

# MAINE STATE LEGISLATURE

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ACTS AND RESOLVES,

PASSED BY THE

TWENTY-FIRST LEGISLATURE

OF THE

S T A T E O F M A I N E ,

JANUARY SESSION, 1841.

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Published by the Secretary of State, agreeably to Resolves  
of June 28, 1820, and February 26, 1840.

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AUGUSTA:  
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1841.

**PUBLIC AND SPECIAL LAWS**  
OF THE  
**STATE OF MAINE.**  
**1841.**

[supplied from page 289 of volume]

SECT. 3. *Be it further enacted,* That this Act <sup>When to take effect.</sup> shall take effect from and after its approval by the Governor.

[Approved April 13, 1841.]

### Chapter 171.

AN ACT to amend the Revised Statutes.

*Be it enacted by the Senate and House of Representatives in Legislature assembled,* That the act passed on the twenty-second day of October last, entitled "an act for revising, arranging, and amending the public laws of the state," be amended as follows:

SECTION 1. The first chapter shall be amended in the third section, by striking out from the twelfth clause the words, "in all cases where an affirmation may be substituted for an oath," and inserting the following, "and in all cases, where a person, required to be sworn, is conscientiously scrupulous of taking an oath, he may affirm"; so that the clause, as amended, will be as follows:

R. S. ch. 1.

XII. The word "oath," shall be construed to include, "affirmation"; and in all cases, where a person, required to be sworn, is conscientiously scrupulous of taking an oath, he may affirm.

Affirmation may be substituted for an oath by persons conscientiously scrupulous.

The same chapter shall be further amended, in the fourth section, by striking out the words, "first day of April," and inserting the words, "from and after the thirty-first day of July"; and by adding at the close of the section the words, "and also excepting chapter sixteen, entitled, 'Of the Militia,' which shall take effect from and after the first day of January, in the year one thousand eight hundred and forty-two"; so that the fourth section, as amended, shall be as follows:

SECT. 4. All the chapters of these revised statutes shall take effect from and after the thirty-first day of July, in the year one thousand eight hundred and forty-one, except where other provision is expressly made, and also excepting chapter sixteen, entitled, "Of the Militia," which shall take effect from and after the first day of January, in the year one thousand eight hundred and forty-two.

Revised statutes take effect Aug. 1, 1841.

R. S. ch. 14.

**SECTION 2.** The fourteenth chapter shall be amended in the tenth section, by striking out the words, "January first, in the year of our Lord one thousand eight hundred and forty-one," and inserting the words, "the time when the revised statutes shall take effect"; so that the section, as amended, shall be as follows :

Laws retained in force, for the purposes of taxes assessed prior to August 1, 1841.

**SECT. 10.** All laws, now in force, relating to the collection of taxes, shall be and remain in full force, for all the purposes of collecting any taxes, which may have been assessed, prior to the time when the revised statutes shall take effect.

The same chapter shall be amended, in the thirty-second section, by striking out the words, "treasurer of the county," and inserting the words, "commissioners of the county"; so that the section, as amended, shall be as follows :

Assessors to observe warrants of state treasurer and of county commissioners.

**SECT. 32.** All assessors, chosen or appointed as above provided, shall duly observe all such warrants, as they shall receive, while in office, from the state treasurer, or the commissioners of the county in which they reside, pursuant to any act of the legislature, imposing it for the use of the state, or granting it for the use of the county.

The same chapter shall be amended, in the thirty-fourth section, by striking out the words, "county treasurer's warrant to them to assess," and inserting the words, "warrant of the county commissioners by them to be assessed"; so that the section, as amended, shall be as follows :

Penalty, if assessors neglect to assess a tax required by warrant of county commissioners.

**SECT. 34.** If such assessors shall neglect to assess the amount of the county tax, required in the warrant of the county commissioners, by them to be assessed, they shall forfeit that sum to the use of said county, and the same shall be levied by the sale of the estate, real and personal, of such assessors, by virtue of a warrant issued by the county treasurer to the sheriff of the county, for that purpose.

The same chapter shall be further amended, in the thirty-sixth section, by striking out the words, "from the respective treasurers," and inserting the following, "mentioned in the thirty-second section"; so that the section, as amended, shall be as follows :

**SECT. 36.** The county commissioners of the county, in which such assessors dwell, shall forthwith appoint other proper persons to be assessors of such state and county taxes, according to the directions of the warrants, mentioned in the thirty-second section; and such newly appointed assessors shall be sworn to perform the same duties, and be liable to similar penalties, as the former assessors.

Commissioners may appoint other assessors in case of such neglect.

The same chapter shall be amended in the forty-fifth section, at the close, by striking out the words, "who issued the warrant," and inserting the words, "of the state or of the county, as the case may be, for the use of the same"; so that the section, as amended, will be as follows :

**SECT. 45.** The person, to whom such warrant shall be directed, shall obey the command therein, on penalty of forfeiting and paying the whole sum named and ordered in said warrant, to be levied on such plantation, to be recovered by the treasurer of the state, or of the county, as the case may be, for the use of the same.

Penalty for refusal to obey a warrant of county commissioners calling a meeting of a plantation for the purpose of organization.

The same chapter shall be further amended, in the fifty-first section, by striking out the words,

"Including turnpike road."

Turnpike road not required to be assessed as real estate.

The same chapter shall be further amended, in the fifty-sixth section, by adding at the end thereof, the following words :

And the provisions of this section shall extend to the assessors of any town, who are or may be required by law to assess any tax upon any school district; the assessors being responsible only for their own personal faithfulness and integrity, and further liabilities, if any, shall rest solely with such school district.

Liabilities for assessment of school district taxes to rest with such districts.

**SECTION 3.** The sixteenth chapter shall be amended, by striking out the fifth section, and inserting, instead thereof, a new section, in the following words :

R. S. ch. 16.

**SECT. 5.** Any staff officer who has ceased to act as such, in consequence of the resignation, promotion or removal of the officer who appointed him, may be honorably discharged; and any such officer, who has been so discharged, not having served five years, may

Discharged staff officers, not having served five years, exempt from duty by paying two dollars, yearly.

be exempted from military duty, by paying two dollars per year, as provided in the preceding section.

The same chapter shall be further amended by inserting, at the end of the twenty-fifth section, the following words :

Brigade inspectors to make their annual returns by the last day of October.

The brigade inspectors shall make the annual returns of their inspections of the militia of the respective brigades to which they belong, to the adjutant general, and also transmit abstracts thereof to the major generals of the respective divisions to which they belong, on or before the last day of October annually.

The same chapter shall be further amended, in the forty-second section, by striking out all the section after the word, "allowance," and inserting, instead thereof, the following words :

Commanders of volunteer companies, how to apply for rations and powder for soldiers.

Provided that, when the commanding officer of a company, raised at large, shall make requisitions to such treasurer, for rations in money and for powder, directed by law, he shall designate the number and names of the members of such company, belonging to such town, city or plantation, and certify that they perform military duty in his company.

The same chapter shall be further amended, in section forty-five, after the words, "the adjutant general and quarter master general, to be appointed by the governor, with advice of the council, with the rank of brigadier general," by inserting the words following :

Adjutant and quarter master general to keep their offices at the seat of government; term of office limited.

And said officers shall keep their respective offices at the seat of government; and their commissions shall continue in force four years from the time of their appointment, unless they shall be sooner removed by the governor and council.

R. S. ch. 17.

SECTION 4. The seventeenth chapter shall be amended, in section fifty-one, by striking out the words, "under the provisions of the sixteenth section of chapter seventy-seven;" so that said fifty-first section, as amended, will be as follows :

Tax on banks appropriated to schools.

SECT. 51. All the sums, which may hereafter be received by the state, for the tax on the several banks, shall continue to be appropriated to the support of town or district schools.

SECTION 5. The twentieth chapter shall be amended, in R. S. ch. 20. section one, by striking out the following words :

**For the use and support of the gospel ministry in** Fee in ministerial lands.  
such town.

The same chapter shall be further amended, by striking out Lands reserved for the first settled minister appropriated to schools. the seventh section thereof.

The same chapter shall be further amended, in section fourteen, by inserting, after the words, "any sale of the same," the following words, "to the persons and uses specified in the respective grants and reservations, under which such lands have become so vested"; so that said fourteenth section, as amended, will be as follows :

SECT. 14. In all cases, where such lands have become vested in any parish, the assessors, clerk and treasurer, for the time being, where no other trustees for the same purpose are already appointed, are hereby constituted a body corporate, and trustees of the ministerial fund in such parish forever, with like powers, and under like liabilities, as selectmen, town clerk and treasurer; and shall pay the annual income and profits of such lands, and interest on the proceeds of any sale of the same, to the persons and uses specified in the respective grants and reservations, under which such lands have become so vested; and shall, at each annual meeting for choice of parish officers, exhibit an account of their proceedings, and a statement of funds, receipts and expenditures. Assessors, clerk and treasurer of parishes to be trustees of funds, to the uses originally prescribed.

