

MAINE STATE LEGISLATURE

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REPORT

OF THE

COMMISSIONERS

APPOINTED TO REVISE THE

PUBLIC LAWS

OF THE

STATE OF MAINE.

TITLE X.

Augusta:

WM. R. SMITH & Co., PRINTERS TO THE STATE.

1840.

TITLE TENTH.

OF CIVIL ACTIONS, THEIR VARIOUS FORMS, LIMITATIONS AND PROCEEDINGS AND EVIDENCE THEREIN.

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86. If before demand he has sold the property on execution he shall not be deemed a trespasser, but must account to executor or administrator.
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SECT. 1. The forms of writs in civil actions which are now, 2 and have long been in use, shall remain as established in the 3 year eighteen hundred and twenty-one, composing the sixty-

4 third chapter of the statutes of that year; which chapter remains
5 unrevoked; but alterations may be made by the supreme judi-
6 cial court or the district court, when necessary to adapt them to
7 changes in the law, or for other causes; but all such changes
8 shall be subject to the final control of the supreme judicial court,
9 which may, by general rules regulate such changes for said
10 courts or for justices of the peace.

SECT. 2. When the plaintiff and defendant both reside within
2 the State, all personal and transitory actions shall be brought in
3 the county where one of the parties lives; but if the plaintiff
4 lives without the State, then in the county where defendant
5 lives, and where there are two or more plaintiffs, or two or more
6 defendants, the action may be brought in the county where either
7 of the plaintiffs or either of the defendants lives; and when not
8 so brought, on motion, or inspection by the court, the writ shall
9 abate, and the defendant shall be allowed double costs, except
10 as provided in the following sections. 1821, 59, § 9. 1839.

SECT. 3. All actions brought on bonds, given by sheriffs and
2 coroners to the treasurer of the State, shall be brought in the
3 county where such sheriff or coroner, shall have been commis-
4 sioned to act. 1821, 91, § 6.

SECT. 4. All actions of debt founded on judgment for dama-
2 ges and costs, or for costs only, rendered by any court of record
3 in this State, may be brought in the court where the same was
4 rendered, or in the county in which either of the parties to such
5 judgment, or his executor or administrator may reside at the
6 time of bringing such action. 1821, 59, § 34.

SECT. 5. All actions may be brought on any judgment ren-
2 dered by any court of record in any other of the United States
3 or by any court of record of the United States, in the county
4 where one of the parties or his executor or administrator lives at
5 the time, or in which any goods, estate or effects of the judg-
6 ment debtor shall be found. 1821, 59, § 35.

SECT. 6. Any local or transitory action against the inhabitants
2 of a county, in their corporate capacity may be commenced
3 and tried either in the county where the plaintiff lives, or in the
4 county against which the action shall be brought. 1821, 59, § 10.

SECT. 7. Any such action commenced by a county, may be
2 brought in the county where the defendant lives, unless he is an
3 inhabitant of that county; in which case the action may be
4 commenced in any adjoining county. 1821, 59, § 10.

SECT. 8. When any corporation shall be a party in any action
2 commenced by or against any county, it shall be commenced
3 or tried in any adjoining county. 1821, 59, § 11.

SECT. 9. Any such action against the inhabitants of a county,
2 by a plaintiff belonging to such county, may be commenced and
3 tried in such county, or in any adjoining county, at the plaintiff's
4 election. 1821, 59, § 12.

SECT. 10. Any local or transitory action by one county
2 against another county, may be commenced and tried in any
3 adjoining county. 1821, 59, § 13.

SECT. 11. When both parties are towns, organized planta-
2 tions, parishes or school districts, the action shall be brought in
3 the county in which either of the parties shall be situated.

SECT. 12. When the action is between a town, organized
2 plantation, parish or school district, and any other corporation
3 or a natural person, it shall be brought either in the county, in
4 which the plaintiff corporation is situated, or in which the
5 defendant corporation shall be situate, or natural person lives.

SECT. 13. When one of the parties is a corporation of any
2 other description, than those mentioned in the two preceding
3 sections, the action may be brought in any county, in which
4 such corporation shall have an established place of business, or
5 if the defendant is a natural person, the action may be brought
6 in the county in which he lives.

SECT. 14. Whenever any forfeiture is recoverable in a civil
2 action, the same shall be brought in the county in which the
3 offence was committed, unless a different provision was made in
4 the statute imposing the same; and if on trial it shall not appear
5 that it was committed in the county, where the action is
6 brought, the verdict shall be in favor of the defendant.

1821, 59, § 44.

SECT. 15. Any action commenced against two or more de-
2 fendants, residing in different counties, and to be tried before
3 a municipal or police court, or a justice of the peace, may be
4 brought in the county where either of the defendants lives, and
5 the writ in such case shall be executed in such counties, accord-
6 ingly by the proper officer. 1827, 359, § 1.

SECT. 16. Every original writ, writ of *scire facias*, writ of
2 error, writ of *audita querela*, petition for writ of *certiorari*, peti-
3 tion for review and bill in equity, shall before entry of the same
4 in court, be endorsed by some sufficient person who shall then
5 be an inhabitant of the State, when the plaintiff or petitioner
6 in any of the cases before mentioned, shall not be an inhabitant
7 of the State; and if pending such suit, such plaintiff or peti-
8 tioner shall remove from the State, he shall on motion of the
9 defendant or respondent, or any other party to the suit, be
10 required to procure such new endorser.

1821, 59, § 8.

SECT. 17. But when, in any of the cases before named there
2 shall be two or more plaintiffs or petitioners, and any one of
3 them is an inhabitant of the State, no endorser shall be required
4 except by special order of court on motion of the other party.

1821, 59, § 8.

SECT. 18. Every endorser shall be liable in case of the avoid-
2 ance or inability of the plaintiff or petitioner to pay all such
3 costs as shall be adjudged against the plaintiff, provided the suit

4 therefor against the endorser, shall be brought within one year
5 after the original judgment. 1821, 59, § 8.

SECT. 19. If pending any suit or petition as aforesaid, any
2 endorser should, in the opinion of the court be deemed insuffi-
3 cient, they may require that a new endorser should be furnished,
4 who is sufficient, the defendant consenting that the name of the
5 original endorser should be struck out; and the new endorser so
6 furnished shall be liable for all costs, from the beginning of the
7 suit in like manner as if he had been the original endorser.

1821, 59, § 8.

SECT. 20. If the plaintiff or petitioner shall, in any case fail
2 to procure such new endorser, according to the order of court,
3 at the time appointed, the action shall be dismissed, and the
4 defendant shall recover his costs. 1821, 59, § 8.

SECT. 21. All civil actions, excepting those founded on scire
2 facias or other special writs, shall be commenced by original
3 writs, which shall be signed, sealed and bear test as required by
4 the constitution.

SECT. 22. All original writs, in the supreme judicial court,
2 and court of common pleas, may be issued by the clerk of said
3 courts in any county, as well in vacation as term time.

SECT. 23. The original writ, may be framed either to attach
2 the goods or estate of the defendant, and for want thereof to
3 take his body; or it may be an original summons either with or
4 without an order, to attach the goods or estate.

SECT. 24. When goods or estate are attached on either of
2 said writs, there shall be a separate summons to be served on
3 the defendant, after the attachment has been made; and the
4 service thereof shall be a sufficient service of the original sum-
5 mons.

SECT. 25. In actions against corporations and in other cases
2 where goods or estate are attached, but in which the defendant
3 is not liable to arrest, the writ and summons may be combined
4 in one.

SECT. 26. When goods or estate are attached, a summons, in
2 form by law prescribed, shall be delivered to the defendant or
3 left at his dwelling-house or place of last and usual abode, four-
4 teen days before the sitting of the court, to which the same writ
5 is made returnable. 1821, 60, § 1.

SECT. 27. If the defendant was never an inhabitant of the
2 State, or has removed therefrom, then the summons shall be left
3 with his tenant, agent or attorney fourteen days before the sit-
4 ting of the court as aforesaid. 1821, 60, § 1.

SECT. 28. When the goods or estate of any person, not being
2 an inhabitant of the State, and having no tenant, agent, or
3 attorney, within the same, have been attached in any civil
4 action, any justice of the court to which the writ is made return-
5 able, may, in vacation, and before entry of the action, make his
6 order, by him signed on the back of said writ, directing in what
7 manner such defendant shall be notified of the said suit and

8 attachment; and such order having been complied with and
9 proof of the service of such notice being made to the satisfac-
10 tion of the court, the defendant shall be held to answer to such
11 suit as in other cases where service is made as prescribed in the
12 preceding section. 1837, 285, § 1.

SECT. 29. All goods and chattels may be attached and held
2 as security to satisfy the judgment for damages and costs which
3 he may recover, except such as from their nature and situation
4 have been considered as exempted from attachment, according
5 to the principles of the common law, as adopted and practiced
6 in this State, and such as are hereinafter mentioned.

SECT. 30. All real estate which is liable to be taken in exe-
2 cution, according to the provisions of chapter ninety-four may
3 be attached on mesne process and held as security for the pur-
4 poses mentioned in the preceding section; but it shall not be
5 deemed necessary that the officer in order to make such an
6 attachment should enter on such estate, or be within view of it.

SECT. 31. A right in equity of redeeming lands mortgaged
2 or taken in execution, may be attached on mesne process; and
3 when so attached if before the levy of the execution, the lands
4 so mortgaged or taken, in execution are redeemed and the
5 incumbrance removed, the attachment shall hold the premises
6 discharged of the mortgage or levy, as effectually as if no mort-
7 gage or levy had existed, and the premises had been attached.

1821, 60, § 1. 1833, 87, § 1.

SECT. 32. No attachment of real estate on mesne process
2 shall be deemed and considered as creating any lien on such
3 estate, unless the officer, making such attachment, shall file an
4 attested copy of the writ, (omitting the declaration) and of his
5 return thereon, so far as it relates to the attachment, in the office
6 of register of deeds, in the county or district, in which all or
7 any part of the lands attached are situated, within five days
8 after the day on which the attachment was made, except as
9 mentioned in the thirty-fourth section, of this chapter. And such
10 proceedings shall be had in such office by the register of deeds,
11 as are prescribed in the eleventh chapter, eighteenth section.

1838, 344, § 1.

SECT. 33. And no such attachment though made and notice
2 thereof given, as directed in the preceding section, shall be
3 valid, unless the plaintiff's demand on which he founds his
4 action, and the nature and amount thereof are substantially set
5 forth in proper counts, or a specification of such claim shall be
6 annexed to such writ. 1838, 344, § 4.

SECT. 34. But if the attested copy of the writ and return on
2 the same, made, shall be lodged in the office of the register of
3 deeds as mentioned in the twenty-eighth section of this chapter,
4 then the attachment shall take effect from the time it was made;
5 otherwise it shall take effect from the time, when such copy of
6 the writ and return, is so deposited in the registry of deeds.

SECT. 35. No personal property, and no real estate, except
2 equities of redeeming real estate mortgaged, or taken in execu-

tion, or equities of redemption which have been sold on execution, or an obligee's conditional right to a deed of conveyance of real estate to him, which has been sold on execution, and except property attached and replevied, and property attached belonging to a person dying after an attachment of it had been made, or specially provided for in any other case, shall be held by virtue of an attachment longer than thirty days next after the day on which final judgment was rendered, in the suit in which the same was attached, to be taken in execution.

1821, 60, § 1, 17.

SECT. 35. When final judgment is rendered for the defendant, the attachment shall be thereby forthwith dissolved.

1821, 60, § 1.

SECT. 37. When hay in a barn, horses or neat cattle are attached by a creditor, and are suffered to remain, by the permission of the officer, in the debtor's possession, on security given for their safe keeping and delivery to the officer, the same shall not be subject to a second attachment, to the prejudice of the first.

1821, 60, § 34.

SECT. 38. The following goods and property shall be exempted from attachment and execution; that is to say—

1821, 95.

First—The debtor's wearing apparel, beds, bedsteads, bedding and household utensils necessary for himself, his wife and children, provided that the beds and bedding so exempted shall not exceed one bed, bedstead and necessary bedding for two persons, nor the household furniture to the value of fifty dollars.

Second—The tools of any debtor necessary for his trade or occupation.

Third—All bibles and school books in actual use in the family.

Fourth—All cast iron and sheet iron stoves, used exclusively for warming buildings.

Fifth—One cow and one heifer, till she shall become three years old, or has had a calf, two swine one of which shall not weigh more than one hundred pounds, and when he owns a cow and heifer more than three years old, or that has had a calf or two swine, each weighing, not exceeding one hundred pounds, he may elect the cow or the heifer or either of the swine to be exempted as aforesaid; ten sheep and wool that may be shorn from them, and thirty hundred of hay for the use of said cow, and two tons for the use of said sheep.

1830, 478.

Sixth—All produce of farms while standing and growing until harvested, and corn and grain necessary and sufficient for the sustenance of the debtor and his family, not exceeding thirty bushels.

1836, 341, § 1.

Seventh—All the debtor's interest in one pew, in any meeting house, where he and his family steadily worship.

30 *Eighth*—All potatoes raised or purchased for the consumption
31 of himself and family. 1828, 394.

32 *Ninth*—All the fire wood conveyed to debtor's house for the
33 use of himself and family, not exceeding twelve cords.

1831, 513.

34 *Tenth*—One boat not exceeding two tons burthen usually em-
35 ployed in fishing business, belonging wholly to an inhabitant of
36 this State. 1835, 572.

37 *Eleventh*—One plough value of ten dollars, one cart of value
38 twenty-five dollars, one harrow of value of five dollars and one
39 cooking stove of value of thirty-five dollars—and all anthracite
40 and bituminous coal and charcoal, conveyed to any person's
41 house, and there consumed in the family of such person—not
42 exceeding five tons of anthracite and fifty bushels of bituminous,
43 from and after the twenty-fifth of February eighteen hundred
44 and thirty-nine one, pair of bull or steer calves under one year
45 old, hereafter purchased and paid for by the owner, or raised
46 from his own cow or cows. 1838, 307. 1839.

SECT. 39. When an attachment is made of any personal
2 property, which by reason of its bulk or other special cause,
3 cannot be immediately removed, a copy of the writ (omitting
4 the declaration) and of the return thereon, made of the attach-
5 ment, may at any time within five days thereafter, be deposited
6 in the office of the clerk of the town in which it is made; and
7 such attachment shall be effectual and valid, as if the property
8 had remained in possession and custody of the officer.

M. R. S. 90, § 33, 34.

SECT. 40. It shall be the duty of the clerk to receive such
2 copy and note thereon the time of his receiving it; and also
3 enter a note thereof in the order in which they are received in a
4 book kept for that purpose for which he shall be entitled to
5 twenty-five cents. M. R. S. 90, § 35.

SECT. 41. When a suit shall be brought against a county, the
2 summons shall be served by leaving an attested copy thereof
3 with one of the county commissioners or with their clerk.

M. R. S. 90, § 42.

SECT. 42. In all suits against the inhabitants of any town,
2 organized plantation, parish, religious society or school district,
3 the summons shall be served by leaving a copy thereof with the
4 clerk of the corporation sued, if there is one, or with one of the
5 selectmen or assessors or members thereof—and if there be no
6 clerk of school district, then notice shall be posted on the outer
7 door of the school house.

SECT. 43. In suits against all other corporations, whether
2 created by act of the Legislature, or under a general law of
3 the State incorporated by application to a justice of the peace,
4 for a warrant, and after due notice to all concerned, by assem-
5 bling under the authority of such warrant and thus forming a
6 corporation and electing its officers, the summons shall be served

7 by leaving a copy of it with the president or clerk, cashier,
8 treasurer, committee or director (as the case may be) of the
9 corporation sued. 1821, 59, § 6.

SECT. 44. And in all the cases mentioned in the three pre-
2 ceding sections, the writ shall be served thirty days before the
3 sitting of the court, to which the writ is made returnable.

1821, 59, § 6.

SECT. 45. When the share or interest of any person in any
2 incorporated company shall be attached on mesne process, an
3 attested copy of the writ shall be left with the clerk, cashier or
4 treasurer of such company; and such attachment shall be a lien
5 on all accruing dividends, as well as on the share; and if the
6 officer having the writ of attachment, shall exhibit the same to
7 the officer of the company, having custody of the account of
8 shares, or interest of the stockholders, and request a certificate
9 of the number held by the defendant and such officer shall
10 unreasonably refuse to give it, or wilfully give him a false certifi-
11 cate thereof, he shall pay double the damages occasioned by
12 such refusal or neglect, to be recovered against him, unless the
13 debt should be paid by the defendant.

1821, 60, § 1. 1821, 50, § 8.

SECT. 46. The franchise and all rights, privileges and immu-
2 nities—of any incorporated company of demanding and receiv-
3 ing tolls or other corporate property may be attached on mesne
4 process, and the officer making the attachment shall leave an
5 attested copy of the process and of his return thereon with the
6 clerk, treasurer or some one of the directors of the corporation.

1821, 60, § 2.

SECT. 47. When an action is commenced against two or more
2 persons, and any one or more of them never was an inhabitant
3 of the State, and has no tenant, agent or attorney in the State,
4 the summons designed for him—may be left with either of the
5 co-defendants in the State and such notice shall be deemed
6 sufficient unless further notice shall be ordered by the court.

M. R. S. 90, § 46.

SECT. 48. When the service of a writ is defective or insuffi-
2 cient by reason of some mistake of the officer or of the plaintiff
3 as to the place where, or the person with whom, the summons
4 or copy should have been left, the court may, if they think
5 proper, order a new summons to be issued and served in such
6 manner as they may direct, and such service shall be as effectual
7 as if made and returned on the original writ.

M. R. S. 90, § 53.

SECT. 49. When the name of a defendant is not known to the
2 plaintiff—the writ may issue against him by a fictitious name,
3 and if duly served, it shall not be abated for that cause, but may
4 be amended on such terms as the court shall order.

M. R. S. 90, § 54.

SECT. 50. Different attachments in one or more counties, may
2 be made successively upon the same writ, and by different offi-

cers before the service of the summons, but none after such service. M. R. S. 90, § 55.

SECT. 51. All writs of scire facias may contain a direction to the officer who shall serve them, to attach the property of those against whom they issue, and also to arrest the bodies, when liable to be arrested, in the same manner as may be done in case of writs of attachment. M. R. S. 90, § 55.

SECT. 52. When personal property is attached, if the creditor and debtor consent, the officer may sell the same before judgment, observing the directions for selling on execution; and when the same property is attached by different creditors in different suits, the same may be so sold by the first attaching officer, or in case of his death, if he was a deputy sheriff, then by the sheriff or another deputy, by the written consent of the defendant and all attaching creditors; and the proceeds of the sales, after deducting the necessary expenses of the sale shall be held by such first attaching officer or the sheriff subject to the successive attachments, in like manner, as if the sale had been on execution. M. R. S. 90, § 57.

SECT. 53. When living animals or goods liable to perish or waste, or be greatly reduced in value by keeping, or which cannot be kept without great expense, and the parties shall not consent to a sale thereof as before provided, the property so attached, at the request of either of the parties interested therein,—may be examined and appraised in the manner following— M. R. S. 90, § 58.

SECT. 54. Upon such request made to the officer, he shall give notice to all parties, and prepare a schedule of the goods, and cause three disinterested persons, acquainted with the nature and value of such goods, to be appointed, and duly sworn as appraisers of such goods. M. R. S. 90, § 59.

SECT. 55. The appraisers shall be appointed, one by the creditor or creditors, one by the debtor or debtors, and one by the officer; and if the creditors neglect to appoint one, or cannot agree, the officer shall appoint one in their behalf, and he shall do the same if the debtor or debtors neglect, or cannot agree, to appoint one. M. R. S. 90, § 60.

SECT. 56. The appraisers shall examine the property attached, and if they are of opinion that the same or any part of it, is liable to perish, or waste, or to be greatly reduced in value by keeping, or be kept at a great expense, they shall proceed to appraise the same according to their best judgment, at the value thereof in money, and the goods shall thereupon be sold by the officer, and the proceeds shall be held and disposed of in the manner before provided in the case of a sale by consent of parties, unless the goods shall be taken by the debtor, as provided in the following section. M. R. S. 90, § 61.

SECT. 57. The goods shall be delivered to the debtor after having been thus appraised, if he shall require it, on his depositing with the attaching officer the value thereof in money, or

4 giving bond to him with two sufficient sureties, with condition
5 either to pay him the appraised value of the goods, or to satisfy
6 all such judgments as shall be recovered in the suits in which
7 the goods were attached, if demanded within the time, during
8 which the goods would have been held by the respective attach-
9 ments, or within thirty days after the time when the creditors
10 respectively might have been entitled to demand payment out
11 of the proceeds of said goods, if they had been sold as before
12 provided. M. R. S. 90, § 62.

SECT. 58. The officer taking such bond shall return the same
2 with the writ, on which the first attachment is made, in like
3 manner as bail bonds are returned, with a certificate of his
4 doings in relation thereto—and in case of a forfeiture of said
5 bond, the creditor or any one or more of them, may bring an
6 action of debt thereon in the name of the officer.

M. R. S. 90, § 63.

SECT. 59. The writ in such action, shall, in addition to the
2 usual endorsement, have also endorsed on it the names of the
3 creditors by whom the action is brought, and in case judgment
4 is rendered for the defendants, execution for the costs shall be
5 issued against all the creditors whose names are so endorsed or
6 separate executions against each creditor for his proper propor-
7 tion, as the court shall consider most equitable and just.

M. R. S. 90, § 64.

SECT. 60. If judgment shall be rendered for the plaintiff, the
2 money recovered shall be first applied under the order of court,
3 to pay the reasonable expenses incurred by the creditors in
4 prosecuting the suit, so far as the same shall not be reimbursed
5 by the costs recovered of the defendant, and the residue shall
6 belong to all the attaching creditors, according to their respec-
7 tive rights.

M. R. S. 90, § 65.

SECT. 61. No judgment or execution shall be awarded for
2 the use of any creditor, without reserving as much as may be
3 due upon any prior attachment, whether the creditor in such
4 prior suit, be or be not one of those by whom the action is
5 brought on the bond.

M. R. S. 90, § 67.

SECT. 62. Any creditor entitled to the benefit of the bond,
2 who shall not have joined in bringing the action thereon, may
3 after a judgment in such action bring a scire facias on the judg-
4 ment, and recover any sum that may be due to him upon the
5 bond, or he may, upon his motion, at any time before final judg-
6 ment in the action on the bond, be allowed, upon such terms as
7 the court shall order, to become a party to the suit in like man-
8 ner and with the same effect, as if he had been one of the
9 original plaintiffs, and his name shall be endorsed on the writ
10 accordingly, with the names of the other creditors. But no
11 creditor whose cause of action on such bond accrued more than
12 one year, before the commencement of the action thereon, shall
13 have judgment or execution in such action; and no creditor

14 shall sue out any such writ of scire facias on the judgment,
15 unless within one year after the cause of the action shall accrue.

M. R. S. 90, § 68.

SECT. 63. When goods which are sold or appraised and
2 delivered to the debtor, in the manner before provided, shall
3 have been attached by several creditors, any one of them may
4 demand and receive satisfaction of his judgment, notwithstanding
5 any prior attachments provided he is otherwise entitled to
6 demand the money, and provided also that a sufficient sum be
7 left of the proceeds of the goods, or of the appraised value to
8 satisfy all prior attachments.

M. R. S. 90, § 70.

SECT. 64. When goods are sold or disposed of, either by con-
2 sent of parties, or after an appraisal as aforesaid, the proceeds
3 thereof, whilst remaining in the hands of the officer shall be
4 liable to be further attached by him as the property of the
5 original defendant, in like manner as the goods themselves
6 would have been liable, if they had remained in the possession
7 of the officer; and the proceeds so attached, shall be held and
8 disposed of in the same manner as if the attachment had been
9 made on the goods themselves before the sale thereof; but nothing
10 in this section shall prevent the officer from paying over to
11 the defendant the surplus of the proceeds of any sale, after
12 retaining enough to satisfy all the attachments actually existing
13 thereon at the time of such payment.

M. R. S. 90, § 71.

SECT. 65. When any personal property, belonging to two or
2 more persons is attached in any suit against one or more of the
3 part owners thereof, it shall, upon the request of any other of
4 the part owners, be examined and appraised in the manner
5 before provided for an appraisement when made at the request
6 of any party in the suit, except that the part owner who makes
7 the application shall appoint one of the appraisers, and the
8 defendant shall not appoint any.

M. R. S. 90, § 73.

SECT. 66. The property shall be delivered to the part owner
2 at whose request it was appraised, upon his giving bond to the
3 attaching officer, in a sufficient penalty with two sufficient sure-
4 ties, with condition to restore the same in like good order, or
5 pay the officer the appraised value of the defendant's share
6 or interest in such property or to satisfy all such judgments
7 as shall be recovered in the suit in which the property is
8 attached, if demanded within the time, during which the pro-
9 perty would have been held by the respective attachments.

M. R. S. 90, § 74.

SECT. 67. If such appraised value or any part thereof shall
2 be so paid, the defendant's share of the property shall thereby
3 become pledged to the party to whom it was delivered, and he
4 may sell the same, if not redeemed and shall account to the
5 defendant for the balance, if any, of the proceeds of such sale.

M. R. S. 90, § 75.

SECT. 68. If the attachment shall in any way be dissolved,
2 the party to whom the defendant's share was delivered, shall
3 restore the same to the defendant, or to the officer, who made
4 the attachment, to be by him delivered to the defendant.

M. R. S. 90, § 76.

SECT. 69. The doings of the officer, together with the bond
2 aforesaid, shall be returned by him in the manner above pro-
3 vided, in the case of a bond given by a debtor upon the delivery
4 of property attached, and in case of the forfeiture of any such
5 bond by a part owner, the like proceedings may be had thereon,
6 as before provided upon the forfeiture of the bond given by a
7 debtor.

M. R. S. 90, § 77.

SECT. 70. It shall be lawful in any civil action to attach any
2 personal property, mortgaged, pledged or subject to any lien
3 created by law, (not by law exempted from attachment) and of
4 which the debtor has the right of redemption, and to hold the
5 same in like manner as if it were unincumbered, provided the
6 attaching creditor shall first tender or pay to the mortgagee,
7 pledgee or holder, the full amount of the demand for which the
8 said property is mortgaged—pledged or subject to any lien as
9 aforesaid.

1835, 188, § 2.

SECT. 71. Every mortgagee, pledgee, or holder of personal
2 property, shall, on demand in writing made upon him by any
3 person, desirous of attaching the same for a debt or demand
4 against the mortgager, pledger or general owner, render a just
5 and true account of the debt or demand secured by such mort-
6 gage pledge or lien, and any mortgagee, pledgee or holder,
7 who shall, after six hours next after such demand made, unrea-
8 sonably neglect to render such account, and shall receive more
9 than is justly due him on account of the demand so secured,
10 shall refund the excess, with ten per cent. interest thereon to the
11 time of recovering judgment.

1835, 188, § 3.

SECT. 72. When any property attached on mesne process,
2 shall be claimed by any person, not being a party to the suit,
3 and such person shall omit for the space of ten days after notice
4 given him therefor by the attaching creditor to bring his action
5 of replevin for such property, the officer making the attachment,
6 may, at the request of the plaintiffs and on his responsibility,
7 (the other attaching creditors, if any, consenting thereto,) sell
8 the same at public auction in the manner provided for the sale
9 of goods, in the one hundred seventeenth chapter, unless the
10 defendant shall claim the property in his own right and forbid
11 such sale, and the sale shall not impair the rights of any party
12 claiming the property.

1831, 508, § 7.

SECT. 73. Not only the right in equity of redeeming lands
2 mortgaged, but also the right of redeeming such right or equity
3 of redemption after the same has been sold on execution, and also
4 the right of redeeming lands levied upon or sold on execution
5 and the right, title and interest which any person has, by virtue
6 of a bond or contract, to a deed of conveyance of real estate,

7 on specified conditions, may be attached on mesne process,
8 and the same lien thereon shall be thereby created by such
9 attachment as if they were tangible property.

1833, 87. 1829, 431, § 1.

SECT. 74. When an action is brought in this State by any
2 person who is not an inhabitant thereof—or who cannot be
3 found therein, to be served with process, he shall be held to
4 answer to any action brought against him by the defendant,
5 provided the demand in the two cases be of such a nature that
6 the judgment or execution in the one case, can be set off against
7 the judgment or execution in the other. M. R. S. 90, § 49.

SECT. 75. If there are several defendants in the original
2 action, each of them shall be authorized to bring such cross
3 action against the original plaintiff; and upon recovering judg-
4 ment therein, he may be allowed to set off his judgment against
5 that which may be recovered against himself and his co-defend-
6 ants, in like manner as if the latter judgment had been against
7 himself alone. M. R. S. 90, § 50.

SECT. 76. The writ in such cross action, may be served on
2 the person who appears as attorney of the plaintiff in the orig-
3 inal action; and such service shall be as valid and effectual as
4 if made on the party himself in the State; and in the cases
5 mentioned in the two preceding sections the court may order
6 such continuances as justice may require for the defence of
7 either of the actions, or for offsetting the demands as therein
8 provided. M. R. S. 90, § 51.

SECT. 77. Goods and chattels attached by an officer, in case
2 of his death whether remaining in his custody or taken from
3 him, by replevin or otherwise, and also all claims for damages to
4 goods so taken from him, shall remain subject to the attachment
5 in like manner as if the officer had lived, and shall not be con-
6 sidered as assets in the hands of his executors or administrators.

M. R. S. 90, § 95.

SECT. 78. All goods taken by replevin from an officer who
2 has attached them, shall be considered as remaining in his cus-
3 tody and control so far as to be liable to further successive
4 attachments in like manner as if the goods themselves had
5 remained in his possession; subject to the provisions in the
6 three following sections. M. R. S. 90 § 99.

