to the end the heirs at law of such deceased party or other person interested in the tenements in question, as aforesaid, or his executors or administrators may come into Court, and take upon them the prosecution or defence of the same suit to final judgment. And if after a reasonable time, according to the discretion of the Court,

granted for this purpose, neither of them shall appear as aforesaid, or appearing shall afterwards become nonsuit, or be defaulted, then the same proceedings and judgment shall be had therein, mutatis mutandis, as would have been had between the original parties.

SEC. 28. *Be it further enacted,* That whenever either of the parties to any judgment shall die before a review has been granted, the legal representatives of such deceased party may petition for such review or become parties to the same as respondents.

Legal representatives of party may petition for review in certain case.

SEC. 29. *Be it further enacted,* That in the administration of oaths in this State, the ceremony of lifting up the hand, as heretofore used, shall be practised, with such exceptions as to Mahometans and other persons, who believe that an oath is not binding, unless taken in their accustomed manner, as the several Courts shall find necessary in the execution of the laws.

Manner of administering oaths in Courts, &c.

SEC. 30. *Be it further enacted,* That no actions shall be sustained in any Circuit Court of Common Pleas within this State, where the damage demanded does not exceed twenty dollars, unless by appeal from a Justice of the Peace, saving such actions wherein the title to real estate may be concerned; and if upon any action originally brought before the Circuit Court of Common Pleas, judgment shall be recovered for no more than twenty dollars debt or damage; in all such cases the plaintiff shall be entitled for his costs, to no more than one quarter part of the debt or damage so recovered: *Provided always,* That where judgment shall be rendered upon the report of referees, full costs shall be taxed for the party recovering notwithstanding the judgment be under twenty dollars, unless a different adjudication respecting the costs shall be made by the report itself.

Actions not sustained in C. Com. Pleas where ad damnum does not exceed \$20.

Regulation as to costs in that Court when damage does not exceed \$20.

Proviso as to judgment on report of referees.

SEC. 31. *Be it further enacted,* That all penalties and forfeitures incurred under the provisions of any statute of this State, for the recovery of which no mode is prescribed, shall and may be sued for and recovered by action of debt in any Court proper to try the same.

Actions of debt to lie for penalties where no other provision is made.

SEC. 32. *Be it further enacted,* That all penalties and forfeitures given or limited by any Act of this State, in whole or in part to the use of this State, may be recovered by indictment in any Court proper to try the same.

Penalties may be recovered by indictment where State is interested.

Printed copies of private Acts and Resolves, by authority, good evidence in Courts.

SEC. 33. *Be it further enacted,* That the printed copies of the private Acts and resolves of this State, which now are, or hereafter shall be printed by and under the authority of the Legislature of this State, shall be admitted as good evidence thereof in all Courts of law, without any further proof whatsoever.

Action of debt may be brought on any judgment rendered in this State.

SEC. 34. *Be it further enacted,* That upon the judgment for debt, damages or costs, which has been, or which shall be rendered and recorded by any Court of record, or any Justice of the Peace of this State, and remaining in force and unsatisfied, an action of debt may be brought in the same Court, or before the same Justice where such record remains, or in any Court of record, or before any Justice of the Peace, holding Pleas for the county in which either of the parties to such judgment, their executors or administrators shall dwell and reside at the time of bringing such action, and proper to try the same. And such judgment may be certified by the Clerk, for the time being of the Court, or by the Justice of the Peace, with whom such record remains.

In what county or court.

Action of debt may be bro't on judgment rendered in any other State;

SEC. 35. *Be it further enacted,* That upon the judgment for debt, damages or costs which has been, or which shall be rendered and recorded by a Court of record in any other of the United States, or by a Court of record of the United States and remaining in force and unsatisfied, an action of debt may be brought in any Court of record of this State, holden for the county in which either of the parties to such judgment, their executors or administrators shall dwell and reside, or in which any valuable goods, credits, or estate of any debtor, in such judgment shall be found at the time of bringing such action: *Provided,* That such judgment shall be certified in the manner which is, or shall be prescribed by any general law of the Congress of the United States.

in what county or court.

Judgment to be certified according to Act of Congress.

In such action interest to be cast on damages and costs.