The same chapter shall be further amended, in section fifteen, by inserting, after the words, "the first meeting of the trustees," the words, "constituted by the third and fourteenth sections"; so that the said fifteenth section, as amended, will be as follows :

SECT. 15. The first meeting of the trustees, constituted by the third and fourteenth sections, in any year, may be called by a personal notice, given by any one of said trustees, to all the other trustees, of the time and place of meeting, seven days at least, prior to said meeting. First meeting of town and parish trustees, how called.

SECTION 6. The thirty-second chapter shall be amended, by inserting, at the end of section five, the following words : R. S. ch. 32.



Insane poor to be removed to, and supported in the insane hospital. Proviso.

If any such poor and indigent person be insane, the said overseers shall, either wholly, or in part, with the assistance of the friends of such person, cause him to be removed to, and provide for his support in, the insane hospital of this State: *Provided*, that he can, under the regulations of the hospital for the time being, be admitted therein, and that, in the opinion of the superintendent of the hospital, or of such physician as he shall depute to make an examination into the case, the insanity of such person be such, that he will derive benefit from a residence therein. And the said superintendent shall appoint a suitable physician, as near as may be to the place of residence of such insane person, to make such examination, the expense whereof shall be paid by the town, to which such person is chargeable for support.

R. S. ch. 60.

SECTION 7. The sixtieth chapter shall be amended, in the first section, by adding, at the close thereof, the following words, "or otherwise containing one hundred and twenty-eight cubic feet; and the measurer shall make due allowances for refuse or defective wood, or bad stowage;" so that the section, as amended, shall be as follows:

Measurer to make allowance for refuse or defective wood.

SECT. 1. All cord wood, exposed to sale, shall be four feet long, including half the scarf; and, being well and closely laid together, a cord of wood or bark shall measure eight feet in length, four feet in width, and four feet in height, or otherwise containing one hundred and twenty-eight cubic feet; and the measurer shall make due allowance for refuse or defective wood, or bad stowage.

R. S. ch. 77.

SECTION 8. The revised statutes shall be further amended by inserting between chapter seventy-six, and chapter seventy-eight, a new chapter, to be numbered seventy-seven, and entitled, "of banks," in the following words:

## CHAPTER 77.

### OF BANKS.

All banks, except savings banks subject to the provisions of this chapter.

SECTION 1. Every bank, which now is, or shall hereafter be incorporated under the authority of this State, except savings banks, shall be governed by the

following rules, and subjected to all the duties, limitations, restrictions, liabilities and provisions, contained in this chapter.

SECT. 2. Any bank, hereafter incorporated, shall, within ten days after acceptance of its charter, give notice in writing of such acceptance to the Secretary of State.

Notice of acceptance of charter to be given to Secretary of State.

SECT. 3. Every bank, incorporated as aforesaid, shall be known by the corporate name of "the President, Directors and Company of the — bank —," (the blank to be filled with such name as its charter may authorize), and shall, except when special provision is otherwise made, be entitled to all the powers and privileges and be subject to all the liabilities contained in the seventy-sixth chapter of the revised statutes.

Corporate name, privileges and liabilities.

SECT. 4. Every bank shall have not less than five, nor more than nine directors, exclusive of such as may be appointed by the Governor and Council, as hereinafter provided, a majority of whom shall be residents in the County where such bank is established; and none but a stockholder in such bank and a citizen of, and resident in the State, shall be eligible by the stockholders to that office, nor shall any two members of a copartnership, be directors of the same bank, nor shall any person be a director in two banks, at one and the same time.

Number and qualifications of directors.

SECT. 5. The directors shall choose one of their own number to act as president, and may make him such compensation as to them shall appear reasonable. The assent of a majority of the directors shall always be necessary for the transaction of business.

Choice of president. Quorum.

SECT. 6. The directors shall be chosen by ballot, annually, at a meeting of the stockholders, to be holden on one of the first fifteen days of the month of October, annually, at some place within the town where the bank is established, which time and place shall be designated by the directors for the time being, by giving public notice thereof, fourteen days previous to the meeting, in some newspaper printed in the

Annual meeting for choice of directors.

County, and, if there be no newspaper printed in said County, then in some one published at the seat of government of the State; and, in all cases wherein the bank shall be the owner of any of the shares of its stock, or where any shares of its stock shall be pledged to said bank, or held by any person or persons, as trustee for said bank, such shares as are so owned, pledged or held, shall in all cases be silent, and shall not be represented by any person for the purpose of having a voice in the business or other transactions of said bank.

Votes allowed to each stockholder. Proxies.

SECT. 7. Every stockholder shall be entitled to vote, according to the number of shares he may hold, in the following proportions, that is to say: for one share, he shall have one vote, and for every two additional shares, he shall have a right to one vote more; *Provided always*, that no one stockholder shall have more than twenty votes: absent members may vote by proxy, authorized in writing.

Special meetings. Vacancies in board of directors.

SECT. 8. Directors may call special meetings of the stockholders, as often as they think the interest of the corporation may require it, giving the same notice as before provided: vacancies in the board of directors may be filled at any such special meeting, the purpose being specified in the notice.

Where the bank shall be kept.

SECT. 9. Every bank shall be kept in the town where originally established.

When a bank may commence business.

SECT. 10. No bank shall go into operation until one half, at least, of its capital stock shall have been paid in, in gold and silver money, which shall be in its vaults, and shall have been examined by three commissioners, appointed by the Governor with the advice and consent of the Council. Said commissioners, at the expense of the bank, shall examine and count the money actually in the vaults, and ascertain by the oaths of a majority of the directors, that such money has been paid in by the stockholders, toward the payment of their respective shares, and not for any other purpose, and that it is intended, that the same shall remain therein as part of said capital; and the

said commissioners shall return a certificate thereof to the office of the Secretary of State.

SECT. 11. The capital stock of every bank, hereafter incorporated under the authority of this State, shall be paid in, one half in six months and the other half in twelve months after the date of its charter, in gold and silver money, of the legal currency of the United States. No stockholder shall, at any one time, hold or own more than one fifth of the capital of any bank.

Instalments of capital stock, when payable.

No stockholder to own more than one fifth.

SECT. 12. No shares in the capital stock of any bank shall be sold, or transferred, except by execution or distress, or by executors, administrators, or guardians, until the whole amount of the capital stock shall have been paid in.

Shares not transferable till all the capital stock is paid in. Exception.

SECT. 13. The State shall have a right, whenever the Legislature shall make provision by law, to subscribe, on account of the State, to the capital of any bank, a sum or sums not exceeding in the whole one tenth part of the previous capital of such bank in addition to the same, subject to such rules, regulations, and provisions, as by the Legislature shall be made and established for the manangement of the same; and to appoint an additional director in such case.

Right of the State to take stock in any bank.

SECT. 14. Shares in any bank shall be liable to be attached on mesne process and taken in execution, and sold, agreeably to the provisions of chapters, one hundred fourteen, and one hundred seventeen, of the revised statutes.

Attachment and sale of shares on writs and executions.

SECT. 15. The lands of any bank, and all the right, title, claim and interest of any bank in lands, mortgaged for security of any debt due or assigned to such bank, and any debt due such bank and secured by such mortgage, shall be liable to be attached on mesne process and taken in execution and sold, agreeably to the provisions contained in chapters ninety-four, and one hundred fourteen, of the revised statutes.

Lands and mortgages may be taken and sold.

SECT. 16. Every bank, within ten days after the first Monday of April and October, respectively, in each year, shall pay to the Treasurer of the State, for

Semi-annual State tax.

the use of the same, a tax of one half of one per cent. on the amount of its capital stock, actually paid in.

Payment thereof, how enforced.

SECT. 17. If any bank shall neglect to pay the aforesaid tax for thirty days after the same shall have become due, it shall be the duty of the Treasurer to issue a warrant of distress to compel the payment of the same, out of the estate and effects of said bank; which warrant shall be executed in the same way, as warrants of distress issued against the estate and effects of delinquent sheriffs, under the provisions of chapter fourteen, section one hundred twenty-seven, of the revised statutes.

Power of banks to hold real estate. Restriction.

SECT. 18. Every bank may hold, with power to sell and dispose of the same, such real estate as may be requisite for the convenient transaction of the business thereof; but the real estate so held shall not, unless by special authority for the purpose, exceed twelve per cent. on the amount of the capital stock, exclusive of what the bank may hold on mortgage, receive on execution, or take as security for, or in payment of, any debts.

Loans and discounts. Restriction on loans to directors.