SECT. 79. And in case of judgment for a return of the goods
2 so replevied, the plaintiff in replevin and his sureties shall be
3 liable for the whole of the goods, or the value thereof, although
4 the attachment for which they were eventually held, should
5 have been made after the taking of the goods by the replevin.

M. R. S. 90, § 100.

SECT. 80. If an officer, after making an attachment of goods,
2 shall die or be removed from office, whilst the attachment
3 remains in force, the same goods whether replevied or remaining
4 in the possession of the officer or of his executors or adminis-
5 trators or other person having the possession or care of them,

6 may be further attached by any officer, so as to bind the goods
7 or the proceeds thereof in like manner, as if the latter attach-
8 ment had been made by the first mentioned officer.

M. R. S. 90, § 101.

SECT. 81. The officer making the latter attachment shall not
2 take the goods themselves, but the attachment shall be made by
3 a return setting forth an attachment in the common form, and
4 stating by whom the goods were previously attached ; and if the
5 goods have not been replevied, by leaving a certified copy of
6 the writ—(omitting the declaration) and of the return of that
7 attachment, with the former officer if living or if he is dead,
8 with his executor or administrator or if none are appointed, then
9 with the person having possession of the goods ; or if the goods
10 have been replevied and the officer who made the original
11 attachment is dead, such copy shall be left with the plaintiff in
12 replevin or his executors or administrators—and the attachment
13 shall be considered as made when such copy is delivered in
14 either of the modes before described. M. R. S. 90, § 102.

SECT. 82. Goods that have been taken by replevin from an
2 attaching officer, shall not be further attached as the property
3 of the original defendant in any other manner than that provided
4 in the four preceding sections, so long as they are held by the
5 person who replevied them, or by any one holding under him,
6 unless the original defendant shall have acquired a new title to
7 the goods. M. R. S. 90, § 104.

SECT. 83. When any estate or goods and chattels are attached,
2 and the debtor dies before they are taken in execution the
3 attachment shall remain in full force in like manner as if the
4 defendant were alive unless the estate of the deceased shall be
5 represented by the executors or administrators of the deceased,
6 as insolvent—and a commission of insolvency shall thereupon
7 issue within one year next, after the defendant's death.

1821, 60, § 32. M. R. S. 90, § 165.

SECT. 84. After the decease of any defendant and before the
2 issuing of any commission of insolvency as mentioned in the
3 preceding section, the executor or administrator on the estate of
4 the deceased may demand of the officer who made the attach-
5 ment of such estate or goods and chattels, a certified copy of
6 the return of said attachment, and description of such property
7 so particular as to enable such executor or administrator to
8 describe the same in the inventory of the estate ; subject to such
9 attachment, (so far as is before mentioned) and the appraisers
10 may also demand of such officer a view of such goods and chat-
11 tels so that they may know their value ; and if such officer shall
12 refuse or neglect to comply with either of such demands, he
13 shall forfeit and pay to such executor or administrator a sum not
14 exceeding thirty, nor less than ten dollars. M. R. S. 90, § 106.

SECT. 85. And when a commission of insolvency shall have
2 been issued, after one year from the death of the debtor, and
3 such attachment thereby dissolved, the officer on demand, shall

4 restore the goods and chattels attached to such executor or
5 administrator to be administered according to law—on payment
6 of his legal fees and charges of keeping the goods.

SECT. 86. If, before any demand made on the officer, as above
2 provided, he shall have sold the goods and chattels, attached by
3 him as aforesaid upon execution, or any other chattel interest,
4 or right of redemption, he shall not be deemed a trespasser in
5 so doing, but shall be liable only for the proceed of the sale,
6 after deducting his legal fee and charges for keeping the goods ;
7 and such proceeds may be recovered by the executor or admin-
8 istrator by action for money had and received.

M. R. S. 90, § 107.

SECT. 87. If such officer shall have paid over the proceeds
2 to the judgment creditor, before such demand, the executor or
3 administrator may recover such sum from the creditor, by a
4 similar action for money had and recovered.

M. R. S. 90, § 108.

SECT. 88. In an action founded on either of the preceding
2 sections, the defendant shall not be allowed in any manner to
3 set off any demand that he may have against the executor or
4 administrator, or against the estate of the deceased.

M. R. S. 90, § 109.

SECT. 89. When an action of replevin, trover or trespass,
2 shall be brought by an officer against any person for taking
3 away from his possession any goods or chattels by him attached,
4 such actions shall not abate by the death of either of the parties,
5 but may be prosecuted by or against the executors or adminis-
6 trators of the deceased party, in like manner as in actions on
7 contract.

M. R. S. 90, § 95.

SECT. 90. And if in such action, judgment should be recov-
2 ered by the plaintiff, the goods or money recovered, shall be
3 held and appropriated and disposed of in the same manner, as
4 they would and ought to have been by the officer, if he had
5 lived and recovered the same himself.

M. R. S. 90, § 96.

SECT. 91. If judgment be rendered against the executor or
2 administrator, the goods and damages recovered shall be
3 returned, delivered and paid in full by the executor or adminis-
4 tor, though the estate of the deceased be insolvent.

M. R. S. 90, § 97.

SECT. 92. Whenever an attachment of real or personal pro-
2 perty, shall be made, and afterwards the parties in the action,
3 by a rule of court, submit the same action, and all other
4 demands which they may have on each other to the decision of
5 referees, and judgment be rendered on their report, such sub-
6 mission and proceeding shall dissolve the attachment.

4 Greenleaf, 277.

SECT. 93. And if by consent of parties, the declaration is
2 amended, so as to embrace a larger demand, than it originally
3 contained, and judgment be thereon rendered for the plaintiff,
4 the attachment made on the mesne process, shall be thereby

5 dissolved, unless it shall appear by the report that no claim was
6 allowed to the plaintiff, except those stated in the writ.

7 Greenleaf, 348.

SECT. 94. The final judgment mentioned in the thirty-fifth
2 and thirty-sixth sections shall be construed to be that which is
3 rendered in the original action and not such as may be rendered
4 on review or a writ of error.

SECT. 95. When bail is taken on mesne process it shall be
2 by bond to the officer making the arrest, with condition that
3 the defendant shall appear and answer to the suit, and that he
4 will abide the final judgment thereon and not avoid.

1821, 61, § 1.

SECT. 96. No officer shall be obliged to accept a bail bond
2 unless signed by two sureties at least, having sufficient in the
3 county in which the principal is arrested, or held in custody;
4 and if he shall take a bail bond with only one surety he shall
5 be liable to the plaintiff for any deficiency of the bail though
6 the surety was at the time he was taken, actually sufficient.

9 Mass, 479.

SECT. 97. A bail bond shall bind the obligors, though signed
2 by only one surety, or when signed by two or more sureties,
3 when all or any of them had not sufficient in the county.

2 Pick. 284.

SECT. 98. The bail bond taken shall be returned with the
2 writ and the clerk shall note upon the writ that a bond is so
3 filed.

1821, 67, § 1.

SECT. 99. Any person who has become bail for another may,
2 before the action is entered in court, exonerate himself from all
3 liability by surrendering his principal to the common jail in the
4 county where the arrest was made or in the county where the
5 writ is made returnable, leaving with the jailor of such county
6 within fifteen days after such commitment, an attested copy of
7 the writ or process, whereby the arrest was made, and of the
8 return endorsed thereon, and of the bail bond, and such jailor
9 shall receive the person into his custody in the same manner as
10 as if the officer who made the arrest had committed him—and
11 provided that such bail should have notified in writing the plain-
12 tiff or his attorney of the time when and place where the
13 principal has been committed, within fifteen days after such
14 commitment. And when bail is given at the prison after com-
15 mitment, it shall be the duty of the jailer to return the bond to
16 the court or justice before whom the writ was returnable.

1821, 67, § 1. 1831, 522.

SECT. 100. In all cases of bond given by a person charged as
2 the father of a bastard child, the sureties shall have the same
3 power to surrender the principal at any time, as well before
4 entry of the prosecution as after, as the bail in civil actions have
5 and thereupon entitle themselves to be discharged from their
6 liability.

SECT. 101. The additional liabilities and rights of bail after entry of the action against the principal, are reserved for, and mentioned and prescribed in the chapter on bail.

1836, 210, § 2.

SECT. 102. No person shall be arrested in any civil action on mesne process, or execution, or on any warrant of distress for taxes, on the fourth day of July or on the day of any State election.

1836, 232.

SECT. 103. On the day of any company training, inspection, review, or election, no soldier, who is enrolled as such, liable to do military duty, and shall have been warned to attend on said days, shall be arrested on mesne process or execution, or for taxes as aforesaid.

1836, 232, § 2.

SECT. 104. No elector shall be arrested, except for treason, felony, or break of the peace, on the days of election of governor, senators and representatives during his attendance at, going to, and returning therefrom.

Constitution, Art. 2d, Sec. 2.

SECT. 105. No person shall serve or execute any civil process from midnight preceding to midnight following the Lord's day; but such service shall be void, and the person on executing such process shall be liable in damages to the party aggrieved, in like manner as if he had not had any such process.

1821, 9, § 9.

NOTES.

SECT. 1. The commissioners instead of reporting twenty pages of mere forms of the various writs and precepts made use of in civil actions, have in this section, referred to them; and have not included the above chapter of the existing statutes in the list of acts repealed; and they have also in the 21, 22, 23, 24 and 25 sections, given a general description of the essentials of the processes used in the commencement of actions, and the mode of service.

SECT. 29. The reference to the principles of the *common law*, as to certain property not liable to attachment, is new; but those exemptions are recognized in practice, and to prevent any doubts, those principles are left in force. The *other* exemptions by statute are found in their proper places.

SECT. 30. This section distinctly declares the law, as to the mode of attaching real estate, according to the general practice as now existing and sanctioned.

SECT. 41. This is the mode adopted in Mass. The statute of this State is not so definite. The county commissioners seem to be the proper agents of the county.

SECT. 42. This section provides for the same mode of service on all the corporations named therein, so as to leave no uncertainty on a point which has recently been a subject of controversy.

SECT. 43. This section embraces *all others*; and renders the course of proceeding plain and simple.

SECT. 47. This section is borrowed from the Mass. code; and it is so carefully guarded that while it may in most cases be sufficient, other notice may be ordered and required to be given.

SECT. 48. This is new and borrowed from the Mass. code. The commissioners suggest it, as in their opinion, a very useful power to be given to the court.

SECT. 49. This also is new, but the cause of justice may be essentially promoted by it.

SECT. 50. This contains no new principles; it only sanctions the practice.

SECT. 51. This section changes the form of *scire facias* so far as to authorize a command to attach property; and in many cases an attachment may be as useful as in common actions.

SECT. 52. This section and the seventeen sections following, are taken from the Mass. code. They contain the provisions of a statute in that Commonwealth passed in the year 1822. The 52d section proceeds on the ground of consent on the part of the debtor and the attaching creditor or creditors. In such cases according to the present practice, personal property attached may be sold before judgment, for the convenience of all concerned; but in the succeeding sections, the provisions, in the cases described, apply where there is no consent of parties. Either party may have the benefit of the provisions. The commissioners respectfully express their own opinion as to the wisdom and usefulness of them, by inserting the sections above mentioned. Much loss and expense may thus be saved to one or the other of the parties by an immediate sale; and the provisions are so framed as to secure the rights of all attaching creditors, without, in any manner, impairing the rights of debtors. The sections are submitted to the consideration of the Legislature, as a salutary improvement in our system of special attachments of personal property. The system seems so perfect, that no attempt has been made to improve or alter it.

SECT. 74. This and the two following sections are taken from the Mass. code. The remedy they provide for the inhabitants of this State, when sued by persons who are inhabitants of other States, as to off-sets, and the mode of service of the writs in cross actions, seems to the commissioners to be a very useful one, and that in practice it will be found so. The sections are respectfully submitted to the consideration of the Legislature for enactment.

SECT. 77. This and the five following sections contain, in a condensed form, certain provisions of the act of 1822, passed in Mass. and are taken from the code of that State. They are so carefully prepared as to preserve attachments of property, in a variety of situations, in which it may be placed or found, all which are particularly described. They appear to the commissioners to have removed doubts; and to have furnished many guards; and are all evidently designed to render plain, what was not so before; and to point out to officers and parties their rights and duties, in such a manner as to recommend them as suitable for enactment by the Legislature; and as such, they are recommended by the commissioners.

SECT. 83. This section is founded on the act of 1821, ch. 60, § 32. Its provisions go further than the language of the existing statute; and, taken in connection with the eight following sections, they are adapted to secure the benefit of an attachment, where the estate is not insolvent; and secure to all concerned, in case of such insolvency, their respective rights. The sections are taken from the Mass. code. Many of the above provisions contain no new principles; but they are designed to prescribe the mode in which they ought to be applied, according to the construction which, in many cases, has been given to our existing statutes.

SECT. 92. This section is merely an enactment of a principle of law, as settled by judicial decisions.

SECT. 93. The same remark applies to this section.

SECT. 94. A mere definition of the words "final judgment."

SECT. 96. This conforms to an early decision in Mass.

SECT. 97. This is the existing law, as settled by decision.

CHAPTER 115.

OF PROCEEDINGS IN CIVIL ACTIONS IN COURT.

- Sect.*
1. When actions must be entered in court.
 2. On non-appearance, defendant to be defaulted, but, &c.
 3. When defendant not inhabitant of State,—action may be continued.
 4. Same subject.
 5. Execution stayed till bond given, in case, &c.
 6. Bond to be left with clerk.
 7. In such case a review of right may be had in one year.
 8. In certain cases, review may be granted after a year.
 9. Circumstantial errors, &c. not to abate process.
 10. Such may be amended on motion.
 11. If there are two or more defendants, one or more may be struck out on motion.
 12. New defendants may be added, and how notified.
 13. Distinction between *trespass* and case abolished.
 14. Treasurers may bring actions in their own names.
 15. In actions on bond and covenant, several breaches may be assigned.
 16. Mode of declaring in certain actions of covenant.
 17. Who may release covenants, and when.
 18. Mode of pleading in civil actions.
 19. Same subject.
 20. Demurrers and joinders.
 21. Mode of recovering penalties.
 22. Defendant may consent—to be defaulted for a certain sum.
 23. *Joint* contracts may be sued as *joint and several*, in case, &c.
 24. Mutual debts may be set off.
 25. Defendant's account when to be filed.
 26. Description of the set-off, as to certainty.
 27. *What* demands may be set off.
 28. Same subject.
 29. Must have existed and belonged to defendant, when action was brought.
 30. Demand assigned to defendant, and notice given to plaintiff may be set off.
 31. Demand on bond can be set off, for no more than is due on it.
 32. Same subject.
 33. The parties must be the same, in the action and set off.
 34. Set off in case of a dormant partner.
 35. If demand sued has been assigned, a demand against the nominal plaintiff, after notice to defendant, cannot be set off against him.
 36. But in such case, the demand against the assignee, for whose use the action is brought, may be set off.
 37. Demands in actions by executors, &c. may be set off as above.
 38. When a set-off is filed in such a case, defendant may recover the balance, as if creditor were living.
 39. But not if the estate of the deceased, is insolvent.
 40. In actions against executors, &c.—they may set off such demands, as the deceased might if living.
 41. In actions by or against executors, &c. no demand shall be set off, due to or from them in their own right.
 42. All set-offs shall be tried on the issue joined—form of the issue, &c.
 43. Plaintiff may have every ground of defence against the off-set as though an action had been brought upon it.
 44. And statute of limitation shall apply to it in same manner.
 45. If nothing is due to either party, no costs to either.
 46. If balance is found due the defendant, he shall have judgment for it—subject to an exception.

- Scet.* 47. Same proceedings to be had in municipal and police courts and in justice actions.
48. After an account filed in set-off, plaintiff shall not discontinue, but by consent of defendant.
49. In certain cases, court may appoint auditors.
50. They shall notify the parties.
51. If there are several auditors, all must hear the parties, but a majority may make a report, &c. &c.
52. Witnesses compelled to attend before them.
53. Court may discharge auditors, or recommit report.
54. If there is no legal objection to it, it may be read in evidence subject to impeachment, &c.
55. Court to allow auditors compensation.
56. On non-suit or discontinuance, defendant to have costs.
57. Proceedings in actions of account.
58. Clerk of court to prepare list of jurors—and mode of empannelling them.
59. Supernumeraries—excusing jurors, &c.
60. Form of swearing jurors.
61. Mode of choosing their foreman.
62. In certain cases jurors may be returned from bystanders.
63. How to be returned.
64. Court may send for jurors in term time, &c.
65. Jurors may be examined on oath, as to interest, impartiality, &c.
66. Jury may find verdicts, subject to opinion of court.
67. When Jury do not agree, court may explain, &c.
68. What shall not disqualify a juror.
69. Objection to juror must be made before trial, if known.
70. Irregularities in summoning jurors, &c. &c., shall not impeach the verdict, unless objection is made before return of the verdict.
71. Clerks and justices may issue summons for witnesses, and compel their attendance.
72. Who may be a witness.
73. How he may be sworn.
74. Who may *affirm* instead of swearing.
75. Town inhabitants, &c. and members of certain corporations may be witnesses, &c.
76. Parties not to treat jurors, &c.
77. In actions of replevin, value of property in certain cases to be found by jury.
78. Proceedings in trial on debtor's bonds, when debtor is discharged, and how judgment may be rendered; how on *other* bonds.
79. Interest to be allowed in actions of debt, on judgments.
80. No judgment to be arrested.
81. When either party dies, if cause of action survives, executor, &c. may prosecute or defend.
82. Surviving party may notify them to appear for the purpose, &c.
83. So in case of appeal, if either party dies before entry same notice may be given to the executor, &c.
84. When general verdict is found, if any count is good there shall be judgment.
85. If plaintiff appeals from a judgment in his own favor rendered by a justice, and does not obtain higher damages, only one quarter costs, &c.
86. Guardian may appear for either party, if insane.
87. Meaning of double or treble costs.
88. When motion for certiorari, &c. fail, costs for respondent.
89. After a non-suit, &c.—no second action maintained till costs of the former are paid.
90. When such action is brought in name of the State, for the benefit of a private person, he shall endorse his name on the writ, and judgment for the costs shall be against him.

- Sect.* 91. When State sues for its own benefit, defendant's costs to be paid by county treasurer.
92. No costs in such case, taxed for travel.
93. When plaintiff brings two actions at same court, which might be joined—what cost allowed.
94. How travel to be taxed.
95. How in cases of default.
96. No costs allowed in action of debt, when an execution could have issued, unless, &c.
97. How, for an aggregate corporation.
98. Saving, as to control of costs by the court, in certain case.
99. How costs taxed when off-set reduces plaintiff's demands below twenty dollars.
100. All actions on court's dockets to be called first day.
101. When a motion is made at common law to set aside a verdict, the facts to be reported by judge, on which the motion is founded.
102. When executions may issue, &c.—from courts and how.
103. How by a justice.
104. Limited to one year, except, &c.
105. When alias and pluries may issue.
106. When scire facias necessary.
107. Interest to be added to execution, &c.
108. No court to be held on 4th July, or on day of State election.
109. Court or jury to decide when a trespass was wilful and record to be made of that fact.
110. Damages on bills of exchange, &c., drawn in this State but payable out of it.
111. Damages on bills, &c. drawn and payable in this State.
112. Court in certain cases may appoint a surveyor, and order sheriff to attend, &c. &c.
113. When same property is attached in two suits, what proceedings may be had by a subsequent attachment.
114. Form of his petition to court.
115. Court may admit him to defend first suit, giving bonds, &c.
116. His right to defend to be entered on record.
117. If recognizance has been given, execution may issue on that—in case, &c.
118. If petition shall prevail—he shall have costs, &c.
119. If first attachment was fraudulent, it shall be void.
120. A justice of the peace, in certain cases, shall summon a witness to attend a criminal trial in another State.

SECT. 1. No action shall be entered in the supreme judicial court or district court, after the second day of the session thereof, without the special permission of the court.

1821, 59, § 14.

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 endorsed thereon, and he shall not appear by himself or attorney, his default shall be recorded, except as hereinafter provided; 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.

1821, 59, § 15.

SECT. 3. If the defendant was not an inhabitant of the State at the time of the service of the writ, or resident therein, and it does not appear that he had actual notice of the suit, or that he had returned to the State, on suggestion of the fact, the court may continue the same from time to time, not exceeding twice, unless for some special cause; or, at their discretion, they may enter judgment or default. 1821, 59, § 7.

SECT. 4. If a defendant was not an inhabitant of the State or within the same at the time of such service, but had actual notice of the suit, the court may in their discretion, order a continuance of the action, though he does not appear in season to answer to the suit, at the return term.

SECT. 5. When judgment in any personal action shall be rendered as above provided in the third section, upon the default of an absent defendant, the plaintiff shall not take out execution thereon within one year thereafter, unless he shall first give bond to the defendant, with one or more sufficient sureties, in a sum equal to double the amount of the judgment for damages and costs, with condition to repay the said amount to the defendant, if the judgment shall be reversed upon a review, to be brought by the original defendant, within one year after rendition of the original judgment, or as much of the amount first recovered, as shall be recovered back upon such review. 1821, 59, § 7.

SECT. 6. The bond above mentioned shall be deposited with the clerk of the court, for defendant's use, and the clerk shall decide on the sufficiency of the sureties, saving a right of appeal from his decision to any justice of the court, in which the judgment was rendered.

SECT. 7. And when judgment is so rendered upon default as mentioned in the third section, the defendant shall be entitled to a review of the action as of right, to be commenced and prosecuted in the same court, within one year next after the judgment was rendered, in the manner provided in the one hundred and twenty-fourth chapter, respecting actions of review. 1821, 59, § 7.

SECT. 8. If such review of right has not been prosecuted within one year as aforesaid, the defendant may at any time within one year, after he shall first have notice of the judgment, apply by petition to the court, in which the same was rendered, for a review of the action; and if it shall appear to the court that justice requires it, they may grant a review thereof, on such terms as they may deem reasonable. 1821, 57, § 3.

SECT. 9. No summons, writ, declaration, plea, process, judgment or other proceedings in courts of justice, shall be abated, arrested, or reversed for any kind of circumstantial errors or mistakes, when the person and case may be rightly understood by the court, nor for want of form only, and which by law might have been amended. 1829, 59, § 16.

SECT. 10. And all such errors, imperfections and defects, may, on motion, be amended, by either party, on such terms as the court may direct.

SECT. 11. In all actions where there are two or more defendants, the plaintiff may amend the writ, by striking out the names of one or more of the defendants, on paying him or them, their costs up to that time. 1835, 178, § 4.

SECT. 12. In any action on contract express or implied, the plaintiff may, on motion, amend his writ, by inserting therein, the names of any other person or persons, as defendants and the court may order a copy of the writ, and the order of the court thereon endorsed, to be served on such additional defendant, and his property to be attached in the same manner, as in case of original writs; and on return of such service and attachment, if any shall be made, such additional defendant or defendants, shall be deemed parties to the suit, and may plead to the action accordingly; but they shall not be liable to any costs, before service made on them, as aforesaid. 1835, 178, § 5.

SECT. 13. In all actions of trespass, and trespass on the case, the declaration shall be deemed equally good and valid to all intents and purposes, whether the same shall be in form, a declaration in trespass, or trespass on the case. 1835, 178, § 1.

SECT. 14. The treasurer of the State, treasurers of counties, towns, parishes and other corporations, may bring actions in their own names and capacities on any bonds, notes or other securities, which shall have been given to them, or their predecessors, and prosecute any suits commenced by their respective predecessors, and pending when they left such offices. 1821, 29, § 26.

SECT. 15. In all actions on any bond or penal sum for the performance of any covenants or agreements, and in all actions of covenant the plaintiff may assign as many breaches as he may think fit, to which the defendant may answer generally, that he has kept and performed all said covenants, whether they are affirmative or negative. 1830, 463, § 1.

SECT. 16. In all cases where real estate has been, or may be absolutely conveyed to any person, his heirs and assigns with a covenant, that he was seized in fee of the same and that it was free of all incumbrances at the time of such conveyance, the same estate then being under mortgage or other incumbrance, or the grantor not being then seized of the same, the assignee of such grantee, his executors or administrators, after having been evicted of said estate, by the elder and better title of the mortgagee, his heirs or assigns, may maintain an action of covenant, broken against the first grantor on any of the covenants, in such absolute deed, in his or their own names, and recover such damages, as the grantee might, if he had been evicted, and had brought the action in his own name; provided he shall file

14 in court at the first term for the use of the grantee, a release of
15 the covenants in said grantee's deed, to said assignee, and all
16 causes of action on any of such covenants. 1835, 183, § 15.

SECT. 17. When a person has conveyed, or shall convey real
2 estate to another, covenanting in his deed that he is seized in
3 fee of the premises, and that they are free from all incumbrances
4 at the time of the conveyance, and such grantee shall afterwards
5 convey the same premises to a third person in fee ; such grantee
6 shall have no power to release the said covenants contained in
7 the deed first mentioned, so as to bar or any way affect the right
8 of such third person, to maintain an action against the first
9 grantor for breach of said covenants of seizin and freedom of
10 the premises from incumbrance. 1835, 183, § 16.

SECT. 18. The defendant may in all cases plead the general
2 issue, which shall be joined by the plaintiff, and he may give in
3 evidence any special matter, in defence when the issue is to be
4 joined to the country, provided, that he shall, at the same time,
5 file in the cause a brief statement of such special matter ; to
6 which the plaintiff may, within such time, as the court shall direct,
7 file any counter brief statement of any matter on which he may
8 rely and give in evidence by way of avoidance of the matter con-
9 tained in the brief statement of the defendant—or 1831, 514.

SECT. 19. The defendant may, at his election, plead such
2 matter specially, after the general issue is pleaded in bar of the
3 action, and by leave of court plead double. In every prosecu-
4 tion for writing and publishing a libel, it shall be lawful for the
5 defendant to give in evidence on the trial thereof, the truth of
6 the matter, charged as libellous, and the truth of such fact, being
7 established shall be justification, unless it shall appear that the
8 matter charged as libellous, originated from corrupt or malicious
9 motives. 1833, 73.

SECT. 20. When the defendant does not deny the fact stated
2 in the declaration, he may file a general demurrer to the same ;
3 and in any stage of pleading either party may demur and the
4 demurrer shall be joined.

SECT. 21. All penalties may be recovered by action of debt,
2 where no other form of action or proceeding is prescribed in
3 the statute imposing such penalties. 1821, 59, § 31.

SECT. 22. In any action founded on judgment or contract
2 the defendant may offer and consent in writing to be defaulted,
3 and that judgment may be entered against him for a specified
4 sum ; and the same shall be entered on record, and the time
5 when the offer was made ; and if the plaintiff shall proceed
6 to trial and recover no greater sum for his debt or damages and
7 costs, up to the time when the offer was made, the defendant
8 shall recover his costs of the plaintiff up to the time of trial ;
9 and such costs shall be off-set against the sum so offered, and
10 judgment shall be rendered and execution issued for the balance
11 for either party which way soever the same may be.

1835, 165, § 6.

SECT. 23. The goods and estate of each deceased debtor in
 2 every joint contract, express or implied, or in any judgment on
 3 any contract, shall be liable in the hands of his executor or
 4 administrator for payment thereof, in the same manner as in
 5 case of a contract joint and several; and the creditor shall have
 6 the same remedy against any of the survivors or against the
 7 executor or administrator, as on a joint and several contract.

1821, 52, § 25.

SECT. 24. When there are mutual debts or demands between
 2 the plaintiff and defendant in any action, one demand may be
 3 set off against the other, as provided in the following sections—

1821, 59, § 19.

SECT. 25. The defendant shall file a statement of his demand,
 2 on the first or second day of the term of the court at which the
 3 writ is made returnable, and the clerk shall enter on the same
 4 the day when it was filed and the defendant shall also on the
 5 same day give written notice thereof to the plaintiff or his coun-
 6 sel—if either is attending court.

SECT. 26. The demand of the defendant shall be as certain
 2 in substance as would be required in a declaration, and the
 3 court may allow amendments thereof when deemed proper.

SECT. 27. No demand shall be set off unless it is founded upon
 2 a judgment or contract—but the contract may be either express
 3 or implied.

M. R. S. 96, § 2.

SECT. 28. No demands shall be set off unless for the price of
 2 real or personal estate sold, or for money paid—money had and
 3 received or for services done or unless it be for a sum liquidated,
 4 or one that may be ascertained by calculation.

M. R. S. 96, § 3.

SECT. 29. No demand shall be set off, unless it existed at the
 2 time of the commencement of the suit, and then belonged to
 3 the defendant; nor unless it is due to him in his own right
 4 except as hereinafter is provided.

M. R. S. 96, § 4.

SECT. 30. Any demand which has been assigned to the
 2 defendant, with notice to the plaintiff of the assignment, before
 3 the action was commenced, may be set off in like manner, as if
 4 it had been originally payable to the defendant.

5 Pick, 312. M. R. S. 96, § 5.

SECT. 31. If the demand set off is founded on a bond or
 2 other contract, having a penalty, no more shall be set off than
 3 the sum equitably due.

M. R. S. 96, § 6.

SECT. 32. The set off shall be allowed in all actions founded
 2 on demands, which could themselves be the subject of set-off,
 3 according to law, and in no others.

M. R. S. 96, § 7.

SECT. 33. If there are several plaintiffs the demand set off,
 2 shall be due from them all jointly. If there are several defen-
 3 dants, the demand set off shall be due from them all jointly
 4 except as is provided in the following section.