SEC. 36. *Be it further enacted,* That in the action of debt, which shall be duly maintained upon any judgment as aforesaid, lawful interest shall be allowed, as well upon the costs as upon the debt or damages, or the balance thereof due and recoverable, and judgment shall be rendered thereon accordingly.

SEC. 37. *Be it further enacted,* That all executions issued upon any judgment in civil causes, shall be made returnable at such times as are provided by the several laws of this State; and in all cases where a writ of execution shall issue, there shall be expressed therein the time and place when and where the same shall be returnable.

How executions are to be made returnable.

SEC. 38. *Be it further enacted,* That the Clerks of the several Courts within this State, may, and are hereby respectively empowered to grant summons for witnesses in civil causes, directed to the persons to be summoned. And if any person who shall be served with lawful process, or summons to testify, depose, or give evidence concerning any cause or matter depending in any of the Courts aforesaid, or before any Justice of the Peace, and who shall have a sum of money tendered to him which shall be equal to his legal fees for travel to the place where the Court is held, and one day's attendance, do not appear according to the tenor of the process or summons, having no reasonable let or impediment to the contrary, such person shall be liable to the action of the aggrieved party for all damages by him sustained by such default, and the Court or Justice of the Peace shall have power by attachment to bring such contemptuous witness into Court, or before him, and to fine him at discretion, not exceeding the sum of twenty dollars, and shall order him to pay the cost of such attachment.

Clerks may grant summons for witnesses in civil cases.

Penalty for witness not obeying summons, on tender of fees.

Amount to be tendered.

Court may issue attachment against such witness.

SEC. 39. *Be it further enacted,* That when any person in whose favour a judgment is given at the Circuit Court of Common Pleas, shall appeal therefrom, when an appeal is by law allowed, because the damages given are too small, he shall be entitled to a Jury at the Supreme Judicial Court to inquire into the damages, without any further notice to the appellee. And when in the Circuit Court of Common Pleas judgment shall be given either upon abatement or demurrer, the party against whom judgment is given, shall have the privilege of appealing, in case the action is appealable without any further proceedings had in the Circuit Court of Common Pleas. And all agreements for waving pleas, and for amendments, and for making new pleas at the Supreme Judicial Court made and entered upon the records

Appeal allowed from C. C. Pleas to Sup. Judicial Court.

Appeal may be from judgment on plea in abatement or demurrer.

Agreements for waving pleas, and for amendments, &c. to be binding.

of the Circuit Court of Common Pleas shall be binding on the parties throughout the whole process of the suit.

Indictment to be found in the county where death happened, though mortal wound were given in another county:

SEC. 40. *Be it further enacted,* That where any person shall be feloniously stricken, poisoned or injured in one county in this State, and die of the same stroke, poisoning or injury in another county thereof; that then an indictment thereof, found by the Grand Jurors of the county where the death shall happen, before the Justices of the Supreme Judicial Court there held, shall be as good and effectual in law as if the stroke had been given, or poisoning, or injury done in the same county where the party shall die, or where the said indictment shall be found.

So if mortal wound were given on high seas.

SEC. 41. *Be it further enacted,* That where any person shall be feloniously stricken, poisoned or injured, on the high seas and without the limits of this State, and die of the same stroke, poisoning or injury, in any county thereof, that then an indictment thereof found by the Grand Jurors of the county where the death shall happen before the Justices of the Supreme Judicial Court there held, shall be as good and effectual in law as if the stroke had been given, or poisoning or injury done in the same county where the party shall die.

Proceedings when a person indicted stands mute.

SEC. 42. *Be it further enacted,* That if any person shall be indicted of any offence against this State for which the punishment is or shall be declared to be death, and shall stand mute, or refuse to plead, the Court shall proceed to the trial of the person so standing mute in the same manner as if he or she had pleaded not guilty, and shall render judgment accordingly. And no person who shall be indicted for any such offence, shall be allowed to challenge peremptorily above the number of twenty persons of the Jury.

If the accused be acquitted of part of felony charged and convicted of residue.