SECT. 19. Every bank, subject to such restrictions as are mentioned in this chapter, may loan and negotiate their moneys and effects, by discounting on banking principles on such security as their regulations may permit; *Provided*, that no loan shall be made by any bank upon pledge of its own stock; nor shall any bank discount notes, bills of exchange, drafts or other security for the payment of money, without at least two responsible names as principals, sureties, or indorsers thereon (and for this purpose any firm composed of two or more persons are to be considered as one person) or adequate personal pledges, or collateral security; and no loan shall be made to any stockholder, until the amount of his shares shall have been paid into the bank. The aggregate of all the debts due from the directors as principals, indorsers or sureties, shall, at no time, exceed one third part of the amount of the capital of such bank; nor shall the debts due from any one director, as principal, indorser

or surety, exceed eight per cent. of the capital stock.

SECT. 20. No bank shall vest, use or improve any of its moneys, goods, chattels or effects, in trade or commerce; but any bank may sell all kinds of personal pledges, lodged with it by way of security, to an amount sufficient to reimburse the sum loaned, with interest and expenses. Not to engage in trade.

SECT. 21. The directors shall make half yearly dividends of the profits of the bank. Semi-annual dividends.

SECT. 22. The directors shall appoint a cashier, and may appoint clerks and other officers for conducting the business of the bank, with such salaries as to them may seem meet; which cashier, clerks and other officers shall be removable at the pleasure of the directors. Cashier, and other officers.

SECT. 23. The cashier of any bank shall not at the same time be a director therein. Cashier not to be a director.

SECT. 24. The cashier and clerks, before they enter upon the duties of their respective offices, shall be sworn, and shall also give bonds, with two or more sureties, to the satisfaction of the directors, conditioned for the faithful performance of the duties of their respective offices. The bond of the cashier shall be renewed every year in the month of October, and in no case shall the bond, given by the cashier, be signed by any director of the bank for which he is appointed, nor be given for a less penal sum than twenty thousand dollars, nor greater than fifty thousand dollars; and said cashier or clerks shall have no voice in the choice of directors of said bank, and shall not represent, for themselves or by proxy, any shares in said bank. Cashier and clerks to be sworn and give bonds.

SECT. 25. The cashier of every bank shall, on the application in writing of the proprietors of one fifth part of the capital stock thereof, call special meetings of the stockholders, by giving notice of such meetings in the manner provided for notifying the annual meeting; and, in case of refusal by such cashier, any justice of the peace in the County where the bank is established, may, on such application, call such meetings, giving the like notice. Special meetings of stockholders, how called.

Limitation of amount of debts and credits.

SECT. 26. The total amount of debts, which any bank shall at any time owe, shall not exceed twice the amount of its capital stock, actually paid in, exclusive of sums due on account of deposits, not bearing interest; nor shall there be due to such bank at any time, more than double the amount of its capital stock, actually paid in.

Exception.

SECT. 27. Debts due to any bank, from any other bank, payable on demand, including bills of the bank, so indebted, shall not be deemed debts due to a bank, within the intent and meaning of the preceding section.

Liability of directors, if they exceed these limits.

SECT. 28. If any bank shall become indebted, beyond the amount allowed by the two preceding sections, the directors, under whose administration it shall happen, shall be liable for the excess in their private capacities; any condition, release or agreement to the contrary notwithstanding; and an action of debt may in such case be brought against them, or any of them, or the heirs, executors or administrators of them, by any creditor of such corporation, and may be prosecuted to final judgment and execution; or such creditor may have a bill in equity against them in the supreme judicial court.

Innocent directors exonerated.

SECT. 29. Any director, who may have been absent, when such excess of debts was contracted, or who may have at the time dissented from the resolution or act, whereby the same was contracted, may exonerate himself from being so liable, by forthwith giving notice of the fact, and of his absence or dissent, to the Governor and Council, and to the stockholders at any general meeting; which meeting he shall have power to call for that purpose.

Banks still liable.

SECT. 30. The provisions of the two preceding sections shall not be construed to exempt any bank, or the lands, goods or chattels of the same, from being also liable for the excess therein mentioned.

Loans and issues not to be made, but at the banking house.

SECT. 31. No loan nor discount shall be made, nor shall any bill or note be issued, by any bank, nor by any person on their account, except at the usual banking house of the same.

SECT. 32. The amount of notes or bills at any time issued and put in circulation, as money, by the several banks incorporated in this State, shall not exceed the following amounts and proportions respectively, viz: a bank, authorized to have a capital of fifty thousand dollars, may put into circulation an amount equal to its capital, actually paid in; a bank, authorized to have a capital of more than fifty thousand, and less than one hundred and fifty thousand, an amount equal to three fourths of its capital, actually paid in; and a bank, authorized to have a capital of one hundred and fifty thousand dollars or upwards, an amount equal to two thirds of its capital, actually paid in.

Amount of circulation.

SECT. 33. All bills shall be issued in the name of the president, directors and company of the bank issuing them, and shall be signed by the president and cashier thereof; but all bills, signed by either the president or cashier thereof, which shall be in circulation through the agency or neglect of any officer of the bank, shall be binding on the corporation. Every bank shall receive, in payment for all debts due such bank, the bills issued by the same, if offered.

Form and signature of bills. Every bank to receive its own bills in payment of debts.

SECT. 34. Every bank within this State, whether heretofore limited by their charters in this respect or not, may issue bills under five dollars, to the amount of one quarter part of its capital, actually paid in, and no more; and no bank shall issue or pay out, or receive in payment or on deposit, any bill or note less than one dollar, or on which is expressed any fractional part of a dollar, under penalty of one hundred dollars for each offence.

Restriction as to bills under \$5.

Fractional bills prohibited.

SECT. 35. Any bank may allow a certain rate of interest for deposits made therein, if they think proper; but no bank shall issue any note, bill, check or other negotiable security, payable at a future day, or bearing interest.

Interest may be paid on deposits, but not to be payable on notes.

SECT. 36. No bank shall issue any bill, note, check or draft, redeemable at such bank in any other manner than by payment in specie; but every bank which shall issue any bill, note, check or draft, re-

Bills to be redeemable in specie at the bank.



deemable in any other manner than by payment in specie on demand, or payable at any place, other than the place where such bank is by law established and kept, shall be liable to pay the same in specie to the holder thereof, on demand at said bank, without a previous demand at the place where the same is made payable by its tenor.

Exception as to drafts or checks.

SECT. 37. Nothing contained in the preceding section shall extend to any draft or check for any balance due to said bank, nor to any check or draft drawn by an officer of any bank within this State, on any other bank, either within or without this State; but all such checks or drafts shall first be presented for payment at the place or bank, on which the same shall be drawn, before the same shall be demanded at the bank which issued them.

Twenty-four per cent. yearly damages for not redeeming bills.

SECT. 38. If the officer of any bank shall neglect or refuse to redeem in gold or silver money, of the legal currency of the United States, any note, bill, check or draft, described in the two preceding sections, and demandable at such bank, or any other bill or note of such bank, on demand, in its usual banking hours, such bank shall be liable, after the expiration of fifteen days from such demand, to pay to the holder thereof, in damages, at the rate of twenty-four per cent. by the year, for the time during which payment shall be delayed or refused, from and after said fifteen days.

Interest to be paid till yearly damages commence.

SECT. 39. The holder of any bill, note, check or draft, after demand made, as described in the preceding section, shall also be entitled to interest at the rate of six per cent. a year, from the time of such demand, until the rate of damages therein specified shall commence.

Damages to cease after tender of the amt.

SECT. 40. If the bank, at which payment of such bill, note, check or draft shall have been demanded and refused, shall, at any time afterwards, cause a legal tender to be made, at the place of residence of the person who made such demand, or of any known owner or assignee of such person, or of his agent, of the amount of such bill, note, check or draft, and all

interest, damages and costs, which may have accrued at the time of such tender, all further interest and damages shall thereafter cease on account of the same.

SECT. 41. Whenever any bill, note, check or draft shall be presented for payment at any bank in this State, which issued and is liable to pay the same, under the provisions of the thirty-eighth and thirty-ninth sections of this chapter, and payment thereof shall have been delayed or refused for the term of fifteen days, then the private property of the stockholders of said bank, to the amount of such shares as they may have acquired in said bank, after the taking effect of an Act entitled, "an Act further regulating banks and banking," passed March twenty-ninth, one thousand eight hundred and thirty-six, shall be liable to be attached on mesne process, and levied upon by execution, in any suit therefor which may be commenced against said bank, as well for the damages, as for the original demand and interest and costs.

Private property  
of stockholders  
liable in certain  
cases.

SECT. 42. Any director of any bank, against which any suit may be commenced, as specified in the preceding section, on demand of the plaintiff in such suit, or on demand of any officer legally charged with the service of any writ or execution, as aforesaid, is hereby required to make and exhibit, to such plaintiff or officer, a true list of the stockholders, liable as aforesaid, with the amount of stock on account of which they are so liable.