M. R. S. 96, § 8. 11 Mass. 140.

SECT. 34. When the person with whom a contract is made, 2 has a dormant partner, and a suit is brought on such contract, 3 by or against the partners jointly, any debt due to or from the 4 person with whom the contract was made, may be set off in like 5 manner, as if such dormant partner had not been joined in the 6 suit. 6 Pick. 352.

SECT. 35. If the demand on which the action is brought has 2 been assigned, and the defendant had notice of the assignment, 3 he shall not set off any demand that he may have acquired 4 against the original creditor, after such notice. 12 Mass. 193. 14 Mass. 291.

SECT. 36. When an action is brought by one person in trust 2 or for the use of another, the defendant may set off any demand 3 against the person for whose use or benefit the action is brought, 4 in like manner as if that person were the plaintiff in the suit. 8 Pick. 342.

SECT. 37. In actions by executors and administrators demands 2 against their testators or intestates, which belonged to the 3 defendant at the time of their death, may be set off in the same 4 manner as if the action had been brought by the deceased. 2 Mass. 498. 3 Pick. 452.

SECT. 38. When upon such set-off against an executor or 2 administrator, a balance shall be found due to the defendant, 3 the judgment therefor shall be in the same form and have the 4 same effect, as if the suit had been originally commenced by the 5 defendant; except, as stated in the following section.

SECT. 39. When the estate of the deceased is insolvent, no 2 judgment shall be rendered in favor of the defendant for the 3 balance found due to him; but the same shall be certified by 4 the clerk of the court to be the balance due from the estate of 5 the deceased, and the same shall be laid before the commission- 6 ers on such estate, in like manner as other claims of creditors. 2 Mass. 452.

SECT. 40. In actions against executors and administrators, 2 and trustees and others, in their representative character, the 3 defendant may set off demands belonging to their testators or 4 intestates, or those whom they represent, in the same manner as 5 the persons represented would have been entitled to set off the 6 same, in an action against themselves.

SECT. 41. In actions brought by or against executors, admin- 2 istrators or trustees in their representative character no demand 3 shall be set off that is due to or from such executors, adminis- 4 trators or trustees in their own right.

SECT. 42. All cases of set-off may be tried upon the issue 2 joined without any further plea; and in all actions, except 3 assumpsit, when an issue to the country is not otherwise formed, 4 the defendant may plead that he does not owe the sum demanded 5 by the plaintiff; which shall be deemed a good plea or general 6 issue, for the purpose of trying the merits of the cause. 2 Mass. 452.

SECT. 43. The plaintiff shall be entitled to every ground of
2 defence against such set-off—which he might have availed him-
3 self, by any form of pleading, in an action brought against him,
4 on the same demand. 2 Mass. 452.

SECT. 44. The statute limiting personal actions, if applicable
2 to the set-off shall be applied in the same manner, as if an action
3 thereon, had been commenced at the time, the plaintiff's action
4 was commenced. 2 Mass. 452.

SECT. 45. If the jury find no balance due to either party,
2 judgment shall be entered thereon, without costs to either; if a
3 balance is found due to the plaintiff, he shall have judgment
4 therefor. 2 Mass. 452.

SECT. 46. When a balance is found due from the plaintiff
2 judgment shall be rendered therefor in favor of the defendant
3 with costs; but no such judgments shall be rendered against
4 the plaintiff, when the demand for which the action was brought
5 had been assigned before the commencement of the action; nor
6 for any balance due from any other person than the plaintiff.

SECT. 47. In actions in a municipal court, and before a justice
2 of the peace, similar proceedings shall be had in respect to set
3 offs, as those before prescribed; provided that in no case shall
4 judgment be rendered for the defendant for more than twenty
5 dollars, exclusive of costs of suit.

SECT. 48. After a demand has been filed in set-off, the plain-
2 tiff shall not be allowed to discontinue his action, unless by
3 consent of the defendant.

SECT. 49. Whenever a cause is at issue, and it shall appear
2 that the trial will require an investigation of accounts or an
3 examination of vouchers, the court may appoint by consent of
4 parties, one or more auditors to hear the parties and examine
5 the vouchers and proof, and to state the accounts and make a
6 report thereof to the court. 1821, 59, § 25. 1826, 347, § 1.

SECT. 50. The auditors shall give notice to the parties of the
2 time and place of hearing them, and may adjourn as may be
3 found necessary. M. R. S. 96, § 26.

SECT. 51. If there is more than one auditor, all shall hear the
2 parties, but a majority may make the report, in which it shall be
3 stated, whether *all* attended the hearing or not.

SECT. 52. Witnesses may be summoned and compelled to
2 attend before the auditors, as before referees, and may be sworn
3 by any such auditor or referee. M. R. S. 96, § 28.

SECT. 53. The court may discharge the auditors and appoint
2 others, or may re-commit their report for revision.

SECT. 54. If there is no legal objection to the report of the
2 auditors, it may be used, by either party as evidence on the trial
3 of the cause before the jury, but shall be open to be impeached
4 or disproved by other evidence. M. R. S. 96, § 30.

SECT. 55. The court shall allow reasonable compensation to
2 the auditors, to be paid by the plaintiff, and taxed in his bill of
3 costs, if he prevail in the suit. M. R. S. 96, § 31.

SECT. 56. When the plaintiff in any stage of the cause shall
2 become nonsuit or discontinue his suit, the defendant shall
3 recover his costs; and in all actions, the party prevailing shall
4 be entitled to his legal costs. 1821, 59, § 17.

SECT. 57. In actions of account, when any person against
2 whom judgment shall be rendered, that he shall account, shall
3 unreasonably delay or refuse to appear at the time and place
4 appointed by the auditors, who have been appointed by the
5 court, or after appearing, shall refuse or neglect to render an
6 account, the auditors shall certify such refusal or neglect, and
7 the court shall cause the damages to be assessed by a jury and
8 judgment for the same on the verdict, or may enter a default
9 and judgment thereon. 1821, 59, § 23, 24.

SECT. 58. When venires for jurors are returned to court, the
2 clerk shall prepare, at the commencement of each term, of the
3 court, separate alphabetical lists of the names of the several per-
4 sons returned as grand and traverse jurors, and the court at
5 which such jurors attend in empannelling the traverse jurors,
6 shall cause the names of the first two persons who shall attend,
7 to be called, who shall be first sworn, and then the others in
8 succession as they shall be named on the list, and in such divi-
9 sions as the court may direct, or all at the same time; and the
10 first twelve shall compose the first jury, and the next twelve on
11 the same list shall be empannelled and sworn in like manner,
12 and shall compose the second jury. 1821, 84, § 10.

SECT. 59. If there are supernumerary jurors, they may be
2 excused from time to time till wanted; and they may be placed
3 on either jury as occasion may require; and jurors may be trans-
4 ferred from one jury to the other when the convenience of busi-
5 ness may require it; and for good reason any juror may be
6 excused. 1821, 84, § 10.

SECT. 60. The following shall be the form of the oath ad-
2 ministered to traverse jurors in civil causes—"You and each of
3 "you swear, that in all cases betwixt party and party, that shall
4 "be committed to you—you will give a true verdict therein,
5 "according to the law and the evidence given you. So help
6 "you God"—and when a juror is conscientiously scrupulous of
7 taking an oath, the word "affirm" shall be used, instead of
8 "swear," and the words—"this you do under the pains and
9 "penalties of perjury," instead of the words—"so help you
10 "God." 1821, 84, § 12.

SECT. 61. Each jury shall retire, after having been thus em-
2 pannelled and sworn, and choose their foreman by ballot, or
3 make the choice upon retiring with the first cause with which
4 they shall be charged; and whenever a foreman is absent or
5 excused from service a new foreman shall be chosen as afore-
6 said. 1821, 84, § 13.

SECT. 62. When by reason of challenge or other cause a
2 sufficient number of jurors, duly drawn and summoned cannot
3 be obtained for the trial of any cause, the court shall cause
4 jurors to be returned from the by-standers, or from the county
5 at large, to complete the pannel, provided that there shall be
6 on the jury not less than seven jurors drawn and returned as
7 before provided. 1821, 84, § 8.

SECT. 63. And such jurors shall be returned by the sheriff,
2 or his deputy or coroner or such other disinterested person as the
3 court may appoint. 1821, 84, § 8.

SECT. 64. The court may when circumstances render the
2 measure expedient, in term time, issue venires for as many jurors
3 as may be wanted to be drawn notified and returned forthwith,
4 or on a day appointed, and the court may also, when in any
5 county, the business requires a long protracted session, during
6 the term excuse all or any of the jurors originally returned, and
7 issue venires for as many new jurors as may be necessary to
8 supply their places, who shall be drawn and notified to attend
9 at such time as the court may direct. 1821, 84, § 8, 17.

SECT. 65. The court, on motion of either party in a suit, may,
2 examine on oath, any person called as a juror therein, whether
3 he is related to either party, or has given or formed any opinion,
4 or is sensible of any bias, prejudice or particular interest in the
5 cause; and if it shall appear from his answers or from any com-
6 petent evidence introduced by the party objecting to the juror,
7 that he does not stand indifferent in the cause, another juror
8 shall be called and placed in his stead for the trial of the cause.
1821, 84, § 9.

SECT. 66. The traverse jury may in all cases find a special or
2 general verdict, subject to the opinion of the court on a case
3 agreed by the parties and reserved, or on the facts as reported
4 by the judge presiding at the trial. 1821, 84, § 15.

SECT. 67. When a jury, not having agreed, return into court,
2 stating the fact, the judge may, in his discretion, explain any
3 questions of law, if proposed to him, or restate any particular
4 testimony, and send them out for further consideration; but they
5 shall not be sent out a second time in consequence of their disa-
6 greement, unless on account of some difficulties not stated when
7 they first came into court. 1821, 84, § 15.

SECT. 68. In prosecutions for the recovery of any sum of
2 money or other thing forfeited, it shall not be a cause of chal-
3 lenge to any juror, that he is liable to pay taxes in any county,
4 town or plantation, which may be benefitted by the recovery.
5 Mass. 90.

SECT. 69. If a party knows of any objection to a juror, in
2 season to propose it before trial, and omits so to do, he shall not
3 afterwards be allowed to make the same objection unless by
4 leave of court, for special reasons.

SECT. 70. No irregularity in the venires, or drawing, summon-
2 ing, returning or empannelling jurors, shall be sufficient to set

3 aside verdict, unless the party making the objection, was injured
4 by the irregularity, or unless the objection was made before the
5 return of the verdict. M. R. S. 95, § 30. 8 Greenleaf, 42.

SECT. 71. The clerks of the several courts, and any justice
2 of the peace, may issue summons for witnesses to attend before
3 such courts to give evidence concerning any matters there
4 depending; and if any person, on whom such summons shall be
5 duly served, and to whom a sum equal to his legal fees for travel
6 to said court, and thence to his home, and for one days attend-
7 ance shall be tendered, shall not appear, having no impediment
8 to the contrary, he shall be liable for all damages sustained by
9 his neglect, and the court may compel his attendance by attach-
10 ment, and fine him not exceeding twenty dollars.

1821, 59, § 38.

SECT. 72. No person who believes in the existence of a
2 supreme being shall be adjudged an incompetent or incredible
3 witness in any judicial court, or in the course of judicial pro-
4 ceedings, on account of his opinions in matters of religion;
5 nor shall such opinions be made a subject of investigation or
6 inquiry.

1833, 58, § 1.

SECT. 73. In the administration of oaths, the deponent shall
2 hold up his hand, unless he is a person who believes that an oath
3 is not binding, if it is not taken in his accustomed manner.

1821, 59, § 29.

SECT. 74. Every person conscientiously scrupulous of taking
2 an oath, and who on any lawful occasion is required to take
3 one, shall make affirmation as follows "I do affirm under the
4 pains and penalties of perjury" which shall be deemed of the
5 same force and effect of an oath.

1821, 85, § 9.

SECT. 75. In all suit at law, wherein any county, town, plan-
2 tation, parish, school district, public corporation, charitable,
3 religious or literary incorporated society, or any mutual fire
4 insurance company, may be a party or interested in the event of
5 the suit, any inhabitant or member of any such corporation
6 shall be admitted as a competent witness, provided he has no
7 other interest therein than as such inhabitant or member.

1821, 87, § 1. 1832, 3.

SECT. 76. If either party in a cause in which a verdict is
2 returned, shall, during the same term of the court, before or after
3 the trial, give to any of the jurors who shall try the cause any
4 thing by way of treat, or gratuity or purposely introduce among
5 the papers in the case which are delivered to the jury, when
6 they retire with the cause, any papers which have any connec-
7 tion with it, but which were not offered in evidence, the court
8 on motion of the adverse party, may set aside the verdict, and
9 order a new trial.

1821, 84, § 15. 6 Greenleaf 141.

SECT. 77. In all actions of replevin, whenever the jury shall
2 find the property or part of the goods and chattels replevied to
3 be in the plaintiff, and of the residue to be in the defendant,
4 they shall also without reference to the estimated value in the

5 replevin bond, find and certify in their verdict, the value of the
6 part belonging to the plaintiff as it was at the time it was
7 replevied; and if such value shall not exceed twenty dollars,
8 the plaintiff shall recover for costs, only one quarter part of
9 such value. 1822, 186, § 2.

SECT. 78. In any action pending on the eighth day of Feb-
2 ruary eighteen hundred and thirty-nine, or, that is now, or shall
3 hereafter be pending in any judicial court, or before any justice
4 of the peace, on a bond given by any execution debtor, or by
5 any person arrested on a warrant of distress, to obtain a dis-
6 charge from arrest or imprisonment, if it shall appear that prior
7 to a breach of any of the conditions of the same bond, the prin-
8 cipal in such bond, had been allowed by two justices of the
9 peace quorum unus, or two justices of the peace and quorum, or
10 a justice of the peace, and a judge of any municipal court, to
11 take and had taken before such justices, the poor debtor's oath,
12 after notice of the intentions of such debtor to disclose the state
13 of his affairs, and take such oath issued by a justice of the peace
14 upon the application of such debtor, or by written notice signed
15 by the debtor himself and served upon the creditor named in
16 the bond, or upon the attorney of such creditor, the defendant
17 shall have a right to have such action tried by a jury, who shall
18 find and assess the damages, if any, the plaintiff has sustained;
19 or if, in their opinion, he has not sustained any damages, they
20 may return a verdict for the defendant notwithstanding there
21 may have been in law a breach of the conditions of the bond;
22 and in such action the plaintiff may introduce any proper evi-
23 dence tending to show that the surety or sureties of such debtor,
24 had, in his or their hands, and possession at the time of the
25 administration of said oath to the debtor, personal property,
26 money, debts, credits or real estate, belonging to such debtor,
27 sufficient in whole or in part to pay the execution referred to in
28 the bond, and if the verdict be for the plaintiff, judgment shall
29 be rendered thereon, without regard to the penalty of the bond.
30 And in any such action on trial before a municipal court, or a
31 justice of the peace, similar proceedings shall be had as to the
32 question of damages, and the mode of entering up judgment
33 provided that in no case shall the jury, or the municipal court,
34 or justice of the peace, give the plaintiff a larger sum in dama-
35 ges than the amount of the debt and cost mentioned in the
36 execution with interest thereon and officer's fees—And in all
37 actions upon any bond or penal sum, where the conditions of
38 the same, are different from those above mentioned, and in all
39 actions in the supreme judicial court, on a recognizance, entered
40 into in the district court, to prosecute and appeal with affect, if
41 the jury shall find that any of the conditions of such bond or
42 penal sum have been broken, they shall estimate the damages
43 the plaintiff has sustained; and judgment thereupon shall be
44 entered for the penal sum aforesaid, and execution shall issue
45 for the damages assessed and costs.

1839. 1830, 463, § 1. 1835, 497.

SECT. 79. In an action of debt on a judgment of any court
2 of record, lawful interest shall be allowed as well on the costs as
3 the damages, or the balance thereof due. 1821, 59, § 36.

SECT. 80. No motion in arrest of judgment shall be sustained
2 in the supreme judicial court or district court in any civil action.
1835, 178, § 6.

SECT. 81. In case of the death of either party in an action
2 pending in the supreme judicial court or district court or before
3 a municipal court, or any justice of the peace, the executor or
4 administrator of the deceased, if the cause of action survive,
5 may become a party to such action, such death being suggested
6 on the record, and may prosecute or defend the same to final
7 judgment. 1821, 52, § 20.

SECT. 82. And the surviving party may cause the executor or
2 administrator of the deceased party to be served with a notice
3 from the court, fourteen days before the sitting of the same,
4 where the notice is made returnable, to appear and prosecute,
5 or defend such action as the case may be ; and upon the refusal
6 or neglect of such executor or administrator, so to appear and
7 become a party to the suit, the court may enter up judgment
8 upon the non-suit or default, as the case may be in the form pre-
9 scribed in the chapter relating to suits, by and against executors
10 and administrators, being chapter one hundred twenty.

1821, 52, § 22.

SECT. 83. And when an appellant or appellee, in any action
2 wherein judgment has been rendered upon an issue in law, or
3 case stated by the parties, by the district court, and from which
4 judgment an appeal has been claimed and granted, shall die
5 before the sitting of the court appealed to, the surviving party
6 may enter the appeal ; and after giving notice to the executor
7 or administrator of the deceased party, the court may render the
8 proper judgment, affirming the judgment of the district court
9 or grant a new trial.

SECT. 84. When a general verdict is entered for the plaintiff
2 in any civil action in which some of the counts in the writ are
3 bad, and any one of them is good, or in any suit there is a wrong
4 joinder of counts, no objection having been made thereto by
5 plea, or motion in writing before the cause is committed to the
6 jury, the judgment for that reason shall not be a subject of
7 reversal upon a writ of error. 1830, 463, § 3.

SECT. 85. In actions tried before a municipal court or a jus-
2 tice of the peace, if the plaintiff shall appeal from a judgment
3 in his favor, and in the district court shall not recover a greater
4 sum for damages, than he recovered by the first judgment he
5 shall not be entitled for his costs of the whole suit, to more than
6 quarter part of the sum finally recovered for damages.

1830, 463, § 3.

SECT. 86. If during the pendency of any action, either party
2 shall become insane, the action may be prosecuted or defended
3 by his guardian, in like manner, as if it had been commenced

4 after the appointment of the guardian, or the court may appoint
5 a guardian for the suit as the case may require.

M. R. S. 93, § 22.

SECT. 87. When in any action a plaintiff is by law entitled
2 to recover double costs, the fees paid for witnesses, depositions,
3 copies and other evidence, shall be taxed and recovered singly
4 —and the remainder only of the taxable costs shall be doubled;
5 and the same rule shall apply when triple costs are recovered.

M. R. S. 93, § 22.

SECT. 88. On application for a writ of certiorari, mandamus,
2 or quo warranto, on behalf of any private person or for any like
3 process, the court in their discretion may allow costs to any per-
4 son notified, and appearing as a respondent, and issue execution
5 against the applicant.

M. R. S. 93, § 22.

SECT. 89. When after a judgment for costs has been ren-
2 dered against a plaintiff, on non-suit or discontinuance, and a
3 second suit for the same cause shall be brought, before the costs
4 of the former suit shall have been paid, the court may stay all
5 proceedings until such costs shall be paid, and may dismiss the
6 suit unless they are paid at such time as the court shall appoint.

M. R. S. 93, § 22.

SECT. 90. When any suit is brought in the name of the
2 State but for the use and benefit of any private person his name
3 and place of residence shall be endorsed on the writ, and if the
4 suit is not maintained, judgment for the defendant's costs shall
5 be rendered against such person, and execution issued in like
6 manner, as if he were the plaintiff on record.

M. R. S. 93, § 22.

SECT. 91. In any civil suit instituted by the State and for the
2 use and benefit of the State, the State shall be liable for the
3 defendant's costs, and judgment shall be rendered for them,
4 against the State, and the treasurer of the county in which the
5 trial is had, shall pay the amount to the defendant on his pro-
6 duction of a certified copy of the judgment, and the same
7 shall be allowed to such treasurer in his account with the State.

M. R. S. 93, § 22.

SECT. 92. When costs are recovered by the State in any civil
2 suit, no fees shall be taxed for the travel of the attorney general
3 or any other attorney for the State.

M. R. S. 93, § 22.

SECT. 93. When a plaintiff shall at the same court and at the
2 same term, shall bring divers actions against the same party,
3 which might have been joined in one, or shall bring more than
4 one suit, upon a joint and several contract he shall recover costs
5 in only one of such actions, unless the court shall certify that
6 there was good cause for commencing them.

1821, 51, § 19. 1822, 184.

SECT. 94. The costs for the plaintiff's travel shall be taxed
2 according to his or his attorney's distance, from the place of
3 trial, whether the plaintiff is payee or endorsee; but no more
4 than for forty miles distance from the court shall ever be

5 allowed, unless the plaintiff himself shall actually travel more
6 than that distance. 1835, 165, § 4. 1821, Vol 1, 435.

SECT. 95. In all actions, if the defendant is defaulted before
2 the jury shall be empannelled, and called to try the cause, the
3 plaintiff shall tax only six days attendance; and if defaulted
4 after the jury are empannelled and called, the cost may be
5 restricted as the court shall direct, but the provisions of this
6 and the preceding section shall not apply to actions pending in
7 any court on the eleventh day of March eighteen hundred and
8 thirty-five. 1835, 165, § 5.

SECT. 96. No costs shall be allowed plaintiff, in an action
2 upon a judgment of any court or justice of the peace, on which
3 an execution might at the time of commencing such action,
4 have been issued and duly served on the judgment debtor, pro-
5 vided this section shall not apply to a trustee process, founded
6 on such judgment. 1835, 165, § 5.

SECT. 97. When an aggregate corporation is entitled to
2 costs, the travel shall be computed from the place where it is
3 situated if it is local in its nature; otherwise from the place
4 where its business is usually transacted, not exceeding forty
5 miles travel, unless the agent of such corporation, shall travel a
6 greater distance to attend the court. 1835, 165, § 5.

SECT. 98. Nothing in this chapter shall take away or control
2 the power of the court, to require payment of costs, or withhold
3 and refuse them—~~by or to either party,~~ as the condition of an
4 amendment or continuance.

SECT. 99. In actions on contract, in which an account is
2 filed in offset, although the damages found for the plaintiff shall
3 not exceed twenty dollars, he shall be entitled to full costs, pro-
4 vided the jury shall certify in their verdict, that the damages
5 were reduced as low as that sum, by means of the amount
6 allowed by them on account of said offset, and as due upon it.

SECT. 100. All actions in the supreme judicial court or dis-
2 trict court, shall be called over by the clerk on the first day of
3 each term; and those which are not then defaulted but con-
4 tinued, shall be entered on a trial docket made by the clerk,
5 and travel and attendance shall be taxed in such action until the
6 defendant shall allow the same to be disposed of, unless the
7 court shall otherwise direct, but no more than ten days attend-
8 ance at any one term shall be taxed in any action in any case.

1833, §36, § 1.

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

9 action shall be continued to be heard on the motion before the
10 whole court.

SECT. 102. Execution may be issued on any judgment after
2 the expiration of twenty-four hours after the same was rendered
3 and when issued from the district court—it shall be made return-
4 able within three months, unless that court shall sit within that
5 time, at the time prescribed by law; and when it will, then it
6 shall be made returnable to the next court, and when execution
7 issues from the supreme judicial court, it shall be made return-
8 able at the end of six months, unless a regular term of said court
9 should be held within that time, in which case the execution
10 shall be made returnable to the same. 1821, 60, § 63.

SECT. 103. Executions issued by a justice of the peace, shall
2 be made returnable in sixty days, from the day they were issued.
1821, 60, § 63.

SECT. 104. No execution shall be issued after the expiration
2 of one year, from the time judgment was entered, except in the
3 case provided for in the eighth section of this chapter.
1821, 60, § 63.

SECT. 105. And an alias or pluries execution, may be issued,
2 within one year next after the day on which the last preceding
3 execution was returnable, and not afterwards. 1821, 60 § 63.

SECT. 106. If the creditor, in the cases mentioned, in the two
2 preceding sections, shall neglect to sue out execution within the
3 times therein prescribed, he shall sue out a writ of scire facias,
4 against the debtor to shew cause why execution of the judg-
5 ment should not be done; and if, after due notice, no sufficient
6 cause be shewn, the court shall award execution for the amount
7 due on the judgment. 1821, 60, § 63.

SECT. 107. That on all executions issued on judgments in
2 civil actions, or acknowledgments of debts, lawful interest shall
3 be collected by the officer serving the execution, from the time
4 judgment was rendered, or the debt became payable; and the
5 clerk or justice shall vary the form of executions, so as to
6 embrace such interest. 1836, 250.

SECT. 108. No court shall be held on the fourth day of July
2 or on the day of any State election.

SECT. 109. In all actions of trespass on property, it shall be
2 the duty of the court or magistrate, or court and jury, to inquire
3 and determine whether the trespass was committed wilfully, and
4 if such is found to be the fact, a record shall be made of that
5 fact, and when execution is issued on judgment in the case, a
6 memorandum shall be made on the margin of the execution,
7 that the judgment was rendered for a trespass committed wil-
8 fully. 1833, 51.

SECT. 110. When an action is brought on a bill of exchange,
2 drawn or endorsed in this State, and payable in any place out
3 of the State, but within the United States, or territories thereof,
4 and being protested for non-acceptance or non-payment, the

holder, in an action against such drawer or endorser, shall recover not only the contents of the bill and interest, but in addition thereto shall recover damages at the rate of three per cent. on the amount of the bill, if it be payable in either of the States of New Hampshire, Massachusetts, Vermont, Connecticut, Rhode Island or New York; and if in New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia or the District of Columbia, at the rate of six per cent., and if in any other State, at the rate of nine per cent.

1821, 88, § 1.

SECT. 111. If a bill of exchange is drawn ~~or~~ ^{and} endorsed in this State for one hundred dollars or more, and payable in this State, at a place seventy-five miles distant from the place where drawn, the damages against such drawer or endorser, over and above the contents of the bill and interest, shall be one per cent., on its amount.

1821, 88, § 2.

SECT. 112. Any court may appoint a surveyor to run lines, and make plans of lands demanded in a real or mixed action, when such a measure may be deemed expedient and useful in the trial of such cause; and when such surveyor is prevented by force, menaces or fear from performing the duties assigned him, the court in which the cause is pending may issue a warrant to the sheriff, commanding him with suitable aid to cause such opposition to the surveyor in the execution of his duties to be prevented and in the execution of such warrant, he may exercise all the power appertaining to his office, as sheriff, and all persons refusing their aid when called for by him, shall be liable to the same penalties as in other cases.

SECT. 113. In all cases where the same property has been attached on mesne process in two or more suits, which are now pending or may be commenced, the plaintiff in any suit, after that in which the first attachment shall have been made, may petition the court, in which such suits are pending for leave to defend against such first suit in like manner as the party therein sued could or might have done.

1831, 508, § 2.

SECT. 114. The party so petitioning shall set forth in his petition the facts on which he relies, and make oath to the truth of the same, or that he verily believes them to be true; and that the court in their discretion may grant the prayer of the petition or not, as they may judge proper.

1831, 508, § 3.

SECT. 115. If the court shall admit the petitioner to defend against such prior suit, he shall give bond or enter into recognizance with sufficient surety in such sum as the court shall order to pay to the plaintiff in such previous suit, all such costs and damages as the court shall adjudge, and decree to have been occasioned to the plaintiff—by such defence.

1831, 508, § 3, 4.

SECT. 116. It shall be entered on record that the petitioner is admitted to defend against the prior action as aforesaid.

1831, 508, § 4.

SECT. 117. In case a recognizance has been entered into,
 2 and if the petitioner shall fail in his defence of such action, the
 3 court shall award execution on the recognizance in favor of the
 4 plaintiff therein—in favor of the petitioner—and proceed to enter
 5 judgment in the original suit between the parties as though such
 6 defence had not been made. 1831, 508, § 4.

SECT. 118. If the petitioner shall prevail in said defence by
 2 verdict or otherwise, the court shall render judgment thereon,
 3 and award execution to the petitioner for his reasonable costs;
 4 and such judgments shall be rendered for costs, if any, to the
 5 party sued in such action as the court may direct. 1831, 508, § 5.

SECT. 119. If it shall appear by the verdict or otherwise that
 2 the plaintiff made his attachment with intent to defraud or
 3 delay other creditors of the defendant, or that there was collu-
 4 sion between the plaintiff and defendant, for the purpose of
 5 defrauding or delaying such other creditors, such attachment
 6 shall be wholly void. 1831, 508, § 6.

SECT. 120. When a certificate shall issue from the clerk of a
 2 judicial court, in any other State, certifying that a person in this
 3 State is believed to be a material witness in the trial of a crimi-
 4 nal cause pending in such court any justice of the peace in the
 5 county where such witness may reside, shall, on request issue a
 6 summons on the back of such certificate, requiring such person
 7 to appear and testify at the court where such trial is to be had,
 8 and if the person so summoned, and having tendered to him a
 9 sum equal to twelve cents for every miles travel, from his place
 10 of abode to the court, and one dollar and fifty cents, at the end
 11 of every day, for such witnesses attendance, and having no
 12 reasonable excuse to the contrary, shall neglect to appear and
 13 testify, shall forfeit three hundred dollars to any person, who
 14 shall sue for the same in an action of debt; but such witness
 15 shall not be compelled to travel from his home, more than five
 16 hundred miles, by virtue of such summons—and for such purpose.
 1839.

NOTES.