SEC. 43. *Be it further enacted,* That when any person indicted of any felony, shall be by the verdict of the Jury of trials upon such indictment acquitted from part of such indictment, and convicted of the residue thereof, any such verdict may be accepted and recorded in the Court where such trial shall be; and thereupon such person so indicted, may be adjudged to be guilty of the offence, if any, which shall appear to such Court to be substantially alleged in and by the residue of such indictment, if the same shall amount

What judgment Court may render.

to a felony, and shall be sentenced and punished accordingly.

SEC. 44. *Be it further enacted*, That any person who shall be held in prison upon suspicion of having committed a crime for which he may have sentence of death passed upon him, shall be bailed or discharged, if he is not indicted at the second term of the sitting of the Supreme Judicial Court in the county where the crime is alleged to have been committed, when there are two terms a year in such county. And in such counties as have but one Supreme Judicial Court in a year, the defendant shall be bailed or discharged, if he is not indicted at the first term: *Provided*, Such person shall have been held in prison for the space of six months next preceding the day of the sitting of the Court. And when any person shall be held in prison under indictment, he shall be tried or bailed at the first term next after his indictment, if he demands the same, unless it shall appear to the Court that the witnesses, on behalf of the government, have either been enticed away or are detained by some inevitable accident from attending. And all persons under indictment for felony shall be bailed or tried at the second term after the bill shall be returned, if they demand it.

Persons in prison, on suspicion, to be bailed or discharged, unless indicted at second term where two Courts are held in the year, or at first term, if there be but one.

Provided he has been in prison six months.

If in prison and indicted, to be tried or bailed at first term, if demanded, after indictment found.

Persons indicted to be tried or bailed at second term.

SEC. 45. *Be it further enacted*, That in all informations to be exhibited, and in all actions or suits to be commenced against any person or persons, on the behalf of any informer, or on the behalf of the State, and any informer for or concerning any offence committed or to be committed against any penal statute, the offence shall be laid and alleged to have been committed in the county where such offence was in truth committed and not elsewhere, and if the defendant, in any such information, action or suit, pleadeth that he owes nothing, or that he is not guilty, and the plaintiff or informer in such information, action or suit, upon evidence to the Jury that shall try such issue, shall not both prove the offence laid in the said information, action or suit, and that the same offence was committed in that county, the issue shall be found for the defendant or defendants.

Informations and actions on penal statutes, on behalf of informer, or State and informer—where to be brought and tried.

SEC. 46. *Be it further enacted*, That if any information, suit or action, shall be brought or exhibited against any person or persons for any offence committed against the form

In such information or action defendant may

plead general
issue and give
special matter
in evidence.

of any penal law, on behalf of any informer, or on behalf of the State and any informer, it shall be lawful for such defendants to plead the general issue, and give any special matter in evidence to the Jury, which shall be as available to him or them, as if he or they had sufficiently pleaded the same matter in bar, or discharge of such information, suit or action.

No person to
be executed
but by warrant
from Supreme
Executive,
&c.

SEC. 47. *Be it further enacted,* That no person upon whom sentence or judgment of death shall be passed or given by the Justices of the Supreme Judicial Court, shall be executed in pursuance of such judgment, before the whole record of such proceedings or case be certified by the Clerk of the same Court, under the seal thereof to the Supreme Executive Authority of this State, nor until a warrant shall be issued by the said Supreme Executive Authority, under the great seal of this State, with a copy of the record thereunto annexed, directed to the Sheriff of the county wherein the trial of the person so convicted as aforesaid, was had, commanding the same Sheriff to cause execution to be done upon the person so convicted as aforesaid, in all things according to the judgment against him. And the Sheriff to whom such warrant shall be directed is hereby authorized and required to execute the same in due form of law.

[Approved March 19, 1821.]

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CHAPTER LX.

An Act respecting the Attachment of Property on Mesne Process, and directing the issuing, extending, and serving of Executions.

Attachment to
hold for 30
days after
judgment.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That all goods and estate attached upon mesne process for the security of the debt or damages sued for, shall be held for the space of thirty days after final judgment, to be taken in execution; and if the creditor shall not take them in execution within thirty days after judgment, the attachment shall be void. And the share or shares, or interest of any person in any turnpike, bridge, canal or other company which heretofore has been, or hereafter may be incorporated, with all the

Attachment of
shares in com-
panies to bind
the same and