Directors to dis-  
close names and  
interests of st'k-  
holders.

SECT. 43. Should any director of any bank, on demand, as aforesaid, unreasonably neglect or refuse to make and exhibit a true list, as provided in the preceding section, then the private property of such director shall be liable to attachment on mesne process or execution, to the full amount of the judgment which may be, or has been recovered in such suit.

Liability for  
neglect, on de-  
mand.

SECT. 44. If any loss or deficiency of the capital stock in any bank shall arise from the official mismanagement of the directors of such bank, the persons who are directors at the time of such mismanagement, and guilty thereof, shall, in their individual capacities,

Loss from mis-  
management of  
directors, how  
made up.

be respectively liable to pay the same; and, in case of their inability to pay such loss or deficiency, the persons who are stockholders at the time of such official mismanagement, shall be liable therefor; *Provided*, that no stockholder, other than directors guilty as aforesaid, shall be liable to pay a sum exceeding the amount of the stock, actually held by such stockholder at that time; and *provided also*, that such liability shall not continue beyond the term of one year from and after such time, as such stockholder may have bona fide transferred his stock, no process having, at the time of such transfer, been commenced against him on account of the same, either in law or equity.

Liability of stockholders, at expiration of charter.

SECT. 45. The holders of stock in any bank, at the time when its charter may expire, shall be liable, in their individual capacities, for the redemption and payment of all bills, which may have been issued by said bank, and which shall remain unpaid, in proportion to the stock they may respectively hold, at the dissolution of the charter; *Provided*, that such liability shall continue for the term of two years only from the time, that notice, that such charter has expired as aforesaid, shall have been given in some newspaper, specially authorized to publish the laws of the State.

Mode of enforcing payment from directors or stockholders.

SECT. 46. Any creditor of any bank, which may have sustained a loss or deficiency of its capital stock, through the official mismanagement of its directors, or any holder of any bill or bills issued by any bank, which bill or bills, after the expiration of its charter, shall remain unredeemed, and which may have been duly demanded of such bank, or at its last and usual place of transacting business, may pursue his remedy and avail himself of the liabilities of its directors and stockholders, specified in the two preceding sections, by a bill in equity to be prosecuted in the supreme judicial court; but this section shall not be construed to deprive any person, injured by the misconduct or neglect of the directors or other officers of any bank, of his right to a special action on the case, on the principles of the common law, against such director or other officer.

SECT. 47. Any stockholder of a bank, who, by virtue of any of the provisions of this chapter, shall have been obliged to pay any debt or demand against said bank, or any part thereof, out of his individual property, may have a bill in equity, in the supreme judicial court, to recover the proportional parts of such sums of money, as he may have so paid, from the directors or other stockholders liable for the same, and such damages and costs as the court may decree.

Mode of obtaining contribution by a stockholder who has been compelled to pay.

SECT. 48. Any corporation, which is or shall be a stockholder in any bank, shall be liable in its corporate capacity, to pay any loss or deficiency of the capital stock in such bank, arising from the official mismanagement of its directors, and shall also be liable for the payment and redemption of all bills, which shall have been issued by said bank, and which shall remain unpaid when its charter shall expire, in the same manner as individual stockholders are liable in their individual capacities; and such corporation may compel a contribution from other stockholders, in the manner prescribed in the preceding section.

Similar liabilities and remedies of corporations, when stockholders.

SECT. 49. No bank in this State shall be permitted to take any greater rate of interest or discount, on any note, draft or security, than at the rate of six per cent. a year, whether such loan be made in specie or otherwise, or agreement made to pay such loan in specie, or at a place other than the bank making such discount; but such interest or discount may be calculated and taken according to the established rules of banking; *Provided*, that in discounting drafts, bills of exchange or other negotiable securities payable at another place, the bank so discounting the same, may, in addition to the said interest, charge the then existing rate of exchange, between the place of discounting and the place where any such security may be payable.

Bank interest limited to six per cent.

SECT. 50. Upon any requisition of the legislature, each bank shall loan to the State a sum, not exceeding five per cent. of its capital stock at any one time, reimbursable by five annual instalments, or at any shorter period, at the election of the State, with the annual

Right of the State to require loans from banks.

payment of interest, at a rate not exceeding five per cent.; but the State shall not be entitled to demand, of any bank, loans, which shall together, at any one time, exceed one tenth part of its capital; and the faith of the State is pledged for the repayment of the same.

SECT. 51. Whenever a loan shall be required of any bank as aforesaid, the Treasurer of the State shall give notice in writing to the president or cashier thereof, of the amount which is to be furnished by such bank, and demand a loan of the same, conformably to the provisions of this chapter; which notice and demand shall be accompanied by a copy of the act or resolve of the legislature requiring such loan, attested by the Secretary of State, and by the approval of the Governor, of such demand, in writing.

SECT. 52. The cashier of each bank shall make a return of the state of such bank, as it existed on the first Saturday of any month, at two o'clock in the afternoon, when thereto required by the Governor, and shall transmit the same to the office of the Secretary of State, within such time as shall be directed by the Governor in his requisition aforesaid; stating the several particulars mentioned in the following form, exhibiting in distinct columns the amounts due from the bank, and the resources of the bank, viz :

State of \_\_\_\_\_ bank, on the first Saturday of \_\_\_\_\_, 18—, two o'clock, P. M.

<i>Due from the bank.</i>		<i>Resources of the bank.</i>	
Capital stock,	\$	Gold, silver and other coined metal, in its banking house,	\$
Bills in circulation,	\$	Real estate,	\$
Net profits on hand,	\$	Bills of other banks, incorporated in this State,	\$
Balances due to other banks,	\$	Bills of other banks, without the State,	\$
Cash deposited, including all sums whatsoever due from the bank, not bearing interest; its bills in circulation, profits, and balances due to other banks excepted,	\$	Balances due from other banks,	\$
Cash deposited bearing interest,	\$	Amount of all debts due, including notes, bills of exchange, and all stocks and funded debts of every description, excepting the balances due from other banks,	\$
<b>Total amount due from the bank,</b>	<b>\$</b>	<b>Total amount of the resources of the bank,</b>	<b>\$</b>

Requisition, how made.

Cashier to make returns, when required by the Governor. Form thereof.

Rate of last dividend, \$

Amount of last dividend, \$

When declared,

Amount of reserved profits at the time of declaring the last dividend, \$

Amount of debts due and not paid, and considered doubtful, \$

Bills in circulation under five dollars, \$

SECT. 53. The cashier of each bank shall, on the first Mondays of the months of January and June, in each year, make returns, exhibiting the state and condition of the bank, as existing at two o'clock in the afternoon of the preceding Saturdays, and transmit the same, within fifteen days, to the Secretary of State, stating all the particulars mentioned in the preceding section, with the addition of the following, viz :

Amount due from the directors, as principals, \$

Amount due from the directors, as sureties, \$

Amount due from stockholders, as principals, \$

SECT. 54. The returns, required in the two preceding sections, shall be signed by the cashiers of the several banks respectively, who shall make oath to the truth of said returns, according to their best knowledge and belief.

SECT. 55. The cashier of each bank, whenever required by the legislature, shall also make return, under oath as aforesaid, of the names of the stockholders, and the amount of stock owned by each in such bank.

SECT. 56. Whenever a return shall be made by any cashier, as provided in either of the four preceding sections, a majority of the directors of each bank shall certify, under oath, that the books of the bank indicate the state of facts so returned by their cashier, and that they have full confidence in the truth of said return.

SECT. 57. For neglect or refusal to make any such return, by such cashier and directors of any bank, such bank shall forfeit, for each offence, a sum not exceeding one thousand dollars, to the use of the State, to be recovered by the Treasurer thereof.

Cashier to make semi-annual returns. Form thereof.

Returns to be signed and sworn to.

Names of stockholders to be returned when required by the Legislature.

Cashier's return to be verified by the directors.

Penalty for not making returns.

SECRETARY OF STATE TO FURNISH BLANKS FOR RETURNS.

SECT. 58. The Secretary of State shall furnish to the cashier of every bank, in the month of March or April annually, at the expense of the State, four printed copies of each of the forms of the returns, required by the fifty second and fifty third sections of this chapter.

TO PUBLISH ABSTRACTS, & TRANSMIT A COPY TO EACH BANK.

SECT. 59. The Secretary of State, after receiving the returns required by the fifty-third section of this chapter, shall, as soon as may be, cause to be prepared and printed a true abstract from those returns, with each column of such abstract footed up; and transmit, by mail, one copy thereof to the cashier of each bank in the State; and further cause the same to be published in the State paper, and such other papers as the Governor and Council may direct.

BANK COMMISSIONERS; POWER AND DUTIES.