SECTS. 25 and 26. It has been considered almost a useless form for a defend-
 ant to file his offset in the clerk's office seven days before court. Defendant and
 plaintiff may both live at a distance from the office; there is trouble for one, and
 seldom notice to the other. These sections seem to provide a better mode of
 proceeding. In the next ten sections, the subject of offsets has been considered,
 and numerous principles of law applicable to them have been arranged in perfect
 order and with perfect simplicity, by the commissioners of Massachusetts. They
 have enlarged the right of offset, so as to embrace many more subjects than our
 existing statute provisions now do; and the extent and limitations of the right,
 thus enlarged, are stated so plainly as to render the whole easily intelligible.
 The commissioners of this State, have copied those sections as the only thing

needful. Those several sections merely propose for enactment, principles which have long been in force and are gathered from numerous decisions.

SECTS. 37 and 38, declare that the principles and modes of proceeding above mentioned in suits between creditor and debtor shall apply in actions where one or both parties appear in court in the capacity of executor or administrator.

SECT. 39. This merely enacts a principle settled by the authority named in the margin; being a leading case.

SECTS. 40 and 41. A limitation of the right of set-off in the *latter* section, which is established in the *former*.

SECTS. 42, 43, 44, 45, are necessary to regulate the proceedings on the trial, where an off-set is filed, as to pleas and the statute of limitation.

SECT. 47. To preserve uniformity.

SECT. 48. Justice seems to require this provision.

SECTS. 50, 51, 52, 53, 54, 55, are all useful in carrying into effect the provisions of the 49th section; giving and defining the powers of the auditor.

SECT. 70. This is new, and founded on constructions and decisions made in relation to the subject matter of the section, cited in the margin.

SECT. 78. The provisions and principles of this section are applicable only to bonds of the kind particularly mentioned in it.

SECT. 86. The provision in this section is in aid of justice and is presumed to be a useful one.

The six following sections are taken from the Mass. R. S. and the commissioners have readily introduced them, as containing provisions as just as they seem necessary.

CHAPTER 116.

OF JUSTICES OF THE PEACE, AND THEIR POWER IN CIVIL CASES, AND PROCEEDINGS THEREIN.

- Sect.* 1. Justice's jurisdiction, nature and extent.
 2. Same subject, and limitation.
 3. When title to real estate, &c. comes in question, what proceedings to be had.
 4. Party required to recognize, to enter action at district court.
 5. Proceedings to be had afterwards by the party.
 6. Form of justice's writ and how served.
 7. On non-appearance of defendant, default to be entered.
 8. If plaintiff fails to prosecute, defendant to recover his costs.
 9. Any party may appeal within twenty-four hours to the district court, and no execution shall issue.
 10. Must find sureties.
 11. Appellant must produce copies, &c. at district court.
 12. Any justice may issue summons for witnesses.
 13. May adjourn his court, &c.
 14. When the justice is unable to attend, another justice may continue the cause, &c.—notify the same.
 15. No justice shall be counsel for either party.
 16. A justice may issue writs of scire facias against executors and administrators, on suggestion of waste and against bail or endorsers.
 17. In what county such writs may be issued and returnable.
 18. How served.
 19. Justice shall have fair records—and when one dies after judgment rendered by him—what proceedings may be had by any other justice.
 20. Same subject, as to transcript of record.
 21. Such transcript attested—legal evidence as the original.

- Sect.* 22. And on such transcribed record, execution may issue.
 23. Justices removing from the State, shall deposit their records with clerk of the court.
 24. Executor or administrator of deceased justice must so deposit them.
 25. Penalty on offender, in either case of neglect.
 26. Clerk shall receive—keep the records and certify copies.
 27. If justice dies or removes, not having made up his records, what proceedings shall be had.
 28. Justice whose commission has expired, and not been renewed, may issue and renew execution, on any judgment rendered by him, &c.
 29. May decide causes at his house or office, &c.
 30. In all cases defendant may plead general issue; and need not file brief statement, except in cases mentioned in the first section.
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SECT. 1. Every justice of the peace, except those residing in
 2 any city or town, within which a municipal court now is, or may
 3 be established, shall have power to hold a court within his
 4 county, and shall have original and exclusive jurisdiction of all
 5 civil actions wherein the debt or damages demanded, do not
 6 exceed twenty dollars, excepting real actions, actions of trespass
 7 on real estate, actions for disturbance of a right of way or of
 8 any other easement, and all other actions, where the title, to real
 9 estate, according to the pleadings, or the brief statement filed
 10 in the case, by either party may be in question.

1821, 76, § 1.

SECT. 2. But in the personal actions mentioned in the excep-
 2 tion contained in the preceding section, when the sum demanded
 3 does not exceed twenty dollars, a justice of the peace shall have
 4 original jurisdiction concurrently with the district court.

SECT. 3. When it shall appear in either of the ways before
 2 mentioned that the title to real estate is concerned or brought
 3 in question, the case shall at the request of either party, be
 4 removed to the district court, to be there tried and determined
 5 in the same manner, as if it had been originally commenced in
 6 that court.

1821, 76, § 11.

SECT. 4. The party requiring the cause to be so removed,
 2 shall recognizance to the other party in a reasonable sum with
 3 sufficient surety or sureties, with condition to enter the action
 4 at the district court, next to be held in the same county; and if
 5 he fail so to recognize, the justice shall hear and decide the
 6 cause in like manner as if no such request had been made to
 7 remove the cause.

1821, 76, § 11.

SECT. 5. The party so recognizing shall produce at the dis-
 2 trict court, a copy of the record and all such papers as are
 3 required to be produced by an appellant; and if he shall fail so
 4 to do, or to enter the action as before provided, he shall upon
 5 the complaint of the adverse party to the said court, be there
 6 non-suited or defaulted, as the case may be, and such judgment
 7 shall be rendered as law and justice shall require.

1821, 76, § 11.

SECT. 6. The writ in civil actions commenced before a justice
 2 of the peace shall be a summons or a *capias* and attachment

3 and of the form prescribed in the one hundred and fourteenth
4 chapter and signed by the justice; and such writ shall be duly
5 served not less than seven nor more than sixty days before the
6 day therein appointed for trial. 1821, 76, § 11.

SECT. 7. If any person duly served with process, shall not
2 appear and answer thereto, his default shall be recorded, and
3 the charge in the declaration shall be considered as true, and on
4 such default, and also when the action is on trial maintained,
5 the justice shall enter judgment for such sum, not exceeding
6 twenty dollars, as he shall find due to the plaintiff with costs,
7 and issue execution. 1821, 76, § 11.

SECT. 8. If the plaintiff shall fail to enter and prosecute his
2 action; or if, on trial, he shall not maintain his action, the
3 defendant shall recover judgment for his costs, to be taxed by
4 the justice, and execution to issue therefor. 1821, 76, § 11.

SECT. 9. If any party aggrieved by the judgment of the jus-
2 tice, may appeal to the next district court, in the same county,
3 and may enter such appeal at any time within twenty-four hours
4 after the judgment was rendered by the justice—in which case
5 no execution shall issue, and the case shall be entered, tried and
6 determined in the district court, in like manner, as if it had been
7 commenced there. 1821, 76, § 11.

SECT. 10. Before such appeal is allowed, the appellant shall
2 recognize with sufficient surety or sureties to the adverse party,
3 if required by him, in a reasonable sum, with condition to pros-
4 ecute his appeal with effect, and pay all costs arising after the
5 appeal. 1821, 76, § 10.

SECT. 11. The appellant shall, at the district court, produce
2 a copy of the record, and all the papers filed in the cause,
3 except when depositions or written evidence or documents are
4 filed, the originals shall be produced at the district court, instead
5 of copies, and if the appellant shall fail to produce such papers
6 and enter and prosecute his action, the court, on complaint of
7 the adverse party may affirm the former judgment and costs.

SECT. 12. Every justice may issue subpoenas for witnesses in
2 civil actions, pending in the supreme judicial court, district
3 court, or before county commissioners, himself or any other
4 justice or referees. 1821, 76, § 13.

SECT. 13. He may adjourn his court by proclamation, from
2 time to time, as justice may require. 1821, 76, § 13.

SECT. 14. Whenever a justice of the peace is unable, by
2 reason of sickness, or other unforeseen cause to attend at the
3 time and place, by him appointed for holding a court, any other
4 justice in the county who can legally try a cause between the
5 parties in the pending suit, may continue such cause, once, not
6 exceeding thirty days, and note such continuance on the record
7 of such absent justice. 1834, 101.

SECT. 15. No justice shall be of council for either party or
2 give advice to either party in a suit before him.

1831, 76, § 13.

SECT. 16. Every justice of the peace may issue writs of scire
2 facias, against executors or administrators, upon a suggestion of
3 waste, after judgment against them, and also against bail taken
4 in any civil action and endorser of a writ, and enter judgment
5 and issue execution, as any court might do in like cases.

SECT. 17. In all cases of scire facias against bail, or the
2 endorser of a writ, or executors or administrators, in proceed-
3 ings of a justice of the peace, or a judge of the municipal or
4 police court, where the defendant resides out of the county
5 where the proceedings are had, such justice or judge may direct
6 the writ or execution to any proper officer of the county, where
7 the defendant resides, provided such officer shall charge fees for
8 travel from the place of his residence to the place of service
9 only, and postage for receiving and returning the execution.

1836, 210, § 3.

SECT. 18. Every such writ of scire facias, shall be served not
2 less than seven days, nor more than sixty before the time when
3 it is returnable.

SECT. 19. Every justice of the peace shall keep a fair record
2 of his proceedings; and when any one shall die after having
3 given judgment in a cause, but before such judgment is satis-
4 fied, it shall be in the power of any other justice of the same
5 county on complaint of the creditor to issue a summons to the
6 person in whose possession the record of such judgment is,
7 directing him to bring to him the same record; and if such per-
8 son shall contemptuously refuse to produce the same, or to be
9 examined respecting it on oath, the justice may commit him to
10 prison, as punishment for the contempt, to be detained until he
11 shall submit to such examination and produce the record.

1825, 76, § 15.

SECT. 20. When such record is produced and delivered to
2 the justice, and has been by him transcribed upon his own book
3 of records, the original shall be returned to the person who
4 produced it.

SECT. 21. A copy of such transcription, attested by the trans-
2 cribing justice, or otherwise proved to be a true copy of the
3 same, shall be legal evidence in all cases where an authentica-
4 ted copy of the original might be received.

SECT. 22. And on such transcribed record, the justice may
2 issue execution in the same manner as if the judgment had been
3 rendered by himself, changing the form as the circumstances
4 shall require; but no such execution shall issue, after the expi-
5 ration of one year from the time the judgment was rendered,
6 unless after scire facias.

1825, 76, § 15.

SECT. 23. Every justice who may remove from the State,
2 shall, before his removal, deposit with the clerk of the judicial
3 courts in the county for which he was commissioned, all his
4 records and papers, appertaining to his said office.

1826, 329, § 1.

SECT. 24. The executor or administrator of any deceased justice, shall also be bound to deposit all the records and papers of such deceased justice, which shall come into his possession, in the clerk's office, in the county for which such justice was commissioned. 1826, 329, § 1.

SECT. 25. The person neglecting to comply with the duty required of him in either of the two preceding sections, shall forfeit and pay one hundred dollars to be recovered on indictment. 1826, 329, § 1.

SECT. 26. The said clerk shall receive and safely keep all such records and papers, and may grant certified copies of them, which shall be as good evidence, as if certified by the justice. 1826, 329, § 2.

SECT. 27. If any justice has died or removed, or shall die or remove from the State, without recording and signing any judgment, by him rendered in any action before him, and his docket, original writ and papers appertaining thereto, and execution if any issued shall have been deposited in the clerk's office, before mentioned, such clerk may, and shall when required, on payment of usual fees, make out and certify copies of all the papers in such cause, and all facts appearing in such docket; and such copies shall be legal evidence. 1831, 498.

SECT. 28. Any justice whose commission has expired or may expire, and shall not be renewed, is authorized to issue and renew executions on any judgment by him rendered while in commission, which shall be obeyed by the officer as if the commission of the justice had not expired; and also to certify copies of judgment rendered by him; but this power shall not continue more than two years from the time such commission expired. 1829, 441, § 16.

SECT. 29. Any justice may hear and decide causes at his dwelling house, office or at any other suitable place; and the writ in such cases, shall be made returnable accordingly.

SECT. 30. In all cases except those mentioned in the first section, the defendant may plead the general issue and need not file any brief statement.

CHAPTER 117.

OF THE LEVY OF EXECUTIONS ON PERSONAL PROPERTY.

- Sect. 1. In what cases executions may be set off against each other.
 2. What goods are liable to be taken on execution.
 3. Gold and silver coin and bank notes may be taken, &c.
 4. How goods are to be advertised, and sold on execution.
 5. Same subject.
 6. Vendue, may in certain cases be adjourned.

- Sect.* 7. And for goods it may be adjourned to another *place*.
 8. In case of doubt as to property, officer may require indemnity.
 9. If purchaser refuses to take the goods, there may be a *re-sale*.
 10. Officer, in his return must state, what articles were sold for.
 11. Disposition of proceeds of sale.
 12. When and how a lessor may sell building on his lands to secure his rents.
 13. Shares in incorporated companies may be sold.
 14. How, notice given when they have not been attached.
 15. How, if they have been attached.
 16. Officer of the company to give certificate of the shares.
 17. Officer to leave copy of execution, and return, with the company.
 18. In case of sale of share, what notice to be given.
 19. Manner of giving notice of sale.
 20. Franchise of certain companies may be sold, and notice to be given.
 21. The mode of selling.
 22. Officer shall deliver the possession of gates, tolls, &c. to purchaser.
 23. Duties and liabilities of the purchaser.
 24. Corporations may redeem, &c.
 25. If goods are attached in two or more suits, what proceedings to be had.
 26. Case of seizing property which may be seized without taking possession, &c., how notice is to be given of the seizure.
 27. When right of redemption is sold, the surplus of proceeds to be paid to the debtor.
 28. Provisions of the three last sections to apply to all kinds of officers.
 29. Sale of shares in all incorporated companies to be regulated by this chapter.
 30. When damages are assessed by county commissioners if not paid, a warrant may issue.
 31. Officer may adjourn the sale on such warrant.
 32. Proceedings in sale of a franchise of a company entitled to demand toll—and sale on warrants, may be in any county, &c.
 33. When property is seized on execution, and proceedings are suspended, the *lien* shall continue.
 34. So if part of the property seized is sold, or set off, the lien shall continue as to residue.
 35. Cases in which executions may be set off, not when the debt in one has been fairly assigned.
 36. Parties must be the same in both executions.
 37. Lien of an attorney, not to be impaired, or affected by a set-off.
 38. Mortgager's or pledger's interest in personal property mortgaged or pledged, may be sold on execution.
 39. After his tendering the debt to mortgagee, &c. or
 40. May be sold, in common form, subject to mortgages, rights, &c.
 41. Action of debt may be brought, on an order or judgment of county commissioners.
 42. How warrants of distress shall be issued against a town or plantation, and how executed.
 43. How levied on real estate.
 44. Rights and liabilities of purchasers of real estate.
 45. Person whose property is sold on execution to be indemnified—and how.
 46. An inhabitant or proprietor of lands, may pay his share of tax, &c. before sale, &c.
 47. The person so paying shall be discharged, &c.
 48. When an individual has been levied on, the nature of his exemption afterwards.
 49. Certificate of assessors, proof of any person's proportion of tax, &c.

SECT. 1. When a sheriff, deputy sheriff, coroner or other
 2. officer, has in his hands, executions, wherein the creditor in one

3 execution is debtor in the other, any such officer is hereby
4 directed to cause one execution to answer and satisfy the other—
5 so far as the same will extend; and this shall be his duty also,
6 if one of such executions is in the hands of such officer, and
7 the creditor in the other, shall be in possession of his execution
8 and shall tender the same to such officer and demand of him to
9 offset the one against the other in the manner prescribed in this
10 section; provided also the creditor in one execution is in the
11 same capacity and trust, debtor in the other. 1821, 60, § 4.

SECT. 2. All chattels real and personal, liable at common law
2 to attachment, and not exempted therefrom as provided in chap-
2 ter one hundred fourteen shall be liable to be taken and sold
4 on execution, as prescribed in this chapter.

SECT. 3. Current gold or silver coin, may be taken on execu-
2 tion, and paid to the creditor, as money collected; and bank
3 notes, and all other evidences of debts, issued by any moneyed
4 corporation, and circulated as money, may be taken on execu-
5 tion, and paid to the creditor at their par value, if he will accept
6 them, otherwise they may be sold like other chattels.

1 Pick. 271.

SECT. 4. Goods and chattels legally taken on execution shall
2 be safely kept by the officer, at the expense of the debtor, for
3 the space of four days at least, next after the day on which
4 they were taken, exclusive of Sunday, and they shall be sold
5 within fourteen days next after the day of seizure, except as
6 hereinafter provided, unless before such sale they shall be
7 redeemed to the debtor, by otherwise satisfying the execution,

1821, 60, § 4.

SECT. 5. The officer shall give public notice of the time and
2 place of sale, at least forty-eight hours before the time of sale,
3 in some public place, in the town or place of sale, or by causing
4 an advertisement of the time and place of sale to be published
5 in some newspaper printed in the county, if there be any such.

1821, 60, § 5.

SECT. 6. If at the time appointed for the sale, the officer
2 should be prevented by sickness or other casualty from attend-
3 ing at the place appointed; or, being present, should deem it
4 for the advantage of all concerned, to postpone the sale, for
5 want of purchasers, or other sufficient cause, he may postpone
6 the sale, not exceeding six days next after the day appointed;
7 and so from time to time, for like good cause, giving notice of
8 every adjournment, by a public declaration, by words or in
9 writing.

1821, 60, § 5.

SECT. 7. And for good reason and for the purpose of obtaining
2 a better price for the goods to be sold, he may, if he should deem
3 it for the benefit of the debtor, adjourn the auction to another
4 place in the same town.

2 Fair. 371. 9 Mass. 265.

SECT. 8. Where there is reasonable doubt as to the owner-
2 ship of goods, or their liability to be taken in execution, the
3 officer may require sufficient security to indemnify himself.

M. R. S. 97, § 18.

SECT. 9. If the highest bidder at such a sale, shall refuse to
2 take and pay for an article, the officer shall sell the same again
3 at auction, at any time within ten days, giving due notice of the
4 second sale; and he shall account for what he shall receive on
5 the second sale, and for any damages he may have recovered of
6 the first bidder for a loss on the re-sale, as for so much received
7 on the execution. 7 Mass. 392. M. R. S. 97, § 27.

SECT. 10. The officer, who shall make such sale, shall, in his
2 return thereon, particularly describe the goods sold, and the
3 price at which each article, or lot, (describing it) was sold; and
4 if any officer shall be guilty of any fraud, in the sale or return,
5 he shall be liable to the debtor to pay him five times the sum of
6 which he was defrauded, to be recovered in an action of the
7 case. 1821, 60, § 5.

SECT. 11. The money arising from the sale of any property
2 on execution, shall be applied to paying the charges and satisfy-
3 ing the execution; and the residue, if any, shall be returned to
4 the debtor on demand, or otherwise legally applied in the manner
5 provided in the following section. 1821, 60, § 5.

SECT. 12. When a lessor of any lands, leased for the purpose
2 of having any buildings erected thereon, shall commence an
3 action against the lessee and attach the same building within
4 six months after the rent becomes due and recover such rent, he
5 may on execution, cause the rents and profits of such buildings
6 to be sold for such term of time, as will be sufficient to pay the
7 debt and costs, observing the same directions of law, as in the
8 sale of any other personal estate. 1824, 258. 1825, 318.

SECT. 13. Any share or interest of any stockholder or pro-
2 prietor in any incorporated company, may be taken on execution,
3 and sold in the following manner. 1821, 60, § 25.

SECT. 14. If the property has not been attached on mesne
2 process in the same suit, the officer shall leave a copy of the
3 execution with the treasurer, cashier, clerk or other recording
4 officer of such incorporated company, and the property shall be
5 considered as seized on execution when the copy is so left.

1821, 60, § 6.

SECT. 15. If the property has been and then is attached the
2 officer shall proceed in seizing and selling it on execution, in
3 the same manner as in case of goods and chattels.

SECT. 16. The officer of the company having the care of the
2 records, or account of shares or interest of the stockholders,
3 shall, upon the exhibition to him of the execution, be bound to
4 give such officers a certificate of the number of shares held, by
5 the judgment debtor or amount of his interest, under the same
6 penalty as is prescribed for refusal to give such certificate to an
7 officer exhibiting a writ of attachment as provided in chapter
8 ———.

SECT. 17. Within fourteen days after the day of sale, the
2 officer shall leave an attested copy of the execution, and of the
3 return thereon with the officer of the company whose duty it

4 may be to record transfers of shares; and the purchaser shall
5 thereupon be entitled to a certificate or certificates of shares
6 bought by him, paying the fees and for recording the transfers.

SECT. 18. If the shares or interest of the judgment debtor
2 had been attached in the suit, in which the execution issued, the
3 purchaser shall be entitled to all dividends which shall have
4 accrued after the attachment. 1821, 60, § 6.

SECT. 19. In making sale of such shares or interest of any
2 stockholder or proprietor, the officer holding the execution shall
3 give notice in writing of the time and place of sale, to the
4 debtor by leaving the same at his last and usual place of abode, if
5 within the county where such officer dwells; and public notice
6 of such time and place of sale by posting up notice thereof in
7 one or more public places in the town or plantation where the
8 sale is to be made, and also in two adjoining towns thirty days,
9 at least, before the day of sale; and shall also publish an adver-
10 tisement of the same import, and naming the judgment debtor,
11 three weeks successively before the day of sale in some public
12 newspaper printed in the same county, if there be one, if not,
13 then in an adjoining county; and if the debtor never lived in
14 such county, the posting of the notification and publishing
15 advertisement as aforesaid shall be held sufficient. 1821, 60, § 7.

SECT. 20. Whenever judgment has been recovered against
2 any turnpike, bridge, canal or other incorporated company with
3 power to receive toll, the franchise of such corporation may be
4 sold on execution at public auction the officer giving notice
5 of the time and place of sale by posting a notification in any
6 town or plantation, in which the treasurer, clerk or any director
7 of the company may reside thirty days at least before the day
8 of sale, and by causing an advertisement, naming the creditor
9 therein, to be inserted three weeks successively in some public
10 newspaper printed in any county where either of said officers
11 resides four days before the day of sale. 1821, 60, § 9.

SECT. 21. In the sale of such franchise, whoever will pay
2 and satisfy such execution, and all fees and incidental expenses,
3 in consideration of being entitled to receive to his own use all
4 such toll as the corporation may be entitled to demand and
5 receive, for the shortest period of time, shall be deemed the
6 highest bidder, and the purchaser for such period of time. 1821, 60, § 10.

SECT. 22. Immediately after such sale, the officer shall deliver
2 to such purchaser, possession of the toll houses and gates, in
3 whatever county they may be situated, who may receive to his
4 own use the tolls accruing within the time limited by his pur-
5 chase, which proceedings shall be stated in the return of said
6 officer. 1821, 60, § 10.

SECT. 23. And the purchaser of such franchise and those
2 claiming under him, shall have all the powers necessary for the
3 convenient use of the same, which were before vested in the

4 corporation, and be bound to discharge the same duties, and be
5 liable to the same penalties, and forfeitures during the term of
6 the said purchase, as before were required of the corporation ;
7 and said purchaser, or those claiming under him, may recover
8 of said corporation, any moneys paid by him, or expenses incur-
9 red, in consequence of his said liability, and without any fault
10 or negligence on his part. 1821, 60, § 10.

SECT. 24. The corporation may at any time within three
2 months, after the day of sale, redeem said franchise paying to the
3 purchaser such sums as he may have paid, in satisfaction of the
4 execution, with twelve per cent. interest thereon, in addition to
5 the toll he may have received. 1821, 60, § 10.

SECT. 25. If goods or any other property sold on execution
2 shall have been attached by any other creditor or seized on any
3 other execution, by the same or any other officer ; or if before
4 payment of such residue to the debtor, any other writ of attach-
5 ment or execution against him shall be delivered to the officer
6 who made the sale, the proceeds of the sale shall be applied to
7 the discharge of the several judgments, in the order in which the
8 respective writs of attachments or executions shall have been
9 served, and the residue, if any, shall be paid over to the debtor.
1821, 60, § 20.

SECT. 26. If an attachment or seizure is made on execution
2 of a share in any incorporated company or of any other prop-
3 erty which may be attached without taking and keeping
4 exclusive possession thereof, and if the same property shall be
5 subsequently attached or taken on execution by any other offi-
6 cer, he shall give notice thereof to the officer, who makes the
7 sale under the first attachment or seizure ; and if the latter
8 without such notice pay to the debtor the balance of the pro-
9 ceeds of the sale, he shall not be liable therefor to the person
10 claiming under such subsequent attachment or seizure.

1821, 60, § 21.

SECT. 27. When the right of redeeming mortgaged real
2 estate is sold on execution, the proceeds of the sale, after satis-
3 fying the execution on which the sale was made, shall be applied
4 and disposed of in the same manner as is provided in case of
5 sale of goods. 1821, 60, § 21, 22.

SECT. 28. The provisions in the three preceding sections,
2 shall be equally applicable to sheriffs, deputy sheriffs, coroners
3 and constables, and their official proceedings in the cases men-
4 tioned in said sections.

SECT. 29. The shares or interest held by any persons in any
2 incorporated company as aforesaid may be attached—and taken
3 and sold on execution—in the manner provided in this chapter,
4 and in no other manner, notwithstanding any thing to the con-
5 trary, in the act incorporating such company.

SECT. 30. Whenever any damages are assessed in favor of
2 any person, by the county commissioners or by a committee or
3 a verdict of a jury for any injury sustained by him, by any

4 acts of any of the corporations aforesaid, authorized to demand
5 and receive toll, and the damages shall not be paid in thirty
6 days after order, or the acceptance of such verdict or of the
7 report of the committee, such person, may have a warrant of
8 distress, against any such corporation, for the damages assessed,
9 and interest and costs. 1821, 60, § 11.

SECT. 31. The officer holding such warrant shall have the
2 same right to adjourn the vendue, as in case of sale of goods on
3 execution. 1821, 60, § 12.

SECT. 32. All proceedings respecting the attachment and sale
2 on execution of the franchise of any corporation entitled to
3 demand and receive toll, and sales on warrant of distress as
4 mentioned in the thirtieth section, may be had in any county,
5 in which either the creditor, or the president, clerk, treasurer,
6 or any director of said corporation may reside.

1821, 50, § 26.

SECT. 33. When any estate, real or personal, is seized on
2 execution, and further service of the execution is suspended by
3 reason of any prior attachment of the same, such estate shall be
4 bound by seizure, until it is set off or sold, in whole or in
5 part, under the prior attachment, or until the same is dissolved.

SECT. 34. If the estate is set off or sold, in part, under the
2 prior attachment, or if the same be dissolved, the estate or such
3 part thereof, as remains undisposed of shall continue bound for
4 thirty days thereafter, by the seizure on execution, and the ser-
5 vice of the execution may be completed, in like manner as if
6 the estate had been first seized thereon, at any time within thirty
7 days, although the return day of the execution may have
8 passed.

SECT. 35. Executions shall not be set off against each other
2 when the sum due on the first has been lawfully and in good
3 faith assigned to another person, before the creditor in the
4 second execution became entitled to the sum due thereon.

M. R. S. 97, § 76.

SECT. 36. Nor where there are several creditors in one exe-
2 cution, and the sum due on the other, is due from a part of them
3 only ; or where there are several debtors in an execution, and
4 the sum due on the other, is due to a part of them only.

M. R. S. 97, § 76.

SECT. 37. Nor shall it be allowed as to so much of the first
2 execution as may be due to the attorney in the suit, for his fees
3 and disbursements therein.

M. R. S. 97, § 76.

SECT. 38. When a creditor of a mortgager or pledger of any
2 personal property, instead of summoning the mortgagee, pledgee
3 or holder, to answer to him in a process of foreign attachment,
4 elects to attach the property so mortgaged or pledged, it may
5 be lawful for him so to do first paying or tendering to such
6 mortgagee, pledgee or holder, the full amount of the debt for
7 which it is so mortgaged or pledged ; and any such property, so

8 redeemed, may be sold on execution, as any other personal
9 property. 1835, 188, § 2.

SECT. 39. And the officer shall apply the proceeds of the sale,
2 after deducting his fees and charges of sale, to the payment of
3 the sum so paid or tendered to the mortgagee, pledgee or holder,
4 and the interest thereon from the time of such payment; and
5 the residue of such proceeds shall be applied to the satisfaction
6 of the plaintiff's judgment, in manner by law provided.

1835, 188, § 2.

SECT. 40. Such plaintiff may have the same attached and
2 seized, and sold on the execution, as in other cases, subject to
3 the rights and interest of such mortgagee, pledgee, or holder,
4 without paying or tendering payment of the debt due to the
5 mortgagee, pledgee or holder. 1835, 188, § 12.

SECT. 41. When a warrant of distress has been, or shall be
2 issued by any county commissioner, and has been or may be
3 returned in whole or in part unsatisfied, and the same remains
4 unsatisfied, the party interested and for whose benefit the war-
5 rant was issued, may have and maintain an action of debt founded
6 on said order or judgment of said commissioners before the
7 proper court of the county, in which the record exists, in the
8 same manner, and under the same regulations, that actions of
9 debt may be brought and maintained on a judgment of any other
10 court; in which action, interest shall be allowed on the sum due,
11 and included in the judgment. 1833, 64, § 2.

SECT. 42. All executions or warrants of distress against any
2 town or plantation shall be issued against the goods and chattels
3 of the inhabitants thereof, and against the real estate therein
4 situated, whether the same is owned by such town or not; and
5 it shall be the duty of the officer executing such precept, to
6 satisfy the same by distress and sale of the goods and chattels
7 of the inhabitants in the manner by law provided.

1833, 64, § 3.

SECT. 43. And in want of sufficient goods and chattels to
2 satisfy the same, after diligent search, (which fact the officer
3 shall certify in his return) it shall be the duty of the officer to
4 levy upon and sell the real estate in said town or plantation, by
5 lots as the same are owned or occupied, or as the same may
6 have been lotted out on the plan thereof, so much as may be
7 necessary to satisfy said precept and expenses of sale; conform-
8 ing in the advertising and sale to the law regulating the sale by
9 collectors of taxes on unimproved lands of non-resident pro-
10 prietors. 1833, 64, § 3.

SECT. 44. And the purchaser and former owner of said land,
2 shall have all the rights and be subject to similar liabilities, as
3 if said land had been sold for taxes as aforesaid.

1833, 64, § 3.

SECT. 45. The owner of any real or personal estate so sold
2 for the purposes above mentioned, shall be entitled to recover

3 against such town or plantation, in an action of assumpsit the
4 full value of the property so taken and sold, with interest, at the
5 rate of twelve per cent. yearly, with costs of suit; and may be
6 admitted to prove the real value thereof, whatever may have
7 been the price at which the same was sold. 1833, 64, § 4.

SECT. 46. But whenever any such warrant of distress or exe-
2 cution shall be issued as aforesaid, against any town or planta-
3 tion, it shall be lawful for any inhabitant thereof, or for any
4 proprietor of any lands therein either before or after the issuing
5 of such precept, to pay his part or proportion of such order or
6 judgment; which part or proportion shall be ascertained by an
7 assessment or apportionment thereof made—by the assessors of
8 said town or plantation, and which service they shall be required
9 to perform, at the request of any such inhabitant, or proprietor,
10 or on notice given them by the county commissioners.

1834, 133, § 1.

SECT. 47. And every person so paying his part or proportion
2 to the treasurer of the corporation for the use of the person
3 interested, or to such person himself—shall be discharged, both
4 as to his person and his property from such warrant or execution.

1834, 133, § 2.

SECT. 48. If any such warrant or execution, has been, or shall
2 be, levied on the property of any person, who at the time, has
3 not paid his part or proportion, every person having so paid or
4 that shall so pay his part as aforesaid, shall be discharged from
5 all executions that may be issued on any judgment against the
6 inhabitants of such town or plantation, on account of said levy,
7 and his person and estate, shall forever be discharged.

1834, 133, § 3.

SECT. 49. The certificate of the major part of the assessors
2 of such town, or plantation, of any person's part or proportion,
3 shall be conclusive evidence thereof; and being delivered to the
4 officer, he shall on payment thereof, in manner aforesaid, in his
5 return on the execution or warrant, return the same satisfied for
6 that sum—with the name of the person who paid it.

SECT. 50. The purchaser at auction of the right, which any
2 person has to a deed of lands on certain condition named in a
3 written contract, shall have the same remedy by bill in equity
4 to compel a conveyance of it, as mortgagors have to compel
5 mortgagees to convey to them on performance of the condition
6 of a mortgage; and without any previous tender.

1829, 431, § 2.

SECT. 51. Whenever any obligor shall plead or in his answer,
2 disclose an assignment of the bond, or contract prior to the
3 attachment by the obligee, or person entitled to the conveyance,
4 and the validity of such assignment shall be put in issue, the
5 court shall cause the assignee to be made a party to the bill, and
6 on his appearance or non-appearance, may direct the same to
7 be tried by a jury and if found fraudulent, it shall be no bar to
8 the conveyance prayed for. 1829, 431, § 2.

NOTES.

SECT. 7. This section contains a new principle, settled in the case cited in the margin.

SECT. 8. This only affirms, as law, what has long been received as such.

SECT. 9. The same remark is applicable to this section.

SECT. 33. This provision is a new one; furnishing a remedy where one seems wanting, for the continuance of the lien created by attachment.

SECT. 34. This section is designed to preserve attachments and secure rights.

SECT. 35. This section guards equitable rights—and

SECTS. 36 and 37 seem adapted for the same purpose, and they are submitted as valuable sections. They are from Mass. code.

CHAPTER 118.

OF BAIL IN CIVIL ACTIONS.

- Sect.* 1. How bail shall be taken.
 2. Clerk to endorse on execution the name of the bail.
 3. Officer's duty on receiving the execution.
 4. Bail may surrender principal—when, &c.
 5. Officer's return in case of principal's avoidance, &c.
 6. When body or property is not found, scire facias may issue against the bail.
 7. Form of the scire facias.
 8. Action against bail must be brought in one year.
 9. Bail may plead jointly and severally any bar, &c.
 10. Bail may surrender before judgment on scire facias.
 11. Principal to be committed to prison.
 12. He shall be discharged, if not taken in execution in fifteen days.
 13. Proceedings when bail is taken in a justice action.
 14. How principal may be surrendered in such cases, and order given for his commitment.
 15. Same subject.
 16. Same subject, surrender *after* judgment.
 17. Same subject, surrender *before* judgment.
 18. Bail may have remedy against principal—what action, &c.

SECT. 1. Bail shall always be taken and the bail bond be
 2 returned and filed with the writ, in the manner mentioned in the
 3 one hundred fourteenth chapter.

SECT. 2. If judgment be rendered against the principal in
 2 the action in which the bail was taken, the clerk of the court or
 3 justice of the peace issuing the execution on such judgment,
 4 shall on the margin of the execution insert the names of the
 5 persons who became bail, with the place of their abode, and
 6 their addition, provided they are named in the bail bond.

1821, 67, § 1.

SECT. 3. The officer holding said execution, shall notify the
 2 bail personally or by leaving a notice in writing by him signed,
 3 at the usual place of abode of the bail, if living in his county,

4 at least fifteen days before the expiration thereof, certifying that
5 he cannot find the principal debtor, nor property wherewith to
6 satisfy the execution, for which service he shall be entitled to
7 demand and receive of the bail the usual fee for the service of
8 a writ, and for travel from the dwelling house of the officer, to
9 the dwelling houses of the bail; and shall minute in said notice
10 the amount of the fees; which the bail shall pay in twenty
11 days, unless within one day at least, before the execution is
12 returnable the bail shall produce and deliver to the officer the
13 principal debtor. 1821, 67, § 1.

SECT. 4. If the bail shall not have committed the principal
2 to prison in the manner mentioned in the said one hundred
3 fourteenth chapter, they may, at any time before final judgment
4 in the original suit, bring the principal into court, where the
5 action is pending, and deliver him into the custody thereof, and
6 be thereby discharged of their suretyship. 1821, 67, § 2.

SECT. 5. In case of the avoidance of the principal and return
2 on the execution by the officer, that he has had the same exe-
3 cution in his hands at least thirty days before the expiration
4 thereof, and that the principal is not found, his bail shall be
5 obliged to satisfy the judgment with interest thereon from the
6 time when it was rendered, unless he shall discharge himself by
7 surrendering the principal before final judgment against him on
8 the writ of scire facias, or by other sufficient defence. 1821, 67, § 2.

SECT. 6. When the principal shall so avoid and his goods
2 chattels or lands cannot be found to satisfy the execution, the
3 person for whom judgment was given shall be entitled to a writ
4 of scire facias in his own name, from the same court against the
5 bail, which may be taken out of the clerk's office, in vacation
6 as well as term time. 1821, 67, § 3.

SECT. 7. In such writ the plaintiff need not declare on the
2 bail bond, but may merely allege that the defendants became
3 bail in the original action. 1821, 67, § 3.

SECT. 8. But no such action shall be maintained against any
2 person as bail, unless commenced within one year from the
3 time judgment was rendered against the principal. 1821, 67, § 8.

SECT. 9. The bail may plead, jointly or severally, that they
2 never became bail, as alleged in the writ, and under that plea
3 may avail themselves of every defence, which would avail them
4 in an action of debt on the bond, upon the plea that it is not
5 their bond; or may show any special matter of discharge, filing
6 a brief statement thereof as by law provided. 1821, 67, § 3.

SECT. 10. The bail may surrender the principal in court
2 before final judgment on the scire facias and deliver him to the
3 order of court, and paying all the costs on the scire facias, they
4 shall be discharged. 1821, 67, § 3.

SECT. 11. The principal so surrendered, shall be committed
2 to the county jail, there to remain for the space of fifteen days,
3 in order to be taken in execution. 1821, 67, § 3.

SECT. 12. And if the creditor shall not within fifteen days
2 next after such surrender of the principal, take him in execu-
3 tion, the sheriff shall discharge him on payment of the legal
4 prison fees.

SECT. 13. When bail is taken on mesne process in an action
2 triable before a justice of the peace, and there shall be a return
3 on the execution issued on the judgment in such suit, that the
4 principal is not found—said justice may issue a scire facias
5 thereon against the bail, to be served seven days before the day
6 of trial; and if no sufficient cause is shown to the contrary, he
7 may render judgment for the debt and costs recovered, with
8 interest thereon from the time judgment was rendered against
9 the principal; and it shall be no bar to such scire facias that
10 the debt and costs on the original judgment when added
11 together shall exceed the sum of twenty dollars.

1821, 67, § 4.

SECT. 14. If the bail shall at any time before final judgment
2 in the original suit is rendered, or upon the return of the scire
3 facias, and before final judgment thereon, bring the principal
4 before such justice, and procure the attendance of the sheriff,
5 his deputy or a constable of the town in which the court is
6 holden, to receive such principal, such justice shall make a
7 record of such surrender, and shall order him into the custody
8 of such officer, and he shall commit the principal to jail, to be
9 proceeded with as mentioned in the eleventh and twelfth sec-
10 tions, and on payment of costs arising on the scire facias, the
11 bail shall be fully discharged.

SECT. 15. It shall be the duty of the officer to attend before
2 such justice for the purpose aforesaid, when so requested, and
3 for so doing he shall be allowed the same fees as for arresting
4 and committing defendant on mesne process, and for neglect of
5 official duty in the above case, he shall be answerable for all
6 damages to the party injured thereby. 1821, 67, § 7.

SECT. 16. When the principal is surrendered to such justice,
2 after final judgment in the original action, the bail shall deliver
3 to the officer a copy of the surrender (which entry the justice
4 is bound to make) attested by the justice, and the officer shall
5 deliver the same to the jailer on committing the prisoner to
6 his custody, and this shall be a sufficient warrant to the officer
7 for receiving and conveying him to jail and to the jailer for
8 holding him in custody. 1821, 67, § 6. M. R. S. 91, § 24.

SECT. 17. If the principal is surrendered before final judg-
2 ment in the original suit, the bail shall deliver to the officer a
3 copy of the original writ, with the return endorsed thereon,
4 attested by the justice; and the officer shall deliver the same
5 copy to the jailer, and this shall be a sufficient warrant to the
6 officer, and jailer, as mentioned in the preceding section.

SECT. 18. Bail may have their remedy against their principal, 2 by an action on the case for all damages sustained by them by 3 reason of their suretyship.

NOTES.

SECTS. 16 and 17. These are the only new sections. They are deemed necessary for the security of the bail. A justice's court is open only on the day appointed for trial, or the day to which it may stand adjourned. The bail may be desirous of surrendering the principal *before* the day appointed for trial, as in the 18th section; the special right to receive the principal is therefore given to the justice, and a copy of the writ and return is made an authority to the officer to commit the principal, and to the jailer to detain him. And in the case stated in the 17th section, the justice has given judgment, and his court is at an end.—Therefore an attested copy of the entry of surrender, is made a warrant for commitment to prison and detention there as in the case stated in the 18th section. Both the sections are taken from the Mass. code.

SECT. 12. *Fifteen* days are substituted for *thirty* days, as being ample time in which to charge the principal in execution.

CHAPTER 119.

OF TRUSTEE PROCESS OR FOREIGN ATTACHMENTS.

- Sect. 1. What actions may be commenced by foreign attachments.
 2. Form of writ.
 3. Mode of service.
 4. Same subject, where principal is absent from the State.
 5. How served when trustees live in same county or different counties.
 6. Plaintiffs may insert names of trustees, before served on principal.
 7. When principal is out of the State, cause to be continued two terms, and trustee may appear for him in case, &c.
 8. What corporations may be sued as trustees.
 9. Trustee in certain cases may disclose before a justice, &c.
 10. Course of proceeding in such case.
 11. May at any time, be so disclosed, by consent of parties.
 12. A person may be adjudged trustee, living in another State when process has been legally served on him.
 13. When the creditor sues the debtor, and he is summoned as trustee, action shall be continued, till the disclosure made, unless, &c.
 14. If amount disclosed is equal to sum recovered, trustee shall not be liable to any costs.
 15. Restriction of the principal of the two preceding sections.
 16. If trustee discloses at first term, and is discharged, he shall have costs.
 17. If adjudged trustee, he may deduct costs from the sum in his hands.
 18. If so adjudged, by having specific property in his hands, he shall have a lien on such property for his costs.
 19. Disclosure, when finished, to be sworn to.
 20. If all trustees are discharged, or the suit be discontinued as to them, action not to proceed against principal unless he was legally served.

- Sect.* 21. When trustee dwells in another county, if discharged court may allow him a reasonable compensation, &c.
22. If a person belonging to the same county, shall not appear at the first term, he shall be liable for all costs afterwards in the suit to be paid by him, unless paid by the principal.
23. When all the trustees neglect to appear, judgment may be rendered against them jointly or severally.
24. Persons resident out of county not liable for costs, &c. When out of the *State* when process was commenced and appear at first term after return, shall have costs.
25. When action fails, defendant and trustee, shall both have costs, if trustee appeared at first term.
26. Trustee shall not have costs, though discharged if he did not appear at first term.
27. A trustee living out of the county, may appear by attorney and declare, &c.
28. If plaintiff proceeds no further, declaration shall be deemed true.
29. Plaintiff may proceed and examine him before a justice.
30. Disclosure may be sworn before a justice and filed in court.
31. Trustee not appearing shall be defaulted.
32. Trustee may make a statement, admitting funds in his hands, and swear to it, and submit it to court.
33. Disclosure of trustee shall be considered as true, in deciding how far he is chargeable—but *other* facts may be proved.
34. Any such other facts may be tried by jury.
35. When property is disclosed, as claimed by a third person by assignment, he may be admitted to defend as a party.
36. If such claimant do not appear voluntarily, he may be summoned in.
37. If he shall appear, he may be admitted a party and defend his right.
38. If he shall not appear, assignment shall have no effect.
39. In such trial principal defendant may be a witness.
40. All testimony, thus introduced shall be in writing.
41. When there is judgment against principal, and trustee does not appear, judgment shall be against his goods in trustee's hands and execution in usual form.
42. Trustee may appear, by consent of parties, at a subsequent term, saving all advantages.
43. A debt or legacy due from an executor or administrator, of goods, &c., may be attached in his hands by foreign attachment.
44. If a trustee summoned in his own right *dies* before judgment against principal shall be satisfied, the goods and effects in his hands shall remain bound in executor's and administrator's hands.
45. If trustee die before judgment in the original suit, his executors or administrators may be cited to appear, as in common cases.
46. If executor or administrator shall not appear, judgment shall be entered by default, and he shall pay on execution the amount due defendant.
47. If he shall not so pay the amount, scire facias shall issue against him.
48. If trustee shall not be living at the expiration of thirty days after final judgment in trustee suit, what proceedings to be had.
49. When executor or administrator is adjudged trustee how execution is to be issued.
50. If after final judgment, he shall neglect to pay, plaintiff may avail himself of administration bond.
51. Goods, &c. in hands of trustee shall be delivered to officer to be sold.
52. If trustee refuses to deliver the same, or enough to pay the execution, plaintiff may have a scire facias, &c.
53. Provision when any made, was pointed out in agreement between trustee and defendant, as settling value of property in his hands.
54. When only a part of such property is taken by execution when balance may be paid to defendant.
55. Any surplus may be paid over to defendant, after satisfying the execution.

- Sect.* 56. When defendant is committed in execution, the plaintiff may sue out processes against a trustee of defendant provided he release him from prison.
57. Such discharge shall not affect the judgment.
58. When trustee discloses property mortgaged to him, what proceedings to be had.
59. Same subject.
60. Same subject.
61. Same subject.
62. Trustee may sell the property in his hands, if authorized by the terms of the contract, between him and the defendant.
63. Cases in which a person shall not be adjudged trustee.
64. If during the pendency of an action, the defendant is summoned as trustee of the plaintiff, the first suit may proceed for certain purposes.
65. On motion of plaintiff in the trustee suit, it may be continued, if not continued—the consequence.
66. Provisions as to same subject.
67. Any money due *absolutely* to the principal defendant may be attached by trustee process, though payable at a future day, but trustee not bound to pay until due.
68. If a trustee liable to pay costs, shall not pay them to officer on demand, and the officer so return, execution shall issue against him for the amount.
69. If any person holds any goods or chattels, by a fraudulent conveyance, he shall be adjudged trustee on account of them.
70. Every trustee may retain enough to pay a just demand due to him from the principal, and shall account only for balance.
71. But unliquidated damages cannot be set off.
72. On original suit, trustee is not adjudged so for any particular amount—but on scire facias he is.
73. If trustee is discharged 't is no bar.
74. When judgment in original suit is not satisfied on execution plaintiff shall have scire facias, &c.
75. When trustee is defaulted on scire facias, not having been examined—what judgment.
76. When there are several trustees and all are defaulted—judgment may be joint or several.
77. When trustee has been examined, what judgment.
78. When trustee appears, if he had not been examined in the original action; and shall appear not to be chargeable—then how costs shall be adjudged.
79. If he had been examined on original process—he may be examined anew on the scire facias.
80. If goods are not demanded of trustee on execution within thirty days after judgment, attachment shall be dissolved—proviso as to cases when the trustee is bound to pay at a future day.
81. If there is no second attachment, demand may be made after thirty days.
82. When trustee cannot be found, officer may leave copy of execution at his house; which shall be sufficient.
83. Judgment against trustee, the effect of it, &c.
84. Same subject.
85. Penalty for swearing falsely in disclosure.
86. When trustee is prevented from appearing in original suit—and a default is entered—he shall pay no costs, &c. &c.
87. Proceedings when process is issued by municipal or police court or justice—how conducted.
88. Same subject, place where action to be brought.
89. When trustee does not appear—default to be entered.
90. If he appears and is discharged, he shall have costs.
91. If adjudged trustee, he shall retain his costs.

- Sect.* 92. On a discontinuance he shall have costs.
 93. Subsequent proceedings to be same as in court.
 94. When judgment in municipal or police court or before a justice shall be less than five dollars, trustee shall be discharged unless, &c.
 95. Course to be pursued when trustee shall remove to another county, in issuing execution.
 96. When trustee resides in a different county from either plaintiff or defendant—and is discharged—what course, &c.

SECT. 1. All personal actions except those of detinue, replevin, actions on the case for malicious prosecution, slander by writing or speaking and those for assault and battery, may be commenced by foreign attachment or trustee process in the supreme judicial court or district court, or, when the amount demanded in damages is not less than five dollars nor more than twenty dollars before a municipal or police court, or a justice of the peace. 1821, 61, § 1. 1824, 275, § 1.

SECT. 2. The writ shall be in the form heretofore established authorizing an attachment of goods and estate of the principal defendant, in his own hands, as well as in the hands of the trustees, and may be varied from time to time, as the supreme judicial court may order.

SECT. 3. The officer serving such writ, shall attach the goods and estate of the principal, of the value required, if so much can be found by him, and read the writ to him, or leave a copy of it at his last and usual place of abode, if at any time within three years, next before the date of the writ, he had been an inhabitant of the State, and serve the same in one of the above modes, on each of the trustees. 1821, 61, § 1.

SECT. 4. In case the principal has not been an inhabitant of the State within three years before the date of the writ such service on the trustee, shall be good and effectual, and like the service on the trustee, described in the preceding section, shall bind all goods, effects or credits of the principal defendant entrusted and deposited in his hands or possession, to respond to the final judgment in the action in like manner as goods or estate, when attached by the ordinary process. 1821, 61, § 1.

SECT. 5. If all the trustees live in the same county, the action shall there be brought; and if they reside in different counties, the action shall be commenced in any county in which any one of them resides; but a trustee process against a corporation aggregate, shall be commenced in the county in which such corporation has its established or usual place of business, or shall have held its last annual meeting, or shall usually hold its meetings. 1821, 61, § 1.

SECT. 6. The plaintiff may insert the names of as many persons, as trustees, as he may deem necessary, at any time before the process is served on the principal, but not after, and he may cause a second service to be made on any of the trustees if found expedient, if made before service on the principal.

1821, 61, § 2. M. R. S. 109, § 9.

SECT. 7. When the principal is out of the State at the time
2 of the service, the cause shall be continued two terms, unless in
3 the mean time he shall come into the State before the setting of
4 the court; and when he does not appear in his own person or by
5 attorney, any one or more of the trustees having goods, effects
6 or credits, in their hands, and having been adjudged trustees,
7 may appear in his behalf, and in his name plead and defend the
8 cause. 1821, 61, § 3.

SECT. 8. All corporations, except counties, towns and par-
2 ishes, may be summoned as trustees, and the writ served on
3 them, as other writs on such corporations, and they may answer
4 by attorney or agent, and make disclosures which shall be
5 signed and sworn to by such attorney or agent; and the same
6 proceedings shall thereupon be had throughout, except neces-
7 sary changes in form, as in other cases of foreign attachment.

1829, 442.

SECT. 9. When any person summoned as trustee, is about to
2 depart from the State or go on a voyage and not to return before
3 the term of the court where he is summoned to appear, he may
4 apply to a justice of the peace and quorum of the county
5 where the trustee resides, for a notice to the plaintiff in the suit
6 to appear before him at a place and day appointed for taking
7 the disclosure of such trustee. 1830, 469, § 1.

SECT. 10. On service having been made and returned, accord-
2 ing to the order of such justice, the examination and disclosure
3 shall be taken and sworn to before the justice, and being certi-
4 fied and returned to court, the same proceedings may be had
5 thereon as if it had been made in court. 1830, 469, § 1.

SECT. 11. And in any case, where a person has been sum-
2 moned as trustee, his examination and disclosure may be so
3 taken, when the plaintiff and trustee consent thereto.

1830, 469, § 2.

SECT. 12. Any person on whom a trustee process shall be
2 served, in any mode of law prescribed, shall be liable to be
3 adjudged trustee by the court, though he was not then and
4 never had been an inhabitant of this State, and the writ may be
5 made returnable in the county, in which either the plaintiff or
6 principal defendant may reside. 1834, 139.

SECT. 13. Whenever an action is brought for the recovery of
2 a debt, and the defendant has been, or shall be summoned as a
3 trustee of the plaintiff, the action shall be continued to await
4 the disclosure of the trustee, unless the court shall otherwise
5 order; and if the defendant shall be adjudged trustee, the dis-
6 closure and the proceedings thereon may be given in evidence
7 on the trial of the action between the trustee and his creditor.

1834, 95, § 1.

SECT. 14. If the amount disclosed shall be equal to the sum
2 recovered in the action, the trustee shall be liable to no costs,
3 subsequent to the interposition of the adjudication.

1834, 95, § 1.

SECT. 15. But in such action as is mentioned in the two preceding sections, the intervention of the trustee process shall not prevent the plaintiff from recovering his costs against the principal debtor, except as is provided in the preceding section.

1834, 95, § 2.

SECT. 16. If any supposed trustee shall come into court at the first term, and submit himself to examination on oath, after having in writing declared that at the time of the service of the trustee process upon him, he had not any goods, effects or credits of the principal in his hands or possession, he shall be entitled to his costs in the same manner as in civil actions where issue is joined for trial.

1821, 61, § 4.

SECT. 17. And if such person is adjudged trustee, he may deduct from the amount in his hands, the amount of such costs.

1828, 382.

SECT. 18. And where such person, shall be adjudged trustee for specific articles in his hands, he shall have a lien upon the same for his costs; and the officer who shall dispose of the same on execution shall pay such trustee the amount due him for costs and deduct the same from the amount of sale, and account to the creditor for the balance, the amount of such fees shall be endorsed on the execution by the clerk and the same shall be evidence of the lien.

1828, 382.

SECT. 19. The disclosure when completed and subscribed by the trustee, shall be sworn to by him in open court, or before some justice of the peace.

SECT. 20. If all the persons summoned as trustees, shall be discharged, or the suit against them has been discontinued, the plaintiff shall not proceed against the principal defendant unless there has been such a service of the original writ upon the principal as would authorize the court to proceed against him to judgment in an action commenced in the ordinary form, but the principal, if he will, may assume the defence of the suit.

1821, 61, § 5.

SECT. 21. When the trustee, at the time the writ was served on him, dwelt in any county, other than the one where the writ was returnable, the court shall in case of his discharge allow him in addition to his legal fee, a reasonable compensation for his time and expenses, in appearing and defending himself.

1821, 61, § 4.

SECT. 22. If any person belonging to the county in which the writ is returnable, who, being summoned, shall neglect to appear and submit to examination at the return term, and having no reasonable cause to the contrary, he shall be liable for all costs, afterwards arising in the suit, to be recovered and paid out of his own goods or estate, if judgment be rendered for the plaintiff, unless recovered out of the goods or effects in the hands of the trustee and belonging to the principal.

1821, 61, § 4.

SECT. 23. When several trustees, resident in the county where the action is depending, being summoned shall neglect to appear, the judgment for costs, shall be rendered against them jointly. 1821, 61, § 4.

SECT. 24. Persons summoned as trustees, resident out of the county where the suit is pending, shall not be liable for any costs arising on the original process herein provided, and if the person summoned as trustee, is out of the State at the time the writ is served on him, and if he shall appear at the first of the court after his return, he shall be allowed for his costs and charges in the same manner as if he had appeared at the term, when the action was entered. 1821, 61, § 4. 10 Mass. 25.

SECT. 25. When the plaintiff does not support his action against the principal, the court shall award costs against him, as well in favor of the principal, as in favor of such persons summoned as trustees severally, who have appeared and submitted to examination on oath; and several executions shall issue accordingly. 1821, 61, § 5.

SECT. 26. When a person summoned as trustee, does not come into court, and declare he had no property or credits of the principal in his hands, when the writ was served and submit himself to examination on oath, the court shall not award costs in his favor, though the suit shall be discontinued. 1821, 61, § 5.

SECT. 27. A person summoned as trustee, and then living in a county, other than that where the writ is returnable, shall not be required to appear in person in the original suit or in a suit on scire facias, but he may appear by attorney and declare whether he had any goods or effects of the principal in his hands, when the writ was served; and thereupon offer to submit himself to examination on oath. 1821, 61, § 6.

SECT. 28. If the plaintiff shall proceed no further, such declaration shall be considered as true. 1821, 61, § 6.

SECT. 29. If the plaintiff shall think proper to examine such supposed trustee on oath, the answers may be taken before a judge of the district court for the county in which the trustee may dwell, or any justice of the peace of such county. 1821, 61, § 6.

SECT. 30. In all cases when a trustee has submitted himself to examination on oath, the answers to such examination may be sworn to before a judge of such court, or a justice of peace; and the same being filed in court shall have the effect, as if sworn to in open court. 1821, 61, § 6.

SECT. 31. When any person has been duly summoned as trustee and neglects to appear and answer to the suit, he shall be defaulted and be thereupon adjudged trustee as alleged.

SECT. 32. If any person summoned, shall admit that he has in his hands, goods, effects or credits of the principal or shall wish to refer that question to the court upon the facts, he may instead of the declaration before mentioned, make a declaration

5 of such facts as he may deem material, and submit himself
6 thereupon to a further examination on oath; and such declara-
7 tion and further examination, if any, shall be sworn to as before
8 provided. M. R. S. 109, § 13.

SECT. 33. The answers and statements sworn to by any per-
2 son summoned as a trustee, shall be considered as true in decid-
3 ing how far he is chargeable; but the plaintiff or trustee may
4 allege and prove, any other facts not stated nor denied by the
5 supposed trustee, which may be material in deciding that
6 question. M. R. S. 109, § 15.

SECT. 34. Any question of fact arising upon such additional
2 allegations, may by consent be tried and determined by the
3 court, or may be submitted to a jury, in such manner as the court
4 shall direct. M. R. S. 109, § 16.

SECT. 35. When it appears by the answers of any person
2 summoned as a trustee, that any effects, goods or credits in his
3 hands are claimed by a third person, in virtue of an assignment
4 from the principal debtor or in some other way, the court may
5 permit such claimant, if he see cause to appear and become a
6 party to the suit, and maintain his right. 1821, 61, § 7.

SECT. 36. Should such claimant not appear voluntarily, notice
2 may be issued and served on him, in such manner as the court
3 may direct. 1821, 61, § 7.

SECT. 37. If such claimant shall appear he may be admitted
2 as a party to the suit, so far as respects his title to the goods,
3 effects or credits in question; and may allege and prove any
4 facts, not stated nor denied in the disclosure by the supposed
5 trustee, and such allegations shall be tried and determined in the
6 manner before provided. 1821, 61, § 7.

SECT. 38. If such assignee, having been duly notified, shall
2 not appear in person or by attorney, the assignment shall have
3 no effect, to defeat the plaintiff's attachment. 1821, 61, § 7.

SECT. 39. Upon the trial between the attaching creditor and
2 the person claiming the same, as before mentioned, the principal
3 defendant may be examined as a witness for either party, if there
4 is no other objection to his competency, except his being a
5 party to the original suit. 1821, 61, § 7.

SECT. 40. All testimony relating to the additional allegations
2 of any party in such trial, shall be given by depositions, taken
3 and filed in the usual manner. M. R. S. 109, § 19.