SECT. 60. The governor, with the advice of the Council, shall appoint two commissioners, who during their continuance in office, shall not hold any office in any bank in this State, and whose duty it shall be, at least once a year, and as much oftener as the Governor and Council shall deem it expedient, to inquire into and examine the transactions of the several banks incorporated in this State, and to ascertain the condition of the same, and whether there has been any departure, by brokerage or otherwise, from the ordinary business of banking associations; and said commissioners shall make report of their doings annually to the Governor and Council, to be laid before the legislature. Said commissioners shall be removable, and vacancies may be filled, at pleasure, by the Governor and Council.

POWER TO EXAMINE BANKS. MAY EXAMINE OFFICERS ON OATH. PUNISHMENT FOR REFUSAL TO TESTIFY.

SECT. 61. The bank commissioners shall have power to visit every bank in this State, as often as they deem it expedient for the public safety, and shall thoroughly inspect and examine all the affairs of said corporations, and make any and all such inquiries as may be necessary to ascertain the condition of said corporations, and their ability to fulfil all the engagements made by them; and said commissioners may summon and examine, under oath, all the directors, officers or agents of said corporations, and such other

witnesses as they may think proper, in relation to the affairs, transactions and condition of said corporations ; and any such director, officer or agent, or other person, who shall refuse, without justifiable cause, to appear and testify, when thereto required as aforesaid, or who shall obstruct, in any way, any commissioner in the discharge of his duty, as prescribed in this chapter, shall, on conviction, be subject to a fine, not exceeding one thousand dollars, or imprisoned for a term, not exceeding two years.

SECT. 62. If, upon examination of any bank, said commissioners shall be of opinion that the same is insolvent, or that its condition is such as to render its further progress hazardous to the public, or to those having funds in its custody, or that said bank has exceeded its powers, or has failed to comply with all the rules, restrictions and conditions provided by law, they may apply to some one of the justices of the supreme judicial court, to issue an injunction to restrain such corporation, in whole or in part, from further proceeding with its business, until a hearing of the said corporation can be had. And said justice shall forthwith issue such process ; and, after a full hearing of the said corporation upon the matters aforesaid, may dissolve or modify, or make perpetual the same ; and make such orders and decrees to suspend, restrain or prohibit the further prosecution of the business of said corporation, as may be needful in the premises, according to the course of chancery proceedings ; and, at his discretion, may appoint agents or receivers to take possession of the property and effects of the corporation, subject to such rules and orders as may from time to time be prescribed by the supreme judicial court, or any justice thereof in vacation. And said commissioners shall have power to appoint a clerk of their board, prescribe his duties, and fix his compensation, whenever the public good may, in their opinion, demand such appointment. And all banks, whose charters have expired, or may hereafter expire, or whose charters have been, or may

Proceedings by commissioners, if they deem a bank unsafe.

Injunction, and appointment of receivers to close its concerns. Liability of banks after expiration of their charters.



hereafter be surrendered or revoked, shall continue subject to all the provisions and penalties in this chapter, during the time allowed their stockholders to act in their corporate capacity, for the purpose of closing its concerns; and it shall be the duty of the commissioners to examine and proceed against any such bank in the same manner, as against banks whose charters have not expired, or been surrendered or revoked.

Plates for bills;  
bills not void by  
alterations.

SECT. 63. No bill or note, of the denomination of one hundred dollars, or less, shall be issued by any bank for circulation, unless the same shall be impressed from the patent stereotype plate of Abraham Perkins or his assigns, or unless said bank shall be in writing authorized by the aforesaid commissioners to issue bills of such other plates, as they may judge to afford greater security against counterfeiters, from the mode of their engraving or style of workmanship; but the Legislature may, at any time hereafter, authorize and require the use of other plates. Every bank shall be held to pay to any bona fide holder the original amount of any note of said bank, notwithstanding the same may have been altered to a larger amount.

Weights to be  
sealed by the  
State sealer.

SECT. 64. The directors of the several banks, once in five years, shall have all the weights, used in their respective banks, compared, proved and sealed, by the Treasurer of the State, or by some person specially authorized by him for that purpose; which shall supersede, so far as respects such banks, the sealing of their weights by the town sealer.

Gold, how to be  
weighed.

SECT. 65. No tender of gold, by any bank, weighed with weights other than those compared, proved and sealed, as required in the preceding section, shall be legal; and the payer or receiver may also require, that the gold shall be weighed in each scale, and the mean weight, resulting therefrom, shall be considered the true weight.

Application to a  
judge of the su-  
preme judicial  
court, if a bank  
refuse to pay its  
bills.

SECT. 66. If, at any time, the officers of any bank shall refuse or neglect to pay any of its bills, when duly presented at their banking house for payment, in

their usual hours of business, or to pay any deposits made by any person, on demand made in such hours, and, for the space of fifteen days thereafter, shall neglect to pay or tender payment of such bills or deposits, in the manner described in section forty of this chapter, the holder of such bill, or the person making such deposit, may make complaint thereof, in writing, to any judge of the supreme judicial court, whose duty it shall be thereupon to cause the president or cashier of such bank, to be notified to appear before him at such time and place as he may appoint, to answer to such complaint, and show cause against further proceedings thereon.

SECT. 67. If such president or cashier, or other agent of such bank, duly authorized, shall not appear at such time and place, or, appearing, shall not show sufficient cause against further proceedings, said judge shall appoint three disinterested receivers, and require of them a bond to the said bank for the faithful discharge of their trust, to his satisfaction, in such sum as he shall determine, to be delivered to said bank for their use.

Court may appoint receivers; who shall give bond.

SECT. 68. Such receivers shall immediately demand and receive, of the officers of such bank, all its real and personal estate, with all its books, papers and evidences of debts due such bank, delivering to the officers their receipt, containing accurate lists and memoranda of such estate, books and debts; and shall proceed with due diligence to dispose of all or any part of such property, and collect the debts, and, with the proceeds thereof, to pay the demands against such corporation.

Their duties.

SECT. 69. The receivers aforesaid may sell at public auction, after giving thirty days' notice in the manner prescribed in chapter ninety-four of the revised statutes, for notice on the sale of real estate of banks taken on execution, and with like power to adjourn the sale, any real estate of said bank, and any mortgages of real estate due to said bank, and make and deliver to the highest bidder, in the name

May sell real estate and mortgages.

of the corporation, any deed or other instrument, necessary for the due conveyance of such real estate or mortgages, with the debts thereby secured; and the purchaser shall have the same rights and powers, as a purchaser of real estate, and mortgages taken on execution as aforesaid.

May collect or sell any of the debts due to the bank.

SECT. 70. Said receivers may collect the debts due and owing to such bank, and commence and prosecute in the name of such bank, or in their own names and capacity as receivers, any action, necessary for the collection of said debts, or they may sell or assign said debts with the evidences thereof, as they shall think expedient.

Revocation of authority of receivers.

SECT. 71. The authority, given as aforesaid to said receivers, may be revoked on a like application to any judge of the supreme judicial court, as is provided in section sixty-six, if he shall see cause after due notice to such receivers and hearing the parties.

Appeal from any order of a judge, to the whole court.

SECT. 72. Either party, aggrieved by the determination of such judge, whether in originally appointing such receivers, or revoking their authority, may have the same revised, and, if a sufficient cause be shown, reversed, at any term of the supreme judicial court, when a majority of the judges thereof shall be present, on complaint to such court, and on such notice as any judge thereof may order.

Compensation to receivers.

SECT. 73. Such receivers may retain to their own use for their services, such sums as may be agreed upon between them and such bank, and, in case of disagreement, such sum as may be awarded by any one of the judges aforesaid, at a term of said court held in the County where the bank is established, on application, with reasonable notice, to the other party.

Liability of officers refusing to surrender property to the receivers.

SECT. 74. If the officers of any such bank, on demand made by such receivers, shall refuse or neglect to surrender to them all the property, which they are required to do by the provisions of the sixty-eighth section of this chapter, any such officer, so refusing or neglecting on demand, shall be liable, in his indi-

vidual capacity, for the payment of all debts due from said bank, in an action or actions on the case, to be brought by any creditor or creditors of such bank, against such officer.

SECT. 75. Whenever such receivers shall have realized, from the property of the bank in their hands, a sum sufficient to pay all its debts, their power over the residue of the property shall cease, and it shall be their duty to surrender the same to said bank, together with all the books and papers belonging to it, on taking from the officers of the bank a sufficient receipt for the same. They shall also render to the bank a fair and just account of their proceedings, receipts and expenditures, at the time of such surrender, and at such previous times, as they shall be required by any judge of the supreme judicial court.

Receivers, after paying the debts, to deliver up the residue of property to the bank.

SECT. 76. Any person, who may have held shares in any bank, and afterwards may have disposed of the same, may be a competent witness in any suit in which such bank is interested, unless otherwise disqualified, notwithstanding any liabilities still attaching to him by virtue of the provisions of this chapter.