SECT. 41. When the plaintiff shall recover judgment against
2 the principal, and there shall be any person summoned as trus-
3 tee, who shall not have appeared and discharged himself—and
4 against whom the suit shall not have been discontinued, the
5 court shall award judgment and execution against the goods,
6 effects and credits in his hands, as well as against the principal
7 in the usual form. 1821, 61, § 8.

SECT. 42. But if there is any agreement between the plaintiff
2 and supposed trustee, that he may appear at a subsequent term
3 of the court, instead of the first term, saving to such trustee all

4 such advantages, as he would have had on appearing and
5 answering at the first term, the court shall allow him all such
6 advantages.

SECT. 43. Any debt or legacy due from an executor or ad-
2 ministrator, and any goods, effects and credits in his hands, as
3 such may be attached by process of foreign attachment.

M. R. S. 109, § 62.

SECT. 44. If any person, who is summoned as a trustee in his
2 own right, shall die before the judgment, if any, recovered by
3 the plaintiff, shall be fully satisfied, the goods, effects and credits
4 in his hands, at the time of attachment, shall remain bound
5 thereby; and his executors or administrators shall be liable
6 therefor, in like manner as if the writ had been originally served
7 on them.

M. R. S. 109, § 63. 1821, 61, § 14.

SECT. 45. If the person so summoned shall die before judg-
2 ment in the original suit, his executor or administrator may
3 appear voluntarily, or may be cited to appear in the same man-
4 ner as is provided in the case of the death of a defendant in a
5 common action; and the further proceedings shall then be
6 conducted in the same manner as if the executor or administrator
7 had been originally summoned as a trustee, except that the
8 examination of the deceased, if any, had been taken and filed,
9 shall have the same effect, as if he were living.

M. R. S. 109, § 64.

SECT. 46. If, in such case, the executor or administrator
2 shall not appear, the plaintiff, instead of suggesting the death
3 of the testator or intestate, may take judgment against him by
4 default or otherwise as if he were living, and the executor or
5 administrator shall pay on the execution the amount which he
6 would have been liable to pay to the principal defendant; and
7 he shall be thereby discharged from all demands on the part of
8 the principal defendant in the suit, for the amount so paid, in
9 like manner as if the executor or administrator, had been himself
10 adjudged trustee.

M. R. S. 109, § 65.

SECT. 47. If the executor or administrator, in the case last
2 mentioned, shall not voluntarily pay the amount in his hands,
3 the plaintiff may proceed by writ of scire facias in like manner
4 as if the judgment in the first suit had been against the executor
5 or administrator himself as trustee.

M. R. S. 109, § 66.

SECT. 48. If any person against whom execution shall issue
2 as trustee, shall not be living at the expiration of thirty days
3 after final judgment in the trustee suit as provided in the
4 eightieth section, the demand to be made by force of the execu-
5 tion for continuing the attachment, may be made of the executor
6 or administrator of the deceased person at any time within thirty
7 days after the appointment of such executor or administrator;
8 and it shall have the same effect as if made within thirty days
9 after the judgment.

M. R. S. 109, § 68.

SECT. 49. When an executor or administrator is adjudged
2 trustee, for or on account of any goods, effects or credits in his

3 hands or possession, merely as such executor or administrator,
4 whether in a suit originally commenced against him as a trustee,
5 or against the deceased testator or intestate; and whether the
6 judgment be in the original suit, or on a writ of scire facias, the
7 execution shall not be served on his own goods or estate, nor
8 on his person, but he shall be liable for the amount in his hands
9 in like manner and to the same extent only, as he would have
10 been to the principal defendant, if there had been no foreign
11 attachment. M. R. S. 109, § 69.

SECT. 50. If after final judgment against an executor or
2 administrator, for any certain sum due from him as trustee, he
3 shall neglect to pay the same, the original plaintiff in the foreign
4 attachment, shall have the same remedy for recovering the
5 amount, either upon a suggestion of waste or by a suit on the
6 administration bond, as the principal defendant in the foreign
7 attachment would have had upon a judgment recovered by him-
8 self, for the same demand against the executor or administrator.

M. R. S. 109, § 70.

SECT. 51. When any person summoned as a trustee, has in
2 his possession any goods, effects or credits of the principal,
3 which he holds or is bound to deliver to the principal defen-
4 dant, he shall deliver the same, or so much thereof as may be
5 necessary to the officer holding the execution, and the same
6 goods shall be sold by the officer, and the proceeds applied and
7 accounted for in the same manner as if they had been taken on
8 execution in common form. 1821, 61, § 13.

SECT. 52. If the trustee neglect or refuse to deliver the same,
2 or sufficient to satisfy the execution, the judgment creditor may
3 have his remedy on a scire facias, as provided in sections seventy-
4 four and seventy-nine inclusive of this chapter, and the debtor
5 his remedy for any overplus belonging to him, as at common
6 law.

SECT. 53. Whenever by the terms of the contract, between
2 the trustee and the principal debtor, any mode of ascertaining
3 the value of the property to be delivered to the officer, shall
4 have been pointed out, it shall be the duty of the officer on the
5 application of the trustee to notify the principal debtor previ-
6 ously to the delivery, that the value may be thus ascertained, as
7 far as it may affect the performance of the contract.

1821, 61, § 13.

SECT. 54. When a part of such goods and articles shall be
2 taken in execution as aforesaid, the trustee may deliver the res-
3 idue to the principal or tender the same to him, within thirty
4 days after satisfaction of the execution, in the same manner as
5 he might have delivered the whole.

1821, 61, § 13.

SECT. 55. Any surplus money remaining in his hands after
2 satisfying the execution and fees, shall be paid over to the prin-
3 cipal, if within the precinct of the officer; and if not, then to
4 the trustee. 1821, 61, § 13.

SECT. 56. Whenever a judgment creditor has caused the debtor to be committed in execution, and may afterwards discover goods, effects, or credits of the debtor, not attachable by the ordinary process of law, he may have the benefit of the trustee process provided in this chapter, in the like manner as any other creditor, provided that within seven days after the service of such process, he shall discharge the body of the debtor from prison by a written direction to the jailer, stating the occasion and reason of the discharge. 1821, 61, § 16.

SECT. 57. Such discharge shall not annul or affect the judgment. 1821, 61, § 16.

SECT. 58. When any person summoned as a trustee, shall in his disclosure state that he had, at the time the process was served on him, in his possession property not exempted by law from attachment, but that the same was mortgaged, pledged or delivered to him by the principal defendant to secure the payment of a sum of money due to such supposed trustee, and that the principal defendant has a subsisting right to redeem the same, by payment of such money the court or justice before which the action is pending shall order and decree that on payment or tender of such money by the plaintiff to said alleged trustee, within such time as the court shall order, and while the right of redemption exists, the person so summoned shall deliver over the property to the officer serving the process, to be held and disposed of in like manner, as if it had been attached on mesne process; and in default thereof, that he shall be charged as the trustee of the principal debtor; which order and decree shall be entered on the records of such court or justice.

1835, 188, § 1.
SECT. 59. On the return of the scire facias, against such alleged trustee, if it shall appear that the plaintiff has on his part complied with the order and decree of the court or justice and that such alleged trustee has refused or neglected to comply therewith, then the court or justice shall enter up judgment against him for the amount of the sum due, and returned unsatisfied on the execution, if there should appear to be in his hands such an amount of the property mortgaged over and above the sum received by such mortgagee or pledgee; but if not, then for the amount of said property so exceeding the above sum, if any; which amount of excess shall on the trial of the scire facias, be determined by the court or jury. 1835, 188, § 1.

SECT. 60. If by the disclosure it appears that the property in the hands of the supposed trustee was mortgaged, pledged or subject to a lien to indemnify him against any liability or secure the performance of any contract or condition; and that the principal defendant has a subsisting right of redeeming the same, the court may order and decree that upon the discharge of such liability by the plaintiff within such time as the court or justice may order, and while the right of redeeming exists, such

9 alleged trustee shall deliver over the property to the officer, to
10 be by him held and disposed, as if it had been attached.

1835, 188, § 1.

SECT. 61. It shall be the duty of the officer selling on execu-
2 tion any personal property delivered to him in virtue of this
3 chapter, in paying the plaintiff the sum by him paid or tendered
4 to the trustee or applied in the performance of the contract or
5 condition or discharge or extinguishment of the liability before
6 mentioned, and the interest from the time of such payment,
7 tender or application to the time of sale, to apply so much of
8 the proceeds of said sale as may be necessary to discharge the
9 same, he having first deducted the charges and so much of the
10 residue as may be required therefor, he shall apply in satisfac-
11 tion of the plaintiff's judgment according to law, and shall pay
12 over the balance, if any to the debtor; the trustee to receive of
13 the officer his costs, accruing before the service of the scire
14 facias as before provided in the sixteenth and seventeenth sec-
15 tions of this chapter.

1835, 188, § 1.

SECT. 62. Nothing contained in this chapter shall prevent
2 the trustee from selling the goods in his hands, for the payment
3 of the sum for which they were mortgaged, pledged or other-
4 wise liable, at any time before the amount due to him was paid
5 or tendered, as before mentioned, provided such sale would be
6 authorized by the terms of the contract, between him and the
7 principal defendant.

M. R. S. 109, § 28.

SECT. 63. No person shall be adjudged a trustee in either of
2 the following cases, namely—

3 *First*, by reason of having drawn, accepted, made or endorsed
4 any negotiable bill, draft, note or other security.

3 Mass. 289—5, 319.

5 *Second*, by reason of any money or other thing, received or
6 collected by him, as a sheriff or other officer, by force of an exe-
7 cution or other legal process in favor of the principal defendant
8 in the foreign attachment, although the same should have been
9 demanded of him previously by the defendant.

10 *Third*, by reason of any money in his hands, as a public offi-
11 cer, and for which he is accountable, as such merely, to the
12 principal defendant.

7 Mass. 259.

13 *Fourth*, by reason of any money or other thing due from him to
14 the principal defendant, unless it is, at the time of the service of
15 the writ upon him, due absolutely, and without depending on
16 any contingency.

3 Mass. 33, § 68. 6 Pick. 120—3 do. 1—3 do. 65.

17 *Fifth*, by reason of any debt due from him, on a judgment so
18 long as he is liable to an execution on the judgment.

2 Mass. 94—3 do. 121.

SECT. 64. If during the pendency of an action, the defendant
2 is summoned as the trustee of the plaintiff, the first suit may
3 nevertheless proceed so far as to ascertain by a verdict or other-

4 wise, what sum, if any, is due from the defendant ; and the suit
5 shall not be delayed on account of the foreign attachment, unless
6 the court, for good cause shall see fit to continue the same for
7 judgment until the termination of the trustee suit, or until the
8 attachment therein shall be dissolved by the discharge of the trustee, or satisfaction of the judgment otherwise. M. R. S. 109, § 31.

SECT. 65. On motion of the plaintiff in the foreign attachment, the court may continue the other suit, on such terms as they may judge reasonable ; and if it is not continued and the judgment is rendered in the other suit, he shall not be adjudged afterwards a trustee, on account of the demand thus recovered against him, so long as he is liable to an execution on the judgment. M. R. S. 109, § 32.

SECT. 66. If before final judgment is rendered in the first suit, the defendant in that suit shall be adjudged trustee in the other, and shall pay thereon the money demanded in the first suit, or any part of it, the fact shall be stated on the record of the first suit, and judgment therein shall be rendered for the costs due to the plaintiff, and for such part of the debt or damages, if any, as shall remain due and unpaid.

M. R. S. 109, § 33.

SECT. 67. Any money or other thing, due to the principal defendant, may be attached before it has become payable provided it be due absolutely and without any contingency as before mentioned ; but the trustee shall not be compelled to pay or deliver it before the time appointed therefor by the contract.

M. R. S. 109, § 34.

SECT. 68. If the person summoned as trustee, and liable for costs, as provided in the twenty-second section of this chapter shall not voluntarily pay them, when demanded by the officer serving the execution, such officer shall state the fact in his return on the execution ; and if it appears by the return that they have not been paid by any one, the court shall award execution against the person so summoned as a trustee, for the amount of such costs.

M. R. S. 109, § 55.

SECT. 69. If any person summoned as trustee, shall have in his possession any goods, effects or credits of the principal defendant, which he holds under a conveyance that is fraudulent and void as to the creditors of the defendant, he may be adjudged a trustee on account of such goods, effects and credits, although the principal defendant could not have maintained an action therefor against him.

M. R. S. 109, § 35.

SECT. 70. Every trustee shall be allowed to retain or deduct out of the goods, effects and credits in his hands, all his demands against the principal defendant, of which he could have availed himself—if he had not been summoned as trustee, whether by way of set off on a trial, or by a set off of judgments or executions between himself and the principal defendant, and he shall be liable for the balance only, after their mutual demands are adjusted.

M. R. S. 109, § 36 16 Mass. 473.

SECT. 71. But unliquidated damages, on either side, for any
2 wrongs or injuries shall not be considered as embraced in the
3 preceding section, as a subject of set off.

SECT. 72. When any person has been adjudged trustee, it
2 shall not be necessary to specify in the judgment the sum for
3 which he is chargeable; but if on a writ of scire facias against
4 him, it shall appear that he is chargeable as trustee, the sum for
5 which he is chargeable, shall be expressed in the judgment.

M. R. S. 109, § 42.

SECT. 73. If any person summoned as a trustee is discharged
2 the judgment shall be no bar to an action brought by the prin-
3 cipal defendant against him for the same demand.

M. R. S. 109, § 48.

SECT. 74. When any person who has been adjudged a trustee
2 in the original action, shall not, on demand of the officer hold-
3 ing the execution, pay over and deliver to him, the goods effects
4 and credits, in his hands, and such execution shall be returned
5 unsatisfied, the plaintiff may sue out a writ of scire facias
6 against such trustee from the same court or before the justice
7 that rendered the judgment to show cause why judgment and
8 execution should not be awarded against him and his own goods
9 and estate for the sum remaining due on the judgment against
10 the principal defendant. 1821, 61, § 9.

SECT. 75. When such trustee, after such writ has been duly
2 served on him, shall neglect to appear and answer to the same,
3 he shall be defaulted, and if he shall not have been examined
4 in the original suit, judgment shall be rendered against him for
5 the whole sum remaining due on such judgment against the
6 principal defendant. 1821, 61, § 10.

SECT. 76. When there shall be more than one defendant in
2 such writ of scire facias, and they are all defaulted, not having
3 been examined in the original suit, the court may enter up joint
4 or several judgments, according to the circumstances of the
5 case, and issue execution in common form, as his own debt.

1821, 61, § 10.

SECT. 77. If any trustee, who has been defaulted on the scire
2 facias, shall have been examined in the original suit, judgment
3 shall be rendered on the facts stated in his disclosure, or proved
4 at the trial, for such part, if any shall remain in his hands, of
5 the goods, effects and credits for which he was chargeable as
6 trustee, or so much thereof as shall be then due and unsatisfied
7 on the judgment against the principal defendant; but if it shall
8 appear that such person paid and delivered the whole amount
9 thereof on the execution, issued on the original judgment, he
10 shall be liable for any costs on the scire facias.

1821, 61, § 10.

SECT. 78. If the trustee appears and answers to the scire
2 facias, and if he had not been examined in the original suit,
3 he shall be liable to be examined in the same manner, as he
4 might have been on the original suit; and on if such examination.

5 he shall appear not to be chargeable, the court shall render
6 judgment against him for costs only, if resident in the county
7 where the original process was returnable; but if not resident,
8 in such county then he shall not be liable to costs nor shall he
9 recover any costs.

SECT. 79. And if he had been examined in the original suit,
2 the court may permit or require him to be examined anew in the
3 suit of scire facias, and in such case, he may prove any matter
4 proper for his defence on the scire facias; and the court may
5 render such judgment as law and justice require, upon the whole
6 matter appearing on such examination and trial.

M. R. S. 109, § 41.

SECT. 80. When any person is adjudged a trustee, the goods,
2 effects and credits, in his hands, if not demanded of him, by
3 virtue of the execution, within thirty days next after final judg-
4 ment, the attachment of them by the original process shall be
5 dissolved, and they shall be liable to another attachment in like
6 manner, as though the prior attachment had not been made;
7 provided that in those cases, where the debt due from the trus-
8 tee to the principal defendant, is payable at a future day, or
9 specific property is in the hands of the trustee which he is bound
10 to deliver at a future day, the attachment shall continue until
11 the expiration of thirty days after such debt shall be payable
12 in money, or the property aforesaid, be demanded of the trustee.

M. R. S. 109, § 43.

SECT. 81. If there shall be no second attachment, the prin-
2 cipal defendant in the suit may recover the goods, effects and
3 credits, if not demanded as aforesaid, within thirty days in like
4 manner as if they had not been attached.

M. R. S. 109, § 44.

SECT. 82. When the officer holding the execution cannot find
2 the trustee in the State, a copy of the execution may be left at
3 his dwelling-house or last and usual place of abode, with notice
4 to the trustee endorsed thereon, and signed by the officer; sig-
5 nifying that he is required to pay and deliver towards satisfying
6 such execution, the goods, effects and credits for which he is
7 liable; and this shall be deemed a sufficient demand for all the
8 purposes mentioned in the two preceding sections.

SECT. 83. The judgment against any person as trustee, shall
2 discharge him from all demands by the principal defendant or
3 his executors or administrators, for all goods, effects and credits,
4 paid, delivered or accounted for by the trustee, by force of such
5 judgment.

1821, 61, § 11.

SECT. 84. And if he is afterward sued for the same by the
2 defendant or his executors or administrators, such judgment and
3 disposition of the goods, effects and credits as above stated,
4 being proved shall be a bar to the action for the amount so paid
5 or delivered by him.

1821, 61, § 11.

SECT. 85. If any person summoned as a trustee aforesaid,
2 upon his examination, shall wilfully and knowingly answer falsely,

3 he shall on due conviction, be adjudged guilty of perjury, and
4 shall be bound to pay to the plaintiff in the suit, the amount of
5 the judgment he may recover against the principal defendant, if
6 the same be unsatisfied, or for such part as is unsatisfied, with
7 interest and costs, to be recovered in a special action on the
8 case. 1821, 61, § 12.

SECT. 86. If any person summoned as trustee, shall be pre-
2 vented from appearing in the original suit, by absence from the
3 State or any other reason, deemed sufficient by the court, and a
4 default be entered against him, he shall not be liable for any
5 costs on the scire facias, but on his disclosure the court may
6 allow him his reasonable costs and charges to be retained or
7 recovered, in like manner as if he had appeared in the original
8 suit. M. R. S. 109, § 59.

SECT. 87. When a trustee process is issued by a municipal
2 or police court or a justice of the peace, the writ shall be in the
3 form now in use and may contain a direction to attach property
4 of the principal in his own hands, as well as in the hands of the
5 person named as trustee, and shall be served in like manner as
6 a trustee process, issued by a judicial court, seven days before
7 the return day. 1824, 275, § 1. 1827, 359, § 1.

SECT. 88. The action shall be brought in the county where
2 either of the supposed trustees resides; and if brought in any
3 other county, the action shall be dismissed and the trustee shall
4 recover his costs.

SECT. 89. When the person summoned does not appear and
2 answer to the suit, he shall be defaulted and adjudged trustee
3 and be liable to costs.

SECT. 90. If he appears at the return day and submits himself
2 to examination on oath, and shall thereupon be discharged, he
3 shall be allowed his legal costs. 1827, 359, § 2.

SECT. 91. If on such disclosure he shall be adjudged trustee,
2 he may retain the amount of his costs.

SECT. 92. When the plaintiff discontinues his suit against the
2 trustee, the trustee shall be allowed his costs. 1827, 359, § 3.

SECT. 93. All subsequent proceeding in such causes shall and
2 may be had, as are in this chapter prescribed in trustee pro-
3 cesses brought to and pending in the supreme judicial court or
4 district court, varying forms as circumstances may require,
5 except as is provided in the following section. 1827, 359, § 5.

SECT. 94. When in such trustee process before a municipal
2 or police court or a justice of the peace, the judgment recovered
3 against the principal, shall be for a less sum than five dollars,
4 the trustee shall be discharged, unless the judgment be so
5 reduced by means of an off-set filed in the case.

SECT. 95. If after a judgment has been rendered in a trustee
2 process before a municipal or police court or justice of the
3 peace, the principal defendant or trustee shall remove out of the

4 county in which it was rendered, such court or justice may issue
 5 execution against such debtor or trustee, directed to the proper
 6 officer of any other county where he may be supposed to reside;
 7 but if such county shall not be contiguous to the county where
 8 the judgment was rendered, there shall be annexed to the execu-
 9 tion a certificate of the clerk of the district court of the county
 10 where the justice resides, under the seal of the court, stating
 11 that the person, who issued the execution is a justice of the
 12 peace of that county, and the signature to the execution is
 13 genuine. 1836, 210, § 1.

SECT. 96. When an action is brought against a trustee of a
 2 county where the trustee resides, but where neither the plaintiff or
 3 defendant reside, and such trustee is discharged, or the action
 4 discontinued as to him, the action shall still proceed, unless it
 5 appear by plea in abatement, that such trustee was collusively
 6 included in the writ for the purpose of giving the court in such
 7 county jurisdiction, provided there was a legal service on the
 8 principal defendant.

NOTES.

A few general remarks on some parts of this chapter may be proper and useful. The existing act as to the trustee process, though it makes certain provisions for the case of the death of the trustee pending the suit whether before or after judgment, yet a great variety of particular provisions are contained in the foregoing chapter, having for their object, and adapted to obtain the benefit of the property alleged to be in the hands of the trustee. The provisions alluded to are taken from the revised statutes of Mass.; (our trustee being a copy of the act in force in the Commonwealth of Massachusetts.) In that code a little system is formed, by means of which the property found in the hands of a trustee, or left at his death in the hands of his executor or administrator, may be secured—even though his estate may be insolvent, to the full amount of the sum which the principal debtor could recover of him or of his executor or administrator, in case no trustee process had ever been served, provided the plaintiff's demand should equal that sum. All these special provisions speak for themselves. In their operation, it is believed, they will completely execute the present trustee process act, according to its original intention, with some few exceptions herein after mentioned.

CHAPTER 120.

OF ACTIONS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

- Sect.* 1. How writs and executions shall run against executors and administrators.
 2. How judgment shall be rendered in several cases named in respect to costs.
 3. How when for costs only.

- Sect.* 4. When judgment for damages and costs, how entered as to costs.
 5. All costs paid by them, to be allowed in probate account, &c.
 6. When execution is not satisfied, and officer's return made scire facias may be issued—what judgment.
 7. If executor or administrator dies or is removed from office, suit may be prosecuted by or against administrator, de bonis non, &c.
 8. When death or removal is after judgment for or against him, a scire facias may issue—provision as to the costs.
 9. How a writ of error may be brought.
 10. In cases where cause of action survives, if only one plaintiff or defendant, and he dies before judgment—action may proceed against executor or administrator of said deceased party.
 11. When after an appeal entered.
 12. Executor or administrator not appearing may be cited.
 13. On non-appearance, a non-suit or default to be entered.
 14. But in such case, if executor or administrator does not assume the prosecution or the defence, not liable for costs.
 15. Certain actions which do survive.
 16. Such may be originally sued against executor or administrator, or prosecuted against them.
 17. Only the value of goods recovered in trespass, &c.
 18. Goods restored on judgment for return not assets.
 19. When several plaintiffs or defendants and one dies, action to be pursued against or by survivors.
 20. When all die, then to be pursued against or by the executor or administrator of the last survivor.
 21. No executor or administrator bound to defend any suit within one year.
 22. Suits so brought, to be continued.
 23. Limitation of actions against them.
 24. Assets accruing after four years, proceedings to be had.
 25. Uncertain or future claims, how preserved.
 26. Same subject.
 27. When a bond is given—action must be on that.
 28. If any thing is due to complainant, he shall have judgment.
 29. Liable for unfaithful administration.
 30. In certain cases a creditor may sue heirs or devisees.
 31. This chapter not to bar action for a legacy.
 32. Proceedings when executor or administrator dies before estate is settled.
 33. How far new administrator shall be liable to suits.
 34. If former administrator gave no notice, then how long.
 35. New administrator to give notice as an original one.

SECT. 1. All writs of attachment and execution, against
 2 executors and administrators, for debts due from the deceased
 3 testator or intestate, shall run against the goods and estate
 4 of the deceased in their hands. 1821, 52, § 19.

SECT. 2. When a judgment for costs shall be rendered against
 2 an executor or administrator, in any action commenced by or
 3 against him, or in any action commenced by or against the tes-
 4 tator or intestate, wherein the executor or administrator has
 5 appeared and taken upon himself the prosecution or defence of
 6 the action, he shall be personally liable for the costs but in the
 7 latter case only for costs after he took on him the prosecution
 8 or defence. 16 M. 530. M. R. S. 110, § 2.

SECT. 3. When judgment is recovered against an executor or
 2 administrator for costs only, the execution shall be awarded

3 against his body, goods and estate, as if it were for his own
4 debt. M. R. S. 110, § 3.

SECT. 4. When the judgment is for debt or damages and
2 costs also, an execution for the debt or damages shall be awarded
3 against the goods and estate of the deceased, in the hands of
4 the executor or administrator, and another execution for the
5 sum due for costs, against the goods and estate of the executor
6 or administrator, and also against his body, as if it were for his
7 own debt. M. R. S. 110, § 4.

SECT. 5. All costs paid by executors or administrators, and
2 for which they are made personally liable, shall be allowed to
3 them in their administration account, unless the judge of probate
4 shall decide that the suit was prosecuted or defended without
5 reasonable cause. M. R. S. 110, § 5.

SECT. 6. When an execution against an executor or adminis-
2 trator, for a debt due from the estate of the deceased, is returned
3 by the officer to whom it was delivered for service unsatisfied,
4 by reason of his being unable to find any goods or other per-
5 sonal estate of the deceased, the plaintiff may, upon a suggestion
6 of waste sue out a writ of scire facias, against the executor or
7 administrator; and if he shall not appear after due service of
8 the writ, and shew cause to the contrary execution shall issue
9 against him for the full amount of the wastes if it can be ascer-
10 tained, otherwise for the full amount of the original judgment
11 and interest thereon from the time it was rendered.

1821, 52, § 19.

SECT. 7. When an executor or administrator shall die, or be
2 removed from office, pending an action brought by or against
3 him, the same may be prosecuted by or against any administra-
4 tor, de bonis non, who shall be appointed after due notice given;
5 and if after such notice he shall not appear and become a party
6 to the suit, judgment may be rendered against him in the same
7 manner as if he had voluntarily appeared; or as if the suit had
8 been originally commenced by or against him.

1821, 52, § 20.

SECT. 8. When an executor or administrator shall die, or be
2 removed from office after judgment shall have been rendered for
3 or against him, a scire facias may be sued out by or against the
4 administrator, de bonis non, and after due service thereof, an
5 execution may issue accordingly upon such judgment, in like
6 manner as it may be done against an executor or administrator
7 in case of the death of a testator or intestate, except only that
8 the judgment against the first executor or administrator for costs,
9 for which he was personally liable, shall be enforced only
10 against *his* executor or administrator, and not against the admin-
11 istrator de bonis non.

1821, 52, § 20.

SECT. 9. A writ of error to correct any errors in such judg-
2 ment may be brought by or against the administrator de bonis
3 non on the original executor or administrator who was a party
4 to such suit.

1821, 52, § 20.

SECT. 10. In all personal actions, the cause of which by law
 2 survives, when there is only one plaintiff or one defendant, and
 3 such sole plaintiff or defendant shall die after the commence-
 4 ment of the action, and before entry thereof or after an appeal,
 5 and before entry of the appeal, or after entry, and any time
 6 before judgment, the executor or administrator of the deceased
 7 party may prosecute or defend the action, as hereafter mentioned
 8 in this chapter. 1821, 52, § 21.

SECT. 11. When the action or appeal is entered, the death of
 2 the party shall be suggested on record, and the executor or
 3 administrator of the deceased may appear voluntarily and pros-
 4 ecute or defend the action, as though it had been commenced
 5 by or against him. 1821, 52, § 21.

SECT. 12. If such executor or administrator does not appear
 2 voluntarily, the court on motion of the surviving party shall
 3 issue a citation to such executor or administrator to appear and
 4 take on himself the prosecution or defence of the suit.

1821, 52, § 21.

SECT. 13. If the executor or administrator shall not appear
 2 at the time mentioned in the citation, after the same has been
 3 served on him according to the order of court, he shall be non-
 4 suited or defaulted, and judgment may be rendered against him.

1821, 52, § 21.

SECT. 14. But in such case, the executor or administrator not
 2 having taken on himself the prosecution or defence of the suit,
 3 shall not be personally liable for any costs in the action; but
 4 judgment shall be rendered for such costs against the estate of
 5 the deceased in his hands. M. R. S. 93, § 6.

SECT. 15. In addition to actions which survive according to
 2 the principles of the common law, the following also shall sur-
 3 vive, namely—actions of replevin, actions of trover, assault and
 4 battery, actions of trespass for goods taken and carried away,
 5 and actions of trespass and trespass on the case, for damage
 6 done to real or personal property. M. R. S. 93, § 7.

SECT. 16. All such actions may be originally commenced by
 2 or against executors and administrators, and if commenced by
 3 or against the original party in his life time, they may be prose-
 4 cuted or defended by his executor or administrator.

M. R. S. 93, § 8.

SECT. 17. In actions of trespass and trespass on the case,
 2 commenced or prosecuted against the executor or the adminis-
 3 trator of the trespasser, the plaintiff shall be entitled to recover
 4 only for the value of the goods taken, or for the damage actu-
 5 ally sustained. M. R. S. 93, § 9.

SECT. 18. When judgment for a return, in an action of
 2 replevin, is rendered against an executor or administrator, the
 3 goods returned by him shall not be considered as assets in his
 4 hands, and if they have been inventoried, such judgment and
 5 return, shall be a discharge for the executor or administrator.

M. R. S. 93, § 12.

SECT. 19. When there are several plaintiffs or defendants
2 and in a personal action, the cause of which survives, and any
3 of them shall die, the death shall be suggested on the record,
4 and the cause shall proceed at the suit of the surviving plaintiff
5 or against the surviving defendant as the case may be.

M. R. S. 93, § 12.

SECT. 20. When all the plaintiffs or all the defendants shall
2 die, in such case, the action may be prosecuted or defended by
3 the executor or administrator of the last surviving plaintiff or
4 defendant.

SECT. 21. No executor or administrator shall be compelled
2 in any court to defend a suit commenced against him, in his
3 said capacity, within the term of twelve months next, after tak-
4 ing on him such trust, unless brought for recovery of a demand
5 not affected by the insolvency of the estate, or unless the suit is
6 brought by way of appeal from the decision of the commission-
7 ers of insolvency on the estate for the purpose of a trial at
8 common law to ascertain the nature or amount of the claim in
9 dispute.

1821, 52, § 18.

SECT. 22. And all such suits, except as mentioned in the
2 preceding section, shall be continued at the expense of the
3 plaintiff, till the year from the time the trust was accepted shall
4 have expired—and any tender of a debt to a creditor within
5 such year, shall bar any action improperly commenced in the
6 course of said year.

1821, 52, § 18.

SECT. 23. No executor or administrator, who has given bond
2 and notice of his appointment, according to law, shall be held
3 to answer to the suit of any creditor of the deceased, unless it
4 shall be commenced, within four years from the time of his
5 giving bond as aforesaid, excepting in the cases after mentioned.

1821, 52, § 28.

SECT. 24. When assets shall come to the hands of an execu-
2 tor or administrator, after the expiration of said four years he
3 shall account for and apply the same in like manner as if they
4 had been received within said four years; and he shall be
5 answerable at law or to any process in the probate court, on
6 account of such new assets, for the benefit of any creditor in like
7 manner as if received within four years—provided such action
8 or process be commenced within one year after the creditor shall
9 have notice of the receipt of such new assets, and not more
10 than four years after the same shall be actually received.

M. R. S. 66, § 4.

SECT. 25. When the demand of any creditor against the
2 estate of any person deceased, founded on any covenant, con-
3 tract or agreement, shall not accrue within the said four years,
4 the claimant may file such demand in the probate office within
5 said term, and the judge of probate shall direct the executor or
6 administrator to retain in his hands assets (if there are sufficient)
7 to satisfy such demand unless the heirs to such estate or devisees
8 thereof, shall give sufficient surety or sureties in the opinion of

9 the judge of probate for such executor or administrator to
10 respond the same. 1821, 52, § 27.

SECT. 26. When such security is given, the executor or
2 administrator shall not be allowed to retain in his hands assets
3 for such purpose, but the estate shall be liable in the hands of
4 the heirs and devisees or those claiming under them, to answer
5 the said demand. 1821, 52, § 27.

SECT. 27. When no bond is given as mentioned in the twenty-
2 fifth section, then the action founded on such claim, shall be
3 brought against the executor or administrator; and when such
4 bond is given, the action shall be brought on the bond.

M. R. S. 66, § 7.

SECT. 23. In such action on the bond, if any thing is found
2 due to the claimant, he shall have judgment and execution there-
3 for with costs.

SECT. 29. When an executor or administrator is guilty of
2 unfaithful administration, he shall be liable to an action on his
3 administration bond for all damages occasioned thereby.

SECT. 30. Where a creditor has a demand against the estate
2 of a person deceased on any covenant, contract or agreement
3 which could not be claimed until after the said term of four
4 years, such claimant, if he has not filed the same in the probate
5 court, as mentioned in the twenty-fifth section, may have his
6 remedy against those who inherit the estate or the devisees
7 thereof, against whom the demand lies, if such claim be made
8 within one year after the same becomes due, and not against
9 the executor or administrator. 1821, 52, § 28.

SECT. 31. Nothing in this chapter shall bar any action
2 against an executor with the will annexed, for the recovery of
3 any legacy, but the same may be commenced in the same man-
4 ner as they might have been heretofore. 1821, 52, § 28.

SECT. 32. When an executor or administrator shall die or be
2 removed without having fully administered the goods and estate
3 of the deceased and a new administrator on the same estate
4 shall be appointed, the time allowed for creditors of the
5 deceased, for bringing their actions, shall be enlarged as fol-
6 lows; viz. to so much of the four years, provided for the limi-
7 tation of said actions, as shall have expired while the former
8 executor or administrator continued in office, shall be added so
9 much time after the appointment of the new administrator, as
10 shall make five years in the whole, and the new administrator
11 shall not be held to the suit of any creditor, commenced after
12 the expiration of said five years, except as provided in the fol-
13 lowing section. M. R. S. 66, § 20.

SECT. 33. Every such new administrator shall in all cases be
2 liable to the actions of the creditors, for the space of two years
3 after he shall have given bond for the discharge of his trust,
4 although the whole time allowed to the creditors, should thereby
5 be extended beyond the five years,

M. R. S. 66, § 21.

SECT. 34. If the former executor or administrator shall not
2 have given notice of his appointment according to law, the new
3 administrator shall be liable to the actions of the creditors for
4 the space of four years, from the date of such new administra-
5 tor's bond. M. R. S. 66, § 22.

SECT. 35. Such new administrator shall give notice of his
2 appointment in the same manner as an original administrator,
3 and failing so to do, he shall have no benefit from the limitations
4 contained in this chapter. M. R. S. 66, § 23.

NOTES.

SECT. 2. This is new. By our law there are some cases when judgment for costs is rendered against the goods and estate of an executor or administrator—and in others against the goods and estate of the testator in the hands of the executor, or of the intestate in the hands of the administrator. This section is taken from the revised statutes of Mass. and the commissioners propose it for enactment. It would seem much more convenient and just that in all cases the judgment for costs should be entered against the goods and estate of the executor or administrator, and that he should be personally liable. All such costs by him paid are to be allowed to him in his probate account, unless the judge should decide that the suit was prosecuted or defended without reasonable cause. What good reason can be given why an administrator on an insolvent estate should bring groundless actions against pretended debtors of the estate, and that then the defendant should have judgment against the estate for his costs, which may not pay him ten per cent. of the amount of those costs? If he abuses his trust in this manner he ought to pay the costs and lose them. The commissioners deem the above a valuable amendment of the law.

SECT. 14. This is a new section and forms a just exception from the principle above stated—he has been in no fault—he has done nothing.

SECTS. 15, 16, 17. These sections, as to all the cases mentioned therein, except assault and battery, seem to be in accordance with the principles of the common law, as now understood, in respect to their surviving to the executors or administrators of the party injured, and against those of the wrong doer. With respect to assault and battery, by means of which the deceased may have been essentially injured and his property diminished by his sickness or disability, why should not the wrong doer be liable in an action by the legal representatives of the person injured? For the same reason the actions in such cases may be brought by the representatives.

SECT. 18. New, and provides a necessary guard against a misappropriation of the property replevied.

SECTS. 19, 20. Are in accordance with common practice.

SECT. 24. This section seems founded upon sound principles and operates to avoid the statute bar, which is made for the protection of executors and administrators. It is taken from the Mass. R. S.

SECT. 27. This is a new section—but is merely directing as to course of proceeding.

SECT. 32. This section is from the Mass. code; the object is to extend the term of limitation from four years to five years (to be ascertained as mentioned in the section) for the benefit of creditors. There must some time elapse between the death of the former administrator and the new one; and as that time may be always varying, this section fixes the boundary line of the second administrator's liability.

The last three sections are merely limitations upon the 32d section, and explanatory.

CHAPTER 121.

OF PARTITION OF REAL ESTATE BY SUPREME JUDICIAL COURT,
AND DISTRICT COURT.

- Sect.*
1. Tenants in common, &c. bound to make partition.
 2. Any one may apply, by petition for it, &c.
 3. Form and allegations of the petition.
 4. Must name the co-tenant, if known.
 5. In such case, petition may be filed in vacation, &c.
 6. When all are not named, court must order the notice.
 7. Petition may be presented to supreme court, in any county, but trial to be in county where lands lie.
 8. May order new notice, in case, &c.
 9. A person interested and not named, may come in before final judgment, and contest.
 10. Court to appoint guardian for infants.
 11. Persons interested may appear and plead jointly or severally, as provided in other civil suits, or file statement.
 12. To such statement, petitioner may reply in same manner.
 13. If it appears respondent has no interest, what proceedings, &c.
 14. If petitioner recovers a less share than is stated, costs for respondent.
 15. Like rules in actions of partition at common law.
 16. Who may join in the petition.
 17. Petitioner may have judgment for as much as he proves.
 18. In partition cases in district court, exceptions may be alleged as in other causes, &c.
 19. No partition of non-resident proprietor's lands, until taxes are all paid.
 20. After judgment, commissioners to be appointed.
 21. Commissioners to be sworn.
 22. Guardians or agents to be appointed for insane persons, &c.
 23. Commissioners to give notice, &c.
 24. Majority may decide but all must act.
 25. May assign to some more than their share, in case, &c.
 26. Court may compel payment of expenses.
 27. Persons out of the State and not notified may in certain cases, have a new partition.
 28. In such case, the mode of proceeding.
 29. Return of commissioners.
 30. Return may be re-committed in case, &c.
 31. Final judgment conclusive on all who might have appeared.
 32. A part owner out of the State, when notice was given, and for whom a share was left, may at any time within three years, have new partition, if the one made was wrong.
 33. If any person who did not appear, claims the land in severalty he shall not be concluded, but may sue, &c.
 34. But if such person shall claim the share left for some supposed petitioners, what proceedings, &c.
 35. Same subject—mode of proceeding.
 36. If such a person, who had not appeared, claims as a tenant in common, and no share was left for or allowed him—then what proceedings to be had.
 37. If any one shall be evicted of the part assigned to him—what proceedings to be had.
 38. Mortgagee bound by the partition—lien attaches to the part assigned to the mortgagee.
 39. Petition to be endorsed as writ, &c.
 40. Commissioners may set off lands for public uses,

SECT. 1. All persons who now are or may be seized of any
2 lands or other real estate in fee simple or for life, or to or for
3 which they have a right of entry, as tenants in common, joint-
4 tenants or coparceners, may be compelled by writ of partition at
5 common law to divide the same. 1821, 37, § 1.

SECT. 2. Any person seized in fee simple or for life of any
2 lands or other real estate, or to or for which he has a right of
3 entry, as tenant in common, joint-tenant or coparcener; and
4 any person possessed thereof, or having a right of entry for
5 a term of years, as tenant in common with others, may apply to
6 the supreme judicial court, or district court, held in and for the
7 county, where such real estate is situated, describing in his
8 petition, in a clear and intelligible manner, the estate whereof
9 he claims partition, and stating what proportion he claims to be
10 interested in. 1821, 37, § 1.

SECT. 3. Such petitioner must state whether he claims parti-
2 tion of his alleged proportion as a fee simple estate, or an estate
3 for life or a term of years. M. R. S.

SECT. 4. He must also allege in his petition who are the
2 cotenants of the estate, and their place of residence, so far as
3 those facts are known to him; and if any or all the cotenants are
4 unknown to him, he must so state in the petition. M. R. S.

SECT. 5. When the cotenants alleged are all named in the
2 petition, the same may be filed in vacation, in the clerk's office;
3 and a copy thereof by him attested being served on each of the
4 alleged cotenants in person, or left at his usual place of abode
5 twenty days before the session of the court, to which it is
6 addressed, shall be one sufficient mode of notice.

SECT. 6. When the cotenants are not all named in the peti-
2 tion, the court to which it is presented shall order what kind of
3 notice shall be given to the parties interested as cotenants, and
4 such notice shall be given accordingly. 1821, 37, § 3.

SECT. 7. Such a petition as is mentioned in the preceding
2 section, may be presented to the supreme judicial court, in any
3 county, but the order of notice shall be made returnable to the
4 court, when held in the county, in which the lands lie, and the
5 cause shall be heard and determined in such county.

1821, 37, § 2.

SECT. 8. The court may order such further notice as they
2 may deem proper, when the order of notice has not been com-
3 plied with, or the notice was imperfect or insufficient.

M. R. S.

SECT. 9. When a person interested is not named in the peti-
2 tion, or is out of the State, and has not had notice, and an
3 opportunity to appear and answer to the suit, he may, on motion
4 to the court, at any time before final judgment be allowed to
5 appear and defend. M. R. S.

SECT. 10. The court shall assign a guardian for the suit, for
2 any infant or insane person interested in the premises.

M. R. S.

SECT. 11. Any person interested in the premises, of which
 2 partition is prayed, may appear and allege jointly with the other
 3 respondents or separately, any matter tending to show that the
 4 petitioner ought not to have partition as prayed for, in whole or
 5 in part; and this may be done in form of a brief statement,
 6 without formally pleading any general issue. M. R. S.

SECT. 12. To such brief statement the petitioner may reply
 2 in the form of a counter brief statement that the person, thus
 3 answering as a respondent has no interest in the premises or
 4 right to be heard; and may also further reply any other matter
 5 to show the insufficiency of the respondent's brief statement.

M.

SECT. 13. If it shall appear that the respondent has no estate
 2 or interest in the lands, the objections to the partition shall be
 3 no further a matter of inquiry—and the petitioner shall recover
 4 of the respondent the costs attending the trial. M.

SECT. 14. If on trial it shall appear that the petitioner holds
 2 a less share or proportion in common than he has alleged in his
 3 petition, the respondent shall recover his costs, though judg-
 4 ment be rendered for the petitioner to have an assignment in
 5 severalty of the part which he in fact holds in common.

1821, 37, § 4.

SECT. 15. In all actions at common law, for partition, the
 2 like rules of proceeding shall be observed in the trial, as to the
 3 filing of brief statements and counter-statements as in cases of
 4 petition for partition; and costs shall be taxed upon like prin-
 5 ciples.

SECT. 16. Tenants in common claiming under a common
 2 ancestor, joint-tenants and copartners may all or any two or more
 3 of them join or sever in petitions for partition and whenever
 4 they join and either petitioner shall decease—pending the peti-
 5 tion, the court may allow an amendment of the petition; and
 6 his name may be erased and the names of his heirs or devisees
 7 inserted in his stead, and they with the survivors may proceed
 8 in the cause for their respective shares; and the heirs or
 9 devisees of a several petitioner may be inserted as petitioners
 10 instead of the deceased.

1826, 347, § 7.

SECT. 17. When it shall appear on trial or default that the
 2 petitioner is entitled to have partition for the share by him
 3 claimed or a less share; the court shall enter the interlocutory
 4 judgment that partition shall be made.

SECT. 18. Whenever in the trial of a case of partition, origi-
 2 nated by writ or petition, as before mentioned, in the district
 3 court, exceptions shall be alleged against the opinion or judg-
 4 ment of said court in matter of law as provided in the eighteen
 5 and nineteenth sections of chapter ninety-seven; or whenever a
 6 writ of error shall be sued out of the supreme judicial court to
 7 obtain a reversal of the judgment; in each case the opinion
 8 and decision of said supreme judicial court shall be certified to
 9 the district court—with directions to proceed in or dispose of

10 such cause, in conformity to such decision, so that all the pro-
 11 ceedings, in the cause in relation to the partition prayed for, or
 12 actually made, may appear on the records of the district court.

M.

SECT. 19. But no partition of real estate belonging to non-
 2 resident proprietors, and held by two or more persons in common,
 3 shall be ordered in any process of partition until the petitioner
 4 shall satisfactorily prove that his proportion of all the taxes
 5 assessed has been paid; nor shall partition of land be ordered,
 6 in which are lots reserved for public use, till such lots have been
 7 first duly assigned by metes and bounds, in such way as the
 8 court before which the cause may be pending shall order.

1828, 345, § 2.

SECT. 20. The court having entered the interlocutory judg-
 2 ment, shall appoint three or five disinterested persons as commis-
 3 sioners to make the partition, and to set off to the petitioners
 4 the share or shares belonging to them, which shall be expressed
 5 in the warrant, and where there are several petitioners, they
 6 may have their shares set off together or in one body, or each
 7 one may have his assigned in severalty at his election.

1821, 37, § 2.

SECT. 21. The commissioners before proceeding to the dis-
 2 charge of their duty shall be sworn before any justice of the
 3 peace faithfully and impartially to perform it—and the justice
 4 administering the oath shall make his certificate thereof on the
 5 back of the warrant.

A. 1821, 37, § 2.

SECT. 22. Where any persons insane or incapacitated to take
 2 care of their own business, are interested, guardians shall be
 3 appointed for them, if living in the State; and an agent or
 4 agents for all those interested who had been out of the State
 5 one year at the time the petition was presented and had not
 6 been returned.

A. 1821, 37, § 7.

SECT. 23. The commissioners shall give sufficient notice of
 2 the time and place for making the partition to all concerned
 3 who are known and within the State, that they may be present
 4 at the making thereof.

1821, 37, § 7.

SECT. 24. All the commissioners shall be present at the per-
 2 formance of the duties assigned them but the acts of a majority
 3 of them shall be valid.

SECT. 25. When any messuage, tract of land or other real
 2 estate shall be of greater value than either party's share of the
 3 estate to be divided, and cannot at the same time be subdivided
 4 among them without great inconvenience, the same may be
 5 assigned to one of the parties, such party to whom the same
 6 shall be so assigned, paying such sum of money to such parties
 7 as by means thereof shall have less than their share of the real
 8 estate, as the commissioners shall award; but in such case the
 9 partition shall not be established by the court, until the sums so
 10 awarded shall be paid to the parties entitled thereto, or secured
 11 to their satisfaction.

1821, 37, § 9.

SECT. 26. When partition shall be made, if any of the petitioners shall neglect or refuse to pay his proportion of the charges attending the partition, an account of such charges shall be laid before the court and all just proportions settled, after notice to all concerned, the court may issue execution against the delinquents interested.

SECT. 27. If any part owner shall have a larger share set off to him than his true and real interest, or more than equal in value to the proportion it was set off for, than any aggrieved partner who at the time the partition was made was out of the State and not notified in season to prevent it, may at any time within three years after the same was made, apply to the court which made the partition, and the court shall cause partition thereof to be made anew. 1821, 37, § 8.

SECT. 28. In such new partition the commissioners need not make a division of the premises; but so much and no more shall be taken off from any share as the same shall be considered more than the proportion of the whole it was designed for, estimating such lands or real estate as in the state they were in when first divided; and in case any improvements have been made on the part that may by such new partition be taken off as aforesaid, the partner who made such improvements shall have reasonable satisfaction made him by the partner to whose share the same shall be added by the estimation of the commissioners; and the court which ordered the partition are also empowered to issue execution for such satisfaction and the costs of the new partition, the same being first taxed and allowed by the court. 1821, 37, § 8.

SECT. 29. The commissioners shall make return of their proceedings under their hands with their warrant to the court which appointed them—and if their doings be confirmed by the court, judgment shall be thereupon rendered, that the said partition be firm and effectual forever; and the return shall then be recorded in the clerk's office and also in the registry of deeds for the county or registry district where the lands lie.

SECT. 30. For good and sufficient reasons the report of the commissioners may be recommitted or set aside—whereupon the same proceedings shall be had as before directed.

SECT. 31. Such final judgment, confirming the partition shall be conclusive as to all rights both of property and possession, and all parties and privies to the judgment, including all persons who might by law have appeared and answered to the petition, except as hereinafter provided.

SECT. 32. If any person who was a part owner with the petitioner; and for whom a share is left upon the partition, should be out of the State, when the notice to him was served and should not return in time to appear and answer to the partition, he may at any within three years, after final judgment apply to the same court for a new partition of the premises; and should it appear to the court that the share left for the

8 applicant was less than he was entitled to, or that the part left
9 was not at the time of the partition equal in value to his share
10 in the premises, they may order a new partition which shall be
11 made in the manner before provided.

SECT. 33. If any person who has not appeared and answered
2 to the petition for partition, shall claim to hold in severalty the
3 premises described therein or any part thereof he shall not be
4 concluded by the judgment for partition, but may bring his
5 action for the land claimed against any or all of the petitioners
6 or respondents, or of the persons holding under them, as the
7 case may require, within the same time in which he might have
8 brought it, if no such judgment for partition had been rendered.

SECT. 34. But when any person who has not appeared and
2 answered as aforesaid shall claim the share that was assigned or
3 left for any of the supposed part owners in the judgment for
4 partition, he shall be concluded by the judgment so far as it
5 respects the partition and the assignment of the shares in like
6 manner as if he had been a party to that suit; still he shall not
7 be prevented thereby from bringing his action for the share
8 claimed by him against the person to whom it was assigned or
9 for whom it was left.

SECT. 35. Such action shall be brought against the tenant in
2 possession in like manner as if the demandant had originally
3 claimed the particular piece demanded, instead of an undivided
4 part of the whole land; and it may be brought in the same time
5 in which it might have been brought, if no judgment for parti-
6 tion had been rendered.

SECT. 36. If any person who has not appeared and answered
2 as aforesaid shall claim any part of the premises described in
3 the petition as a part owner with those who were parties to the
4 suit or any of them; and if the part or share so claimed was not
5 known or not allowed or left for him in the partition process, he
6 shall be concluded by the judgment so far as it respects the
7 partition; but he shall not be prevented from bringing an action
8 for the share claimed by him against each of the persons who
9 shall hold any part of the premises under the judgment, and if
10 he should prevail in such action, instead of his being entitled to
11 a new partition of the whole premises, he shall recover against
12 each of the persons holding under the judgment for partition,
13 the same proportion held by him that the demandant was enti-
14 tled to claim out of the whole premises, before partition was
15 made.

SECT. 37. If any person to whom a share shall have been
2 assigned, or left, shall be evicted thereof by any person, who
3 at the time of the partition had an elder and better title than
4 those who were parties to the judgment, he shall be entitled to
5 a new partition of the residue in like manner as if no partition
6 had been made. M. R. S.

SECT. 38. And any person having a mortgage, attachment, or
2 other lien on the share in common, of any part owner, shall be

3 bound by the judgment so far as it respects the partition, but,
4 his lien shall remain in full force upon that part which shall have
5 been assigned to or left for such owner. M. R. S.

SECT. 39. Every petition for partition, originally filed shall be
2 endorsed in the same manner as original writs; and all the reg-
3 ulations concerning the endorsement of writs contained in the
4 ninety-sixth chapter shall apply to endorsements of petition for
5 partition.

SECT. 40. In any process for the partition of a tract of land
2 in which certain lots or proportion of such tract are reserved
3 for public uses, they shall also order the commissioners appointed
4 to make the partition, that they shall first set off by metes and
5 bounds such reserved lots, or proportions of an average quality
6 and situation of the lands of said tract, and make return of such
7 location into the land office of the State, with a description of
8 its quality and location, and then proceed to execute the other
9 duties assigned them by the court; and the return being
10 accepted by the court, and recorded as now provided, shall be
11 valid, as a location of such reserved lands. 1839, 357, § 1.

NOTES.

SECTS. 1, 2. By the terms used in these sections, it is not required that the petitioner should be actually *seized* of a fee simple estate or an estate for life, or *possessed* as tenant for years of a certain portion of the undivided lands whereof partition is prayed. The language of the existing statute is not so explicit, it would seem, as to require he should be; but in addition to this circumstance, it has been the intention of the commissioners to apply to this proceeding for the partition of real estate, the same principle which they have applied in regard to conveyances of real estate by deed or by devise; that is, if the petitioner has a *legal right of entry* into the premises, or, in other words, has not been dis-seized twenty years, then, as he may rightfully enter and gain the legal seizin, the ceremony of entry may be waived, and an actual seizin need not be proved, more than in the cases above mentioned, and also in the 5th, 6th and 7th sections of the chapter of real actions.

SECTS. 3, 4. Are also new, but simply directory, and designed to insure correctness of proceeding.

SECT. 5. New, but its only object and effect, are, to expedite the process.

SECTS. 8, 9. Both new; but they both express what is now commonly practiced according to the usages of the courts.

SECTS. 10, 11. These are both new. Their sole object is to protect rights.

SECTS. 12, 13. These two sections merely refer to practice and proceeding.

SECT. 16. This is new in part, and contains a useful amendment—saving expense.

SECT. 17. This is nothing more than what is always done by the court.

SECT. 18. This section is new, and its object is supposed to be a good one.

SECT. 20. The last clause of this section is new, in authorizing several petitioners to have their respective shares set off in one body. The qualification of freeholders is also disposed with.

SECT. 29. This is taken from the Massachusetts code: and exactly conforms to the practice in such cases.

SECT. 30. The same remark applies to this section,

SECT. 31. This and the seven following sections are copied from the revised statutes of Mass. They provide a series of principles and proceedings which the commissioners in that State have found necessary to preserve the rights of all parties. As the existing statute in this State, is a copy of the statute of Mass. in force there, till the late revision of its statutes, there is the same reason for some principles and proceedings (similar in substance to those in Mass.) in this State as in that. They are rendered necessary in consequence of the proposed abolition of *all real actions*, except *writs of entry*, as mentioned by the commissioners in their former report. In the leading case of *Cook v. Allen* 2 Mass. Rep., the court decided that the judgment in a partition case, bound all persons who were duly notified, to appear, so far as their *possessory title* was concerned; but still such persons were not completely bound, because they might resort to their *writs of right*, against which the judgment in partition would be no bar; but, if *writs of right* are abolished, with a multitude of others, as proposed, rights must be otherwise guarded, and injustice be prevented. The 32d and 37th sections provide in two cases for a *new* partition; and the 33d, 34th, 35th and 36th sections guard rights and provide remedies, by which, without destroying the partition, every part owner may obtain his proportion of the common land or its value in money. The commissioners are not able to devise a better course of proceeding.

SECT. 38. This is also a new section—affirming a principle which is recognized by the courts in practice; but it will be perhaps better understood, when in the form of statute law.

SECT. 39. There seems to be the same reason for this provision, as in case of writs, &c.

CHAPTER 122.

OF LOCATION OF RESERVED LANDS.

- Sect. 1. Application to be made to district court for appointment of committee, to make the location.
2. Committee to be sworn.
 3. To give notice—mode of giving it.
 4. Must make return of their doings in six months.
 5. Court may confirm the location made by grantee.
 6. Or location may be made on warrant for partition.
-

SECT. 1. When in the grant of townships or parts thereof, there shall be certain proportions of the same reserved for the use of such township, or for public uses, and such proportions have not been located in severalty by the grantee, for the respective purposes expressed in the grant, prior to the incorporation of such township, as a plantation or town, the district court, in the county where the land lies, on the application of the assessors of such plantation or town, may appoint three disinterested persons of the county, and issue their warrant, under the seal of the court to them, requiring them as soon as may be, to locate in separate lots the proportions reserved for the purposes before mentioned, and shall designate the use for which each lot is so reserved and located in said township; such lots to be of an average quality with the residue of the lands therein.

1821, 41, § 1.

SECT. 2. Said committee, before acting under such warrant, shall be sworn to the faithful discharge of the duty assigned them, before a justice of the peace and a certificate thereof shall be endorsed on the warrant. 1821, 41, § 2.

SECT. 3. They shall also give notice of their appointment and of the time and place of their meeting, to execute the same, by publishing the same in some newspaper in the State, to be designated by the court, and by posting up written notifications in two more public places in the same plantation or town, at least thirty days next prior to their making such location. 1821, 41, § 3.

SECT. 4. They shall make return of said warrant, and their doings thereon, under their hands to the next district court in the county, after having completed the service; which being accepted by the court, and recorded in the registry of deeds, of the same county, within six months, shall be a legal assignment and location of such reserved proportions, for the uses designated.

SECT. 5. Whenever the grantee of any such lands, shall sever and locate such reserved proportions thereof for the purposes mentioned in the grant, designating the use for which each lot is located, and present the same to said court, such court may confirm the same, and such location shall then be deemed legal and conclusive, after being recorded as before mentioned.

SECT. 6. Or the severance and location of such reserved lands may be made and completed in the manner prescribed in the fortieth section of chapter one hundred and twenty-one, relating to the partition of real estate, as circumstances may render it convenient.

CHAPTER 123.

OF GRANTING REVIEWS.

- Sect.*
1. In what cases sup. jud. court may grant reviews.
 2. In what cases a judge of district court may grant them.
 3. Previous notice to be given.
 4. Where application may be filed.
 5. Only one review to be granted.
 6. Within what time it may be granted.
 7. Proceedings to be had, when petition is for a review on account of newly discovered evidence.
 8. Court may stay execution, on bond being filed.
 9. Court may grant leave to prosecute a rejected claim against an insolvent estate, in certain cases.
 10. Where new trial may be had.

SECT. 1. The justices of the supreme judicial court may grant a review in all civil actions, including petitions for partition, originally commenced in the late court of common pleas or district court, and in which judgment has been or shall be rendered in that court or in the supreme judicial court, whenever they shall judge it reasonable and for the advancement of justice, without being limited to particular cases; including also prosecutions for maintenance of bastard children.

1821, 57, § 2.

SECT. 2. Any justice of the district court may, concurrently with the supreme judicial court, grant reviews of actions, of the kinds and in the circumstances mentioned in the preceding section, in which judgment was rendered in said district court, and also in actions wherein the judgment was rendered by a justice of the peace, or municipal or police court.

1835, 165, § 3.

SECT. 3. No review shall be granted by either court, until due notice has been given to the adverse party.

1821, 57, § 1.