Stockholders may be witnesses after sale of their stock.

SECT. 77. The charters of all the banks, incorporated in this State, shall expire on the first day of October, in the year eighteen hundred and forty-seven.

Charters to expire October 1, 1847.

SECT. 78. No person, unless specially authorized by the Legislature, shall contribute to the funds, or become a member of any company or banking association, for the purpose of issuing notes to be circulated as money, receiving deposits, making discounts, or transacting any other business which incorporated banks may or do transact by virtue of their charters; and all notes or other securities for the payment of money or the delivery of property, made to such company or association, or for their use, shall be void.

Banking companies prohibited, unless authorized by the State.

SECT. 79. No private person nor body corporate, unless specially authorized by law, shall hold any agency in this State, for the purpose of receiving and issuing, loaning or putting in circulation as money, the bills, notes, orders or other evidences of debt of

Agencies of foreign banks or bankers prohibited, unless authorized by the State.

any banking company, not incorporated by the Legislature of this State, nor of any private banker, not a resident in this State; but this prohibition shall not extend to any incorporated bank, in this State, exercising the powers given to such banks by the foregoing provisions in this chapter, nor prevent such bank from paying out the bills of foreign banks, received in its usual course of business, and the circulation of which is not otherwise prohibited by law.

No person to issue bills as a private banker, to be circulated as money.

SECT. 80. No person shall issue any drafts, bills or promissory notes or other evidences of debt, payable to bearer or order, as a private banker, for the purpose of loaning them or putting them in circulation, as money.

Penalty for violating the three preceding sections.

SECT. 81. If any body corporate or private company, or individual, shall be guilty of any or either of the offences, described in the three last preceding sections, such offender shall forfeit one thousand dollars, for each and every such offence; to be recovered by indictment for the use of the State, or by action of debt, one half to the use of the State, and the other half to the person who may first sue for the same.

Punishment for frauds and embezzlement.

SECT. 82. The following offences by officers, stockholders or servants of banks in this State, committed with a fraudulent intent to injure any creditor, stockholder, holder of bank notes issued, or to be issued by such bank or other person, are hereby declared to be high misdemeanors, and the persons guilty thereof, shall, on conviction, be punished by fine, not exceeding five thousand dollars, imprisonment in the County jail, not exceeding one year, confinement in the State prison to hard labor, not exceeding ten years, or any or all of said punishments, according to the aggravation of the offence:

*First.* If any such person shall convert to his own use or deliver to any other person, or to his check or order, any funds or evidence of debt or other property, belonging to the bank or deposited therein;

*Secondly.* If he shall issue, or aid in issuing, any bank notes or other evidence of debt, obligatory on

said bank, with the intent that the same shall not be paid ;

*Thirdly.* If he shall become indebted to such bank for a valuable consideration with like intent, or shall aid or abet any other person in so doing ;

*Fourthly.* If he, on behalf of the bank, shall loan any money or deliver any valuable property, belonging to such bank or deposited therein, to any stockholder or other person ;

*Fifthly.* If he shall make any dividend of the funds or effects of such bank, amongst the stockholders or any of them, beyond the profits actually accrued to such bank, or aid therein, thereby diminishing the capital of said bank.

SECTION 9. The ninety-first chapter shall be amended, in section four, after the words " limited to," by striking out the word "such," and inserting, instead thereof, the word "any," so that the said fourth section, as amended, will be as follows :

SECT. 4. When any contingent remainder or executory devise, or other estate in expectancy, has been so granted or limited to any person, that, in case of his death before the happening of the contingency, the estate would descend to his heirs in fee simple, such person may, before the happening of the contingency, sell, assign or devise the premises, subject to such contingency.

Owner of a contingent remainder or executory devise may convey it.

SECTION 10. The ninety-fourth chapter shall be amended, by inserting, at the end of section thirty-four, the following words :

R. S. ch. 94.

And such corporation shall have the right to redeem any lands, and, if mortgaged, the debts secured thereby, sold by virtue of the provisions of this section, within the time and in like manner, and with like remedies to compel a reconveyance, as are provided in the forty-first and forty-second sections ; and such right of redeeming shall be liable to attachment on mesne process, and seizure and sale on execution, as provided in the forty-third section, for the attachment and sale of the right of redeeming an equity of redemp-

Right of redemption, where real estate of banks or manufacturing corporations has been sold on execution.

tion ; reserving to the corporation the same right of redeeming from the purchaser at said second sale.

The same chapter shall be further amended, by inserting, at the end thereof, a new section, as follows :

**SECT. 50.** All the right and title, to a conveyance of real estate, by virtue of a bond or contract which any debtor may have, may be taken and sold on execution, in the manner prescribed in the thirty-sixth and four following sections ; and any such right, so sold, and also any right, title and interest, which any person owns, in virtue of a possession and improvement, having been sold on execution, as provided in the said thirty-sixth and four following sections, may be redeemed from the purchaser, or person holding under him, by like proceedings, on the same conditions, and with the same remedies to compel a reconveyance thereof, as are provided in the forty-first and forty-second sections ; and this right to redeem from the purchaser shall be liable to attachment on mesne process, and seizure and sale on execution, as provided in the forty-third section, for the attachment and sale of the right of redeeming an equity of redemption ; and, in all cases, where a right to redeem from a former sale or levy has been sold on execution, the debtor shall have the same right of redeeming it, as is allowed upon the first sale of rights in equity of redeeming mortgaged real estate.

Right, by contract, to a deed of real estate may be sold on execution.

Right of redemption of certain interests in real estate.

Such right of redemption may be sold on execution.

R. S. ch. 96.

**SECTION 11.** The ninety-sixth chapter shall be amended in the seventh section, by inserting, at the close thereof, the following :

Supreme judicial court to control the records and documents of the supreme judicial court of Massachusetts, now remaining in this State.

All records and documents of the supreme judicial court of Massachusetts, previous to the separation of Maine, now remaining in the several Counties in this State, shall remain under the control and authority of the supreme judicial court of this State, in the same manner and for the same purposes, as the records and documents of their own doings ; and the clerks of the same court shall have the like power in relation to the one, as the other of those records and documents.

SECTION 12. The ninety-seventh chapter shall be amended R. S. ch. 97. in the thirteenth section, by inserting, after the word "town," the following, "or in any libel for forfeited goods originally commenced in the district court;" so that the section, as amended, will be as follows :

SECT. 13. Any party, aggrieved at the judgment of any district court, on any demurrer or agreed statement of facts, or in any personal action, wherein issue in fact has been joined and a verdict given, in which the debt or damage demanded exceeds two hundred dollars, or in any action of replevin, or action of trespass on lands, writ of entry or of dower, or action against a town, or in any libel for forfeited goods, originally commenced in the said court, may appeal therefrom to the next supreme judicial court to be held for the same County. Appeal in certain cases.

The same chapter shall be further amended, in the fourteenth section, by inserting, at the close thereof, the following words :

If there shall not be, in the opinion of the court, a reasonable time for the party appealing to produce the sureties required, during the term of the court, the court may designate some justice of the peace, to take such recognizance, within ten days after the adjournment of the court, and the court shall order a stay of execution accordingly; and the recognizance, if so taken, and filed with the clerk, shall be as valid, as if taken in court. Recognizance on an appeal may be taken by a justice of the peace in certain cases.

SECTION 13. The ninety-ninth chapter shall be amended in the twenty-first section, by striking out the words "or scire facias"; so that the section, as amended, shall be as follows : R. S. ch. 99.

SECT. 21. The party, for whose benefit any judgment shall have been rendered by the commissioners of any County, shall have like remedy for the same and interest, by an action of debt upon such judgment, before any court of competent jurisdiction, as is provided for judgments recovered before the judicial courts. Action of debt on a judgment of a court of county commissioners.

SECTION 14. The one hundred and fourth chapter shall be amended, in the twelfth section, by striking out, after the words "official bond," the following words : "for any neglects R. S. ch. 104.



or misdoings, which may occur after such new bond shall have been filed and accepted," and inserting the last mentioned words at the close of the section; so that the section, as amended, shall be as follows :

New bond may be required of a sheriff or coroner on application of his sureties.

SECT. 12. Whenever any surety upon the official bond of any sheriff or coroner, or the heirs, executors or administrators of such surety, shall petition the county commissioners, in the County of such sheriff or coroner, to be discharged from such bond, the court shall cause such sheriff or coroner to be served with an attested copy of the petition, and may require him to give a new bond to their satisfaction; and, upon such new security being given, such surety or his legal representatives shall be free from any further responsibility on such bond, for any neglects or misdoings, which may occur after such new bond shall have been filed and accepted.

The same chapter shall be amended in the twenty-seventh section, by inserting, after the word "deputy," the words "coroner or constable"; so that the section, as amended, shall be as follows :

Liability, if coroner or constable detain money collected, after demand.

SECT. 27. Any sheriff or his deputy, coroner or constable, who shall unreasonably refuse or neglect to pay to any person moneys, received by him upon execution, to the use of such person, upon demand made therefor, shall pay five times the lawful interest of such money, so long as he shall unreasonably detain it.

R. S. ch. 105.

SECTION 15. The one hundred and fifth chapter shall be amended in the eighteenth section, by striking out the words "as heir, legatee, creditor or debtor, or," and inserting, instead thereof, the words "either in his own right, or in trust, or in any other manner, or be"; and by inserting, after the words "jurisdiction of such estate," the following words: "or if he be interested at the time of his appointment to office"; and by inserting, at the end of said section, the following words: "and in all cases, where, by reason of the interest of the judge, or for any other cause, an estate shall be settled in an adjoining County, the register of probate of such adjoining County shall transmit to the probate office of the County where such estate should otherwise have been settled, copies of all records re-

lating to said estate, to be recorded on the records of the County where such estate belongs"; so that the said eighteenth section, as amended, will be as follows :

SECT. 18. Whenever any judge of probate shall be interested, either in his own right, or in trust, or in any other manner, or be within the degree of kindred, by means of which, by law, he might, by any possibility, be heir to any part of the estate of any person deceased, such estate shall be settled in the probate court of the most ancient adjoining County; *Provided*, that the amount of the interest of such judge shall not be less than one hundred dollars, in such estate. If his interest commence at any time, after he shall regularly have assumed jurisdiction of such estate, or if he be interested at the time of his appointment to office, further proceedings therein shall be transferred to the probate court held in the most ancient adjoining County. And, in all cases, where, by reason of the interest of the judge, or for any other cause, an estate shall be settled in an adjoining County, the register of probate of such adjoining County shall transmit to the probate office of the County, where such estate should otherwise have been settled, copies of all records relating to said estate, to be recorded on the records of the County, where such estate belongs.

When a judge is interested, estate to be settled in the most ancient adjoining County.

Transcript of proceedings to be recorded in the County where the estate belongs.

SECTION 16. The one hundred and seventh chapter shall be amended in the thirteenth section, by striking out the word "nevertheless," and inserting the words "notwithstanding there may be an appeal;" so that the section, as amended, shall be as follows :

R. S. ch. 107.

SECT. 13. When, by reason of a suit concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary or of administration, the judge of probate may, in his discretion, appoint a special administrator, who shall, notwithstanding there may be an appeal, proceed in the execution of his duties, until it shall be otherwise ordered by the supreme court of probate.

Special administrator to proceed in his duties, though there may be an appeal.

SECTION 17. The one hundred and eighth chapter shall be amended in the twenty-fifth section, by adding at the close the

R. S. ch. 108.

following words : " or other appropriate action ;" so that the section, as amended, shall be as follows :

Legatee may bring an appropriate action against executor for a legacy.

SECT. 25. Any residuary legatee, or any person having a particular legacy given him, under any last will, may sue for and recover the same of the executor, in an action of debt at common law, or other appropriate action.

R. S. ch. 114.

SECTION 18. The one hundred and fourteenth chapter shall be amended, in section fifteenth, after the word " officer," by inserting the following words : " if there be but one defendant, such action shall be commenced in the County where he resides ;" so that said fifteenth section, as amended, will be as follows :

Actions within the jurisdiction of justices, where to be commenced.

SECT. 15. Any action, commenced against two or more defendants, residing in different Counties, and to be tried before a municipal or police court, or a justice of the peace, may be brought in the County where either of the defendants lives ; and the writ, in such case, shall be executed in such Counties accordingly, by the proper officer. If there be but one defendant, such action shall be commenced in the County where he resides ; and any action, commenced before either of said courts, shall be brought in the town where the plaintiff, or some defendant or trustee, or the attorney, commencing the action, lives.

R. S. ch. 115.

SECTION 19. The one hundred and fifteenth chapter shall be amended, in section two, by striking out the words, " except as hereinafter provided," and inserting, instead thereof, the following words : " 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 has 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," so that said second section, as amended, shall be as follows :

Default of defendant, if he fail to appear.

SECT. 2. When the defendant shall have been duly served with process and return thereof made, according to the mandate of the writ, or order of a judge of the court, indorsed thereon, and he shall not appear by himself or 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 has 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. But such default shall be erased, or taken off by leave of court, or without such leave, if the defendant shall appear in court, in person or by attorney, at any time before the jury are dismissed, and pay to the plaintiff such costs as the court shall order. And if, by the return of the officer or otherwise, it appear to the court, that the defendant has not had sufficient notice, they may order such further notice as they may think proper.

Assessment of damages and judgment.

Proviso.

The same chapter shall be further amended, by inserting, at the end of section twenty-two, the following words :

And in all actions of trespass upon lands, wherein the defendant, by his plea or brief statement, shall disclaim all right, title and interest in the land upon which the trespass is alleged to have been committed, and declare that the trespass was involuntary, or by negligence or mistake, and that he had tendered or offered sufficient amends therefor, before the action was commenced, or brings money into court to satisfy the damage the plaintiff has sustained, with costs, if upon trial it appear, that such trespass was involuntary, or by negligence or mistake, and the jury shall not assess greater damages for the trespass than the money tendered or brought into court therefor, the defendant shall recover of the plaintiff his reasonable costs. And any person, after the commencement of a suit against him, and before the entry thereof in court, shall have the same right to tender payment of the amount due to the plaintiff or his attorney in the action, and legal costs to the time of such tender, and with the same effect, as before the commencement of the suit. *Provided*, that in actions brought against towns, under the provisions of the eighty-ninth section of chapter twenty-five, the defendant towns shall have

Tender in cases of involuntary trespass: also after a suit is commenced, and before entry: also in actions against towns for damages in consequence of defects in roads.

the same right, to avail themselves of a tender before the commencement or entry of the action, or an offer of judgment in court, for any specified sum as damages, as is by law provided in cases of contract.

The same chapter shall be further amended, in section one hundred and one, by inserting, after the word "filed," the following words: "in the supreme judicial court;" so that the said one hundred and first section, as amended, will be as follows:

Proceedings on motion to set aside a verdict in the supreme judicial court.

**SECT. 101.** When a motion is made and filed in the supreme judicial court, that a verdict may be set aside, as being against law, or the direction of the court, or against evidence, the whole evidence shall be drawn up in the form of a report, and signed by the presiding judge; and, if the motion shall be founded on any alleged cause, other than the rulings and instructions of the judge to the jury, the evidence, as to the facts stated in the motion, shall be heard, examined and reported by the judge, and, in either case, the action shall be continued, to be heard on the motion before the whole court.

The same chapter shall be further amended, by inserting, at the close of section one hundred and four the following words:

Time of issuing execution, when defendant was out of the State and not notified.

In which case, the first execution may be issued in not less than one year, and not more two years from the time judgment was rendered.

R. S. ch. 117.

**SECTION 20.** The one hundred and seventeenth chapter shall be amended, in section fifteen, by striking out the words, "in case of goods and chattels," and inserting instead thereof, the following words: "is provided in the nineteenth section;" so that the said fifteenth section, as amended, will be as follows:

Shares in incorporated companies, if attached on the writ, may be sold on execution without further notice to the corporation.

**SECT. 15.** If the property has been, and then is attached, the officer shall proceed in seizing and selling it on execution, in the same manner, as is provided in the nineteenth section.

R. S. ch. 120.

**SECTION 21.** The one hundred and twentieth chapter shall be amended, by inserting, at the end of section fifteen, the following words:

Survivorship of applications for review and actions of review.

Applications for review of actions, and actions of review.

SECTION 22. The one hundred and twenty-third chapter R. S. ch. 123. shall be amended, by inserting, at the end thereof, three new sections, as follows :

SECT. 11. When an appeal shall be claimed from the judgment of a district court, in any civil action, and, by reason of any mistake or accident, the appellant shall not duly enter his appeal, or the appellee shall not duly enter his complaint for affirmation of judgment, in the supreme judicial court, the court may, on the petition of the appellant or of the appellee, as the case may be, allow the appeal or the complaint to be entered at any other term of the court, held for the same County, upon such terms as they may deem just and reasonable ; and, if the appeal or the complaint be so entered, the court shall proceed therein, as if it had been entered at the proper term.

Supreme judicial court, on petition, may allow entry of an appeal or complaint which was omitted through mistake or accident.

SECT. 12. When an appeal shall be claimed from the judgment of a justice of the peace, or a municipal or police court, in any civil action, and, by reason of any mistake or accident, the appellant shall not duly enter his appeal, or the appellee shall not duly enter his complaint for affirmation of judgment in the district court, the court may, on the petition of the appellant, or of the appellee, as the case may be, allow the appeal or the complaint to be entered at any other term of the court, held for the same County, upon such terms as they may deem just and reasonable ; and, if the appeal or the complaint be so entered, the court shall proceed therein, as if it had been entered at the proper term.

District court may allow entry of an appeal or complaint, which was omitted through mistake or accident.

SECT. 13. No petition for the entry of any such appeal or complaint shall be sustained, unless it be presented to the court, or filed in the clerk's office, within one year after the term at which the same ought to have been entered ; and no attachment made, and no bail taken, shall be revived or continued in force, by the entry of any such appeal or complaint by the original plaintiff, as provided in the two preceding sections ; but such attachment and bail shall remain discharged.

Petitions therefor limited to one year. Attachments and bail not continued by entry of the appeal.

R. S. ch. 125.

SECTION 23. The one hundred and twenty-fifth chapter shall be amended, by adding, at the end of the nineteenth section, the following words :

If mortgagee or his assignee be out of the State, bill in equity may be filed on payment of redemption money to clerk of the court.

When such mortgagee or person claiming under him, being out of the State, or whose residence is unknown, shall have proceeded according to the provisions of the fifth section of this chapter, for the purpose of foreclosure, the mortgager, or other person having a right to redeem, may file his bill or petition, as provided in section sixteen, and may at the same time pay to the clerk of the court the sum due, and the court shall order such notice to be given as they may judge proper ; and such payment shall have the like effect and force, as a tender of payment made before the commencement of the suit.

R. S. ch. 140.

SECTION 24. The one hundred and fortieth chapter shall be amended, by inserting, at the end thereof, a new section, in the following words :

Habeas corpus may issue for discharge of an insane person, arrested on mesne process or execution. Effect thereof.

SECT. 38. When any insane person is arrested or imprisoned on mesne process or execution in any civil suit, any judge of the supreme judicial court or district court, or any judge of probate within his County, on application, may inquire into the case, and, if he think proper, may issue a writ of habeas corpus, and cause such person to be brought before him for examination ; and, after notice to the creditor or attorney, if either be living in the State, and a hearing thereon, if it shall be proved to the satisfaction of said judge, that the person is insane, he may discharge such person from arrest or imprisonment ; and, in that case, the creditor shall have a right to make a new arrest, upon the same demand, whenever such debtor shall become of sound mind. But, if such person be arrested on the same demand a second time before he becomes of sound mind, and be discharged again for the same reason, his body shall forever thereafter be exempted from arrest therefor.

R. S. ch. 144.

SECTION 25. The one hundred and forty-fourth chapter shall be amended, in section one, by striking out the words, " to her satisfaction ;" so that the said first section, as amended, will be as follows :

SECT. 1. When a woman is entitled to dower, and it is not set out to her by the heir or tenant of the freehold, according to the intendment of the law, nor assigned to her by the judge of probate, she may recover the same by a writ of dower, in the manner hereinafter prescribed.

Right of a widow to sue for dower.

SECTION 26. The one hundred and fifty-sixth chapter shall be amended, by adding, at the end of the chapter, a new section, as follows :

R. S. ch. 156.

SECT. 16. Upon any conviction of burglary, robbery or larceny, unless it be before a justice of the peace, for larceny, the court may order a meet recompense to the prosecutor, and also to the officer who has secured or kept the stolen property, not exceeding their actual expenses, with a reasonable allowance for their time and trouble, to be paid by the County treasurer, and charged by him to the State.

Compensation for expenses of prosecutor to conviction, for burglary, &c. and officer.

SECTION 27. The one hundred and fifty-ninth chapter shall be amended, by adding, at the close of the chapter, a new section, as follows :

R. S. ch. 159.

SECT. 14. Whenever an insurrection shall exist in this State, to obstruct the course of justice, or the due execution of the laws, the Governor is hereby empowered to detach and call into actual service, such part of the militia, as in his opinion shall be adequate to suppress the same.

In case of insurrection, Governor may detach into actual service an adequate military force.

SECTION 28. The one hundred and sixty-seventh chapter shall be amended, by adding, at the close thereof, a new section, as follows :

R. S. ch. 167.

SECT. 16. If any person shall, by due course of law, be under sentence of imprisonment for life in the State prison, either by commutation of a previous sentence, or otherwise, and shall be actually imprisoned in pursuance of such sentence, then all contracts, of whatever nature, to which such person shall be a party, shall be affected, changed or annulled, as effectually, and in the same manner, as they would be, if such person were actually dead; and such person shall cease to have any title to, or any interest in any estate,

Convict sentenced for life to the State prison and committed, to be regarded as civilly dead. Distribution of his estate.



real or personal, and the same shall be treated, disposed of, and descend, in all respects, as if the death of such person had actually taken place at the time of such imprisonment; and all power and authority, of whatsoever nature, which such person might lawfully exercise over any other person or persons, shall thenceforth cease, as if the person so imprisoned were dead.

General repealing Act.

Repeal of certain Acts relating to banks and banking.

SECTION 29. The Act entitled, "an Act to repeal all the acts, which are consolidated in the revised statutes," passed October twenty-second, one thousand eight hundred and forty, shall be amended, by inserting at the end of the first section, the following words :

1821.

*Acts passed in the year, eighteen hundred twenty-one.*

Chap. 142. An act concerning plates for printing bank notes.

Chap. 143. An act to enforce the payment of bank notes and for other purposes.

Chap. 144. An act imposing a tax on the banks within this State.

Chap. 145. An act making further provisions in respect to the banks within this State.

Chap. 146. An act directing the mode and time of making returns of, and enforcing the right to loans from the several banks in this State.

Chap. 147. An act to restrain unincorporated banking associations and for other purposes.

1825.

*Acts passed in the year, eighteen hundred twenty-five.*

Chap. 290. An additional act concerning plates for printing bank notes.

Chap. 315. An act to prevent frauds in the business of banks, and of public offices and trusts.

1827.

*Act passed in the year, eighteen hundred twenty-seven.*

Chap. 364. An additional act respecting banks.

1831.

*Act passed in the year, eighteen hundred thirty-one.*

Chap. 519. An act to regulate banks and banking.

1832.

*Acts passed in the year, eighteen hundred thirty-two.*

Chap. 16. An act respecting banks, and other incorporated companies.

Chap. 32. An act in addition to an act to regulate banks and banking.

1833.

*Act passed in the year, eighteen hundred thirty-three.*

Chap. 80. An act additional to an act to regulate banks and banking.

1836.

*Acts passed in the year, eighteen hundred thirty-six.*

Chap. 215. An act prohibiting the emission and circulation of bank bills of a small denomination, and certain other purposes.

Chap. 233. An act further regulating banks and banking.

1838.

*Act passed in the year, eighteen hundred thirty-eight.*

Chap. 326. An act additional regulating banks and banking.

1840.

*Act passed in the year, eighteen hundred forty.*

Chap. 90. An act suspending the operation of an act, entitled, "an act prohibiting the emission and circulation of bank bills of a small

denomination and certain others," and of the fourth section of an act, entitled, "an act further regulating banks and banking."

SECT. 30. All the provisions of this act, except the third section, shall take effect and be in force from and after the thirty-first day of July, in the year one thousand eight hundred and forty-one; and the provisions of the third section of this act shall take effect and be in force from and after the first day of January, in the year one thousand eight hundred and forty-two.

Time when this Act shall take effect.

[Approved April 16, 1841.]

### Chapter 172.

AN ACT to prevent betting or wagering on Elections.

SECTION 1. *Be it enacted by the Senate and House of Representatives in Legislature assembled,* That any person or persons, who shall bet or wager any sum or sums of money upon any election, or the event of any election of President of the United States, or Governor of this State, or any member of Congress, or of any man to any office, shall forfeit a sum or sums equal to the sum or sums that he or they shall so bet or wager, to the use of the city, town or plantation, in which the person or persons, so betting or wagering, shall reside at the time of such betting or wagering, to be recovered by action of debt in any court competent to try the same.

Forfeiture of a sum equal to the wager, to the town.

SECT. 2. *Be it further enacted,* That, if any person or persons shall, after the passage of this Act, receive any sum or sums of money upon any bet or wagering aforesaid, he or they, so receiving, shall be liable to pay, to the person or persons losing the same, the amount so received; to be recovered by action of debt in any court competent to try the same, with interest from the time the money was so received.

Party losing may recover back the sum lost.

SECT. 3. *Be it further enacted,* That it shall be the duty of the mayors of the several cities, and the treasurers of the several towns and plantations in this State, to sue for and recover any sum or sums of money, which may be forfeited by the first section of this Act, in their respective cities, towns and plantations.

Mayors of cities and treasurers of towns, &c. to sue for the penalty, named in the first section.