SECT. 4. The application to the supreme judicial court for a review may be filed in any county, and the order of notice made returnable in the county where the judgment was rendered.

SECT. 5. Neither court shall have power to grant more than one review in the same action.

1821, 57, § 3.

SECT. 6. No review shall be granted, unless application is made therefor, within three years next after the rendition of the judgment complained of.

1821, 57, § 3.

SECT. 7. Whenever an application for a review is filed, if one of the grounds of application is the alleged discovery of new evidence, the substance of such new evidence and the names of all the witnesses by whom the allegation is intended to be proved, must be stated in the application under oath.

6 Greenleaf, 479.

SECT. 8. On application for a review by a defendant in a personal action, the court may in their discretion, stay execution on the judgment complained of, or grant a supersedeas, upon his filing in court his bond with sureties to be approved by the court, or such person as they may appoint, in a penal sum, equal to double the amount of the damages and costs, conditioned to pay said amount if such should be the final judgment on the review, with interest thereon from the date of said bond, up to the time of rendition of judgment, in the action on said bond, at the rate of twelve per cent annually.

1831, 502, § 2. 1821, 57, § 5.

SECT. 9. When any person, whose claim on an insolvent estate has been rejected in whole or in part by the commissioners appointed by the judge of probate, by accident or mistake, has omitted to give notice at the probate office, within the time, by law prescribed, of his intention to have his claim determined at law, said court, may, after due notice to the executor or admin-

7 istrator on the estate, if they think that justice requires it, give
 8 such applicant leave to institute a suit for recovery of his claim,
 9 at the next district court in the county, where the executor or
 10 administrator resides ; but such application must be made within
 11 two years after the return of the commissioners, and leave shall
 12 not be granted after the lapse of four years from the time
 13 administration was granted ; and no distribution shall be dis-
 14 turbed by any judgment, which may be recovered in such action.

1821, 57, § 9.

SECT. 10. Whenever a review is granted by either of said
 2 courts, the trial shall be had in the court by which the review
 3 was granted.

1821, 57, § 3.

CHAPTER 124.

OF ACTIONS OF REVIEW.

- Sect. 1. From what court, the writ of review shall be sued.
 2. Form of the writ.
 3. Mode of service.
 4. If sued by original plaintiff, may contain a direction to attach property.
 5. Action to be entered at next term, after granted.
 6. Cause to be tried on former pleadings, or as amended.
 7. When there were no pleadings in former suit, pleas to be filed.
 8. Each party may introduce new evidence.
 9. How judgment is to be given.
 10. Party prevailing to recover costs, proviso.
 11. Bail or attachment in original suit, not affected by judgment on the review.
 12. Form of judgment, when damages on review are *reduced*.
 13. Form of judgment when damages are *increased* on review.
 14. Provision in cases of replevin, and cases when an account is filed in off set.

SECT. 1. Whenever a person is entitled, as a matter of right
 2 to a review of an action as provided in the seventh section of
 3 the one hundred and fifteenth chapter, or whenever a review is
 4 granted by the supreme judicial court, or by the district court,
 5 a writ of review in the former case shall be sued out, and pro-
 6 secuted in the same court in which the judgment complained of
 7 was rendered ; and in the latter case, the writ shall be sued out
 8 and prosecuted in the court which granted the review.

1821, 57, § 4.

SECT. 2. It shall not be necessary in the writ of review to
 2 recite at length the writ and proceedings in the original suit
 3 but may merely contain a summons to the defendant to appear
 4 and answer to the plaintiff in the review of an action which was
 2 brought by the plaintiff, and such suit and the judgment therein

3 may be described and identified in a condensed form, so as to
4 render it intelligible and sufficiently certain.

SECT. 3. Such writ of review may be served in the same
2 manner as other writs, or when the defendant is not an inhabi-
3 tant of or found in the State, it may be served on the person
4 who appeared as his attorney in the original suit.

1821, 57, § 4.
SECT. 4. If the writ of review is sued out by the original
2 plaintiff, he may cause the defendant's property to be attached
3 as might have been done in the original suit, and the form of
4 the writ, may be so varied accordingly.

SECT. 5. The plaintiff in review shall enter the action at the
2 next term after it is granted, unless for special reasons, the court
3 on motion, grant leave to enter it at the second term, and he
4 shall produce in court, there to be filed, certified copies of the
5 writ and judgment, and all proceedings in the former suit, and
6 the originals or copies of all depositions used and filed therein.

1825, 57, § 4. 1826, 347, § 5.
SECT. 6. The cause shall be tried on the issue joined in the
2 former suit, but the court may allow amendments in any of the
3 pleadings, as they might have done in the original action or they
4 may admit additional issues, or *brief* statements.

1821, 57, § 4. 1826, 347, § 5.
SECT. 7. If the former judgment was rendered on default, or
2 without any issue joined, the proper pleadings shall be made on
3 the trial of the review, and the cause be tried thereon.

SECT. 8. Each party may introduce any legal evidence,
2 whether produced on the formal trial or not; and the cause
3 shall be disposed of by verdict, non-suit, default or otherwise,
4 as if it were an original suit. 1821, 57, § 4. 1826, 347, § 5.

SECT. 9. Judgment on the, review shall be given as the merits
2 of the cause upon law and evidence shall require, without any
3 regard to the former judgment, except as is hereinafter men-
4 tioned. 1821, 57, § 4. 1826, 347, § 5.

SECT. 10. The party prevailing in the review shall recover
2 his costs, but this shall not prevent the court, when granting a
3 review on petition from imposing on him such terms as to costs,
4 as they may deem reasonable.

1821, 57, § 5.
SECT. 11. No attachment made, or bail taken, in the original
2 action, shall be liable to satisfy the judgment which shall be
3 rendered on the review. 1821, 57, § 6.

SECT. 12. If any sum is recovered by the plaintiff in the
2 original action for debt or damages, and that sum is reduced on
3 the review, the original defendant shall have judgment and
4 execution for the difference with his costs; or if the former
5 judgment has not been satisfied one judgment may be set off
6 against the other, and an execution shall issue for the balance.

SECT. 13. If the original plaintiff shall recover on the review
2 a greater sum for debt or damage than was awarded to him on

3 the original judgment, he shall have judgment and execution for
4 the excess and costs on the review.

SECT. 14. In review of actions of replevin, and in actions
2 where an offset is filed, the defendant shall be considered, so far
3 as it respects the damages that may be awarded to him in the
4 original action or on the review, like a plaintiff in other actions.

NOTES.

SECT. 2. Commissioners have simplified the declaration.

SECT. 4. Have provided for attachment of property.

SECT. 5. Have authorized an entry of the action the second term in certain cases.

SECT. 14. The provision in this section is new, but seems to be necessary to prevent injustice in certain cases.

CHAPTER 125.

OF MORTGAGES, THEIR REDEMPTION AND FORECLOSURE.

- Sect.* 1. How mortgages are made.
2. Mortgage not to enter before breach, except, &c.
3. How a mortgage may be foreclosed.
4. Same subject.
5. Same subject.
6. Mortgagor, &c. must redeem in three years.
7. Mortgagee or person claiming under him, may declare on his own seizin, without naming the mortgage or assignment and on motion of either party, the conditional judgment shall be entered if the tenant is mortgagor or one claiming under him.
8. If tenant is not, such judgment may be entered on motion of the *plaintiff*.
9. When such judgment is entered—the form of it.
10. If nothing is found due on the mortgage, judgment shall be rendered for defendant, &c.
11. When mortgagee or person claiming under him is deceased, the action to foreclose must be brought by executor or administrator.
12. When a mortgage is assigned to the State, the State treasurer may demand and receive the debt, and give discharge and use same means as an individual to foreclose the mortgage.
13. Mortgages and the debts secured by them shall be assets in the hands of executors or administrators of mortgagee or person claiming under him, in case of his disease; and executor or administrator shall be seized of such estate when recovered to the use of heirs, &c.
14. Action must be brought against person in possession or mortgagee or person claiming under him, may be joined as a defendant—provided, &c.
15. When the condition of a mortgage is for doing some other than paying money—form of judgment.

- Sect. 16. Form of proceeding in equity by mortgagees—for redemption of mortgage.
17. Same subject continued.
18. Same subject.
19. Same subject.
20. Limitation of bill in equity, &c.
21. When suit for redemption is brought, court may order notice to any persons interested in the estate and he may be made a defendant.
22. When court make a decree, how they may carry it into execution, and for what sums.
23. When money is brought into court to redeem lands the court may deduct rents and profits therefrom—for which defendant is chargeable.
24. When treasurer of the State and the person applying to redeem, do not agree as to the sum due, such person may file bill against the State.
25. How such suit shall be brought, and the proceeding.
26. When the person entitled to redeem rights in equity dies before making a tender what proceedings may be had.
27. When mortgagee, &c. is under guardianship, a tender may be made to guardian.
28. How mortgages may be discharged.
29. If a purchaser of an equity sold on execution pay the debt to mortgagee, &c. the mortgagors may redeem such mortgaged estate from the purchaser—and when, &c.
30. When condition of a mortgage of *personal* property has been broken, the mortgagor, &c. may redeem within sixty days.
31. On what terms he may so redeem.

SECT. 1. Mortgages of real estate mentioned in this chapter, include not only those made in the usual form in which the condition is set forth in the deed, but also those made by a conveyance appearing on its face to be absolute, with a separate deed of defeasance.

SECT. 2. No future mortgagee nor any person claiming under him shall have any right to enter into possession of the mortgaged premises, until after the breach of the condition, unless otherwise provided in the deed.

SECT. 3. After breach of the condition, if the mortgagee, or any one claiming under him, is desirous of obtaining and holding possession of the premises, for the purposes of foreclosure, he may proceed in either of the three following ways—viz—

First—he may commence an action at law and obtain possession under a writ of possession, issued on the judgment, in the action, duly executed by an officer. 1821, 39, § 1.

Second—he may enter into possession and hold the same by consent, in writing, of the mortgagor or the person holding under him. 1839, 372.

Third—he may enter peaceably and openly (if not opposed) in the presence of two witnesses and take possession of the premises; in which case a certificate of the fact and time of such entry shall be made and signed and sworn to by such witnesses before any justice of the peace, and such written consent and such certificate shall be recorded in each registry of deeds, in which the mortgage is or by law ought to be recorded; and no such entry shall be effectual unless such certificate and consent

19 in writing shall be so recorded within thirty days next after such
20 entry is made. 1821, 39, § 1. 1839, 372.

SECT. 4. Such possession, obtained in either of the three
2 modes above prescribed, being continued for the three following
3 years, shall forever foreclose the right of redemption.

1821, 39.

SECT. 5. If after breach of the condition, the mortgagee or
2 any person claiming under him is not desirous of taking and
3 holding possession of the premises for the purpose of fore-
4 closure—he may proceed in either of the two following modes—
5 viz:

6 *First*—he may give public notice in the newspaper printed in
7 the county where the premises are situated, or if there be none
8 such, then in an adjoining county, three weeks successively, of
9 his claim by mortgage on such real estate, describing such
10 premises intelligibly and naming the date of the mortgage, and
11 that the condition in the same has been broken, by reason
12 whereof he claims a foreclosure; and cause a copy of such
13 printed notice, and the name and date of the newspaper in which
14 it was last published to be recorded in each registry of deeds in
15 which the mortgage deed is, or by law ought to be recorded,
16 within thirty days after such last publication—or—

1838, 333, § 1.

17 *Second*—he may cause a copy of such notice to be served
18 and attested as a true copy by the sheriff of the county or his
19 deputy, in which the mortgagor or his assignee lives, if in this
20 State, by a delivery to him in hand, and shall cause the original
21 notice and the sheriff's return thereon, to be recorded within
22 thirty days after such service, in manner aforesaid.

1838, 333, § 2.

SECT. 6. The mortgager or person claiming under him may
2 redeem the mortgaged premises within three years next after
3 such publication or service of the notice mentioned in the pre-
4 ceding section, and if not so redeemed his right of redemption
5 shall be forever foreclosed.

1821, 39, § 2.

SECT. 7. The mortgagee and where the mortgage has been
2 assigned, the person claiming under him in an action for pos-
3 session, may declare on his own seizin in a writ of entry, with-
4 out naming the mortgage or assignment; and if it shall appear
5 to the court on default, demurrer, verdict or otherwise, that the
6 plaintiff is entitled to the possession of the premises for breach
7 of the condition of the mortgage, the court shall, on the motion
8 of either party, award the conditional judgment herein after
9 mentioned; unless it should appear that the tenant is not the
10 mortgagor, nor a person claiming under him.

M. R. S. 107, § 3.

SECT. 8. And should it appear that the tenant is not the
2 mortgager, nor a person claiming under him and the plaintiff
3 shall prevail in the suit, the judgment may be entered for pos-

4 session as at common law, unless the plaintiff should consent
5 that the conditional judgment should be rendered.

M. R. S. 107, § 4.
SECT. 9. When such judgment is rendered, the court shall
2 ascertain how much is due to the plaintiff on the mortgage, and
3 then enter judgment that if the defendant shall, within two
4 months after the judgment, pay to the plaintiff the sum so found
5 due on the mortgage, with interest and costs of suit, the mort-
6 gage shall be void, and the defendant shall hold the premises
7 discharged of the same ; otherwise, that the plaintiff shall have
8 his execution for possession of the premises and costs.

1821, 39, § 3.

SECT. 10. And if it shall be ascertained by the court on
2 enquiry that nothing is due on the mortgage, then the action shall
3 not be sustained, but judgment shall be rendered in favor of the
4 defendant, and he shall hold the land discharged of said mort-
5 gage. 2 Greenleaf, 322. 3d Mass. 520.

SECT. 11. When a mortgagee or person claiming under him,
2 is deceased, the action to foreclose the mortgage, must be
3 brought by the executor or administrator of such deceased per-
4 son, declaring on the seizin of such deceased person.

Mass. 12, § 18. 1821, 39, § 9.

SECT. 12. When a mortgage is made or assigned to the State,
2 the treasurer may demand and receive the money due thereon,
3 and by his deed of release, discharge the mortgage ; and after
4 breach of the condition he may in person or by his agent, make
5 use of the like means, for the purpose of foreclosure, which an
6 individual mortgagee might, as specially prescribed in the third
7 fourth and fifth sections of this chapter.

1821, 39, § 7.

SECT. 13. Lands mortgaged to secure the payment of debts,
2 or the performance of any collateral engagement and the debts
3 so secured, in case of the decease of the mortgagee or person
4 claiming under him, shall be assets in the hands of his execu-
5 tors or administrators and they shall have the same control of
6 them as of a personal pledge ; and whenever they shall recover
7 seizin and possession of them, they shall be seized and possessed
8 of the estate so recovered, to the use and behoof of the widow
9 and heirs or devisees of the deceased or his creditors, as the case
10 may be ; and may when the mortgaged premises are redeemed,
11 receive the redemption money, and give effectual discharges for
12 the same, and releases of the mortgaged premises.

1821, 39, § 9.

SECT. 14. An action on a mortgage deed, may be brought
2 against any person in possession of the mortgaged premises ;
3 and the mortgager or person claiming under him, may in all
4 cases be joined with him as a cotenant, whether he then has any
5 interest or not in the premises ; but he shall not be liable for
6 any costs, when he has no estate in the premises and makes no
7 defence.

SECT. 15. When the condition of a mortgage is for doing
2 some act, other than the payment of money, the court may vary
3 the terms of the conditional judgment to be rendered, as circum-
4 stances may require; and award execution, unless the defendant
5 shall within two months after judgment, perform what shall be
6 therein prescribed.

SECT. 16. When any mortgagor or other person having a
2 right to redeem lands mortgaged, shall bring his bill in equity
3 for the redemption thereof, within the time, as limited in the
4 *third, fourth and fifth* sections of this chapter, and shall in his
5 bill offer to pay such sum as shall be found to be equitably due,
6 or to perform such other condition as the case may require, such
7 offer shall have the like effect and force as a tender of payment
8 or performance, made before the commencement of the suit;
9 and the bill shall be sustained without proof of such tender,
10 provided the mortgagee, or person claiming under him, shall
11 have refused or neglected on request, to render a true account
12 of the sum due, before the commencement of the suit; and no
13 costs shall be awarded against the defendant, unless it shall
14 appear that he unreasonably refused or neglected to render such
15 account, when requested, of the money due, and of the rents
16 and profits and money expended in repairs and improvements,
17 if any, or in any other way by his default, had prevented the
18 plaintiff from performing or tendering performance of the condi-
19 tion, before the commencement of the suit. 1837, 286, § 1.

SECT. 17. Whenever a sum of money due on a mortgage has
2 been paid or tendered to the mortgagee, or person claiming
3 under him, by the mortgagor or the person claiming under
4 him, within the time limited, as before mentioned, he may
5 have a bill in equity for the redemption of the mortgaged pre-
6 mises, and compel the mortgagee or person claiming under him,
7 by a decree of the supreme judicial court, to release all his
8 right and title in the land to the complainant, though such
9 mortgagee or his assignee shall never have had actual pos-
10 session of the premises for breach of the condition.

1837, 286, § 2.
SECT. 18. Or in such case the mortgagor or other person
2 having right to redeem, may have his bill in the manner pre-
3 scribed in the sixteenth section of this chapter, (without having
4 made a tender before the commencement of the suit) and the
5 cause shall be tried in the same manner. 1837, 286, § 2.

SECT. 19. But when the suit is brought before an actual
2 entry for breach of the condition and before payment or tender,
3 if the mortgagee or the person claiming under him, be out of
4 the State and shall not have had actual notice, the court shall
5 order proper notice to be given to the other party and continue
6 the cause as long as necessary. 1837, 286, § 2.

SECT. 20. No bill in equity shall hereafter be brought for
2 redemption of mortgaged premises, founded on a tender of pay-
3 ment or performance of the condition, made before the com-

4 mencement of the suit, unless within three years next after the
5 twenty-ninth of March, one thousand, eight hundred and thirty-
6 seven or next after making such tender. 1837, 286, § 3.

SECT. 21. In any suit brought for redemption of mortgaged
2 premises, when it shall appear necessary to the attainment of
3 justice that any other person, besides the defendant, claiming
4 an interest in the premises, should be made a party with the
5 original defendant, on motion, the court may order him to be
6 served with an attested copy of the bill in such manner as they
7 may direct, and on his appearance, the cause shall proceed as
8 though he had been originally joined.

1838, 286, § 4.

SECT. 22. The court when they shall make a decree for the
2 redemption of mortgaged lands, shall have power to award exe-
3 cution jointly or severally as the case may require and for such
4 sums as shall be found due from him or them for rents and
5 profits over and above the sums reasonably expended in repair-
6 ing and increasing the value of the estate redeemed.

1821, 39, § 5.

SECT. 23. When any sum of money shall be brought into
2 court, in a suit for redemption of mortgaged premises, the
3 court shall have power to deduct therefrom such sum as the
4 defendant may be chargeable with on account of rents and
5 profits by him received or costs awarded against him; and the
6 person to whom a sum of money is tendered to redeem such
7 lands, if he shall receive a larger sum than he is entitled to
8 retain, he shall refund the excess.

1821, 39, § 6.

SECT. 24. If the treasurer of the State and the person apply-
2 ing to redeem such lands mortgaged to the State, shall disagree
3 as to the sum due thereon, the person so applying may bring a
4 bill in equity against the State for the redemption thereof.

1821, 39, § 8.

SECT. 25. Such suit shall be brought in the supreme judicial
2 court in the county of Kennebec; and the court shall order
3 notice to be served on the treasurer of the State in the usual
4 form, and the court shall hear the cause and decide what sum is
5 due on said mortgage to the State; and it shall be the duty of
6 the treasurer to accept the sum adjudged by the court to be
7 due, and discharge and release such mortgage; provided that
8 all expenses and costs attending the proceedings shall be paid
9 by the complainant.

1821, 39, § 8.

SECT. 26. If any person entitled to redeem any mortgaged
2 estate, or to redeem an equity of redemption which may have
3 been sold on execution; or the right to redeem such right, or
4 the right to redeem lands set off on execution, shall die without
5 having made any tender for that purpose, a tender may be made
6 and a bill for redemption commenced and prosecuted, as well
7 by the executors or administrators, as by the heirs or devisees of
8 the deceased person; and if the plaintiff in any such bill in
9 equity shall die, pending the suit, the same may be prosecuted

10 to final judgment by his heirs or devisees or his executors or
11 administrators. 1821, 39, § 1.

SECT. 27. When the mortgagee or other person holding
2 under him, is under guardianship as an infant or otherwise,
3 a tender may be made to such guardian; and he shall have
4 power to receive the sum due on the mortgage; and upon
5 receiving it, or on performance of such other condition as the
6 case may require, to execute a release or discharge of the
7 mortgage. Mass. 12, § 16.

SECT. 28. In all cases, the mortgage may be discharged by
2 the deed of release of the person authorized to discharge it, or
3 by his causing satisfaction and payment to be entered in the
4 margin of the record of such mortgage in the register's office
5 under his hand. 1821, 39, § 1.

SECT. 29. If the purchaser of an equity of redemption, sold
2 on execution shall have satisfied and paid to the mortgagee, or
3 those claiming under him the sum due on the mortgage, the
4 mortgagor or those claiming under him, shall have a right to
5 redeem such mortgaged estate of such purchaser or any person
6 claiming under him, within the time and in the manner he
7 might have redeemed the same of the mortgagee, had there
8 been no such sale made, and within such time only.

1821, 39, § 11.

SECT. 30. When the condition of any mortgage of personal
2 property has been broken, the mortgagor or any person lawfully
3 claiming or holding under him may redeem the same at any
4 time within sixty days next after said breach, unless the property
5 shall have been sold in the mean time, in pursuance of the con-
6 tract between the parties—or on execution for the debt of the
7 mortgagor.

SECT. 31. The person entitled to redeem such property, shall
2 pay or tender to the mortgagee or person holding under him,
3 the sum due on the mortgage, with all reasonable and lawful
4 charges, incurred in the care and custody of the property or
5 otherwise, arising from the mortgage itself; and if such pro-
6 perty is not immediately restored, the person entitled to redeem
7 the same, may recover it, in an action of replevin; or he
8 may recover such damages as he may have sustained by the
9 withholding thereof, in an action of the case.

SECT. 32. No mortgage of personal property, made since the
2 twenty-fourth day of April, eighteen hundred and thirty-nine, or
3 that shall be made hereafter, where the debt, thereby secured,
4 amounts to more than the sum of thirty dollars, shall be valid
5 against any other persons than the parties thereto, unless pos-
6 session of the mortgaged property be delivered to, and retained
7 by the mortgagee; or unless the mortgage has been, or shall be
8 recorded by the clerk of the city, town or plantation, where the
9 mortgagor resides. 1839, 390, § 1.

SECT. 33. The clerk, on payment of his fees, shall record all
2 such mortgages, that shall be delivered to him in a book kept

3 for that purpose, noting in the book, and on the mortgage the
4 time when the same was received, and it shall be considered as
5 recorded, when left as aforesaid with the clerk. His fees shall
6 be the same, as are allowed for like services, to the register of
7 deeds. 1839, 390, § 3.

SECT. 34. Nothing in the two preceding sections, shall avoid
2 or defeat any contract of bottomry, or respondentia or transfer,
3 assignment or hypothecater of any ship or goods at sea, or
4 abroad, if the mortgagee shall take possession of such vessel or
5 goods as soon as the arrival of the same within the State.

1839, 390, § 2.

NOTES.

SECT. 2. This section contains a new principle, subject however, to a proviso. Many instances have occurred in which manifest injustice has been done by an unexpected entry of a mortgagee before breach; as in case of a mortgage to secure to the mortgagee a maintenance during life, by the immediate entry of the mortgagee, the mortgagor has been disabled from performing his agreement. The section is designed to prevent misapprehension or deception. It is believed to be a useful provision, and as such, is inserted.

SECT. 7. Is new—but it is only declarative of the principles of law and according to the usual course of proceeding.

SECTS. 10, 11. Affirm the law as long since settled in the cases in the margin.

SECT. 27. A new express provision—removing all doubts as to such a tender, if any.

CHAPTER 126.

OF THE RIGHT OF ERECTING MILLS AND MILL DAMS, AND OF FLOWING LANDS; AND THE MODE OF OBTAINING DAMAGES THEREFOR.

- Sect.*
1. Any man may erect mill and dam across any river not navigable, &c.
 2. On what conditions.
 3. Not on another's land, but by consent.
 4. Height of dam and water to be settled by commissioners or jury.
 5. Injured persons may recover damages for three years.
 6. Form of complaint.
 7. To be filed or presented to court and served.
 8. Service how made.
 9. What plea owner or occupant may plead.
 10. Mode of trial and appeal.
 11. Complainant failing—to pay costs.
 12. If decision is in favor of complainant, what proceedings are to be had.
 13. Either party to have trial by jury, and use the commissioners' report.
 14. If no trial by jury be requested, report may be accepted, &c.
 15. Verdict or report shall be a bar to an action.
 16. Compensation to commissioners.

- Sect.* 17. Verdict or report, to fix the annual damages.
 18. Person whose lands are flowed may demand security for damages to be given, when he applies for increase of damage.
 19. He shall have a lien upon the mill, land, &c. for his damages.
 20. He may sue for the damages awarded.
 21. The execution may be satisfied by selling all the mill, lands or so much of it in common with the residue, as may be necessary, giving notice, &c.
 22. Effect of such sale.
 23. Party may redeem.
 24. No new complaint to be brought till one month after damage becomes due.
 25. Owner may in a month make a tender.
 26. Owner of land may offer to take a reduced sum.
 27. No action at common law to be maintained except as before provided.
 28. Costs to prevailing party.
 29. Either party may file a new complaint.
 30. Tenants may make such offers, as well as owners.
 31. Recorded agreement of parties to bind them.
 32. A judgment against a complainant, shall not bar a new complaint.
 33. A tender may be made by owner of mill, when original complaint is filed.
 34. Complaint not to abate by death.
 35. If a complaint is abated—a new one may be filed in one year after.

SECT. 1. Any man may erect and maintain a water mill and
 2 a dam to raise water for working it, upon and across any stream
 3 that is not navigable, upon the terms and conditions and subject
 4 to the regulations herein after expressed. 1821, 45, § 1.

SECT. 2. No dam shall be erected to the injury of any mill
 2 lawfully existing, either above or below it, on the same stream,
 3 nor to the injury of any mill site, on which a mill or mill dam
 4 shall have been lawfully erected and used, unless the right to
 5 maintain a mill on such last mentioned site, shall have been lost
 6 or defeated by an abandonment or otherwise.

10 Pick. 357. 17 Mass. 269. 11 Mass. 533.

SECT. 3. Nor shall any mill or dam be placed on the land of
 2 any person, without such grant, conveyance or authority from
 3 the owner, as would be necessary by the common law, if no pro-
 4 vision relating to mills had been made by any statute.

1821, 45, § 1.

SECT. 4. The height to which the water may be raised and
 2 the length of time during which it may be kept up in each year,
 3 shall be liable to be restricted and regulated by the verdict of
 4 a jury, or report of commissioners, as hereinafter provided.

1824, 261, § 1.

SECT. 5. Any person, sustaining damages in his lands, by
 2 their being overflowed by a mill dam, may obtain compensation
 3 for the injury by complaint to the district court, in the county
 4 where the lands so flowed shall be situated, or any part of the
 5 same; but no compensation shall be awarded for any damages
 6 sustained more than three years before the institution of the
 7 complaint.

1821, 45, § 2.

SECT. 6. The complaint shall contain such a description of
2 the land alleged to be overflowed and injured, and such a state-
3 ment of the damage, that the record of the case shall show with
4 sufficient certainty, the matter that shall have been heard and
5 determined therein.

SECT. 7. Such complaint may be presented to the court in
2 term time, or be filed in the clerk's office in vacation, and a copy
3 thereof, in either case, shall be served on the person complained
4 of, by being delivered to him or left at his dwelling house, if he
5 has any in the State; otherwise it shall be left at the mill in
6 question, or with the owner of the mill. 1821, 45, § 2.

SECT. 8. Such service shall be made by the proper officer
2 fourteen days at least before the term at which the complaint is
3 to be heard. 1821, 45, § 2.

SECT. 9. The owner or occupant of such mill, may appear
2 and plead in bar to such complaint, that the complainant has no
3 right, title or estate in the lands alleged to be flowed; or that
4 he has a right to maintain such dam and flow the lands for an
5 agreed price, or without any compensation, or any other matter
6 which may show that the complainant cannot maintain the suit;
7 but he shall not plead in bar of the complaint that the land
8 described therein, is not injured by such dam.

1821, 45, § 3. 4 Greenleaf, 322.

SECT. 10. When any such plea is filed, and an issue in fact
2 or in law is joined, it shall be heard and decided as similar
3 issues are to be decided in cases at common law, and either
4 party may appeal to the supreme judicial court.

SECT. 11. If on any such plea, the issue is decided in favor
2 of the respondent, or the complainant shall become nonsuit or
3 discontinue the suit, the respondent shall be entitled to his costs
4 as in common actions. 1821, 45, § 8.

SECT. 12. If the issue is decided in favor of the complainant,
2 or if the owner or occupant, after being notified as before men-
3 tioned shall not appear, or shall be defaulted, or shall not plead
4 or shew any legal objection to proceeding, the court shall ap-
5 point three or more disinterested persons of the same county,
6 commissioners, who shall go upon and examine the premises,
7 and make a true and faithful appraisement under oath, of the
8 yearly damages, if any, done to the complainant by the flowing
9 of his lands described in the complaint, and how far the same
10 may be necessary; and ascertain and make report what portion
11 of the year such lands ought not to be flowed. 1824, 261, § 1.

SECT. 13. If either party shall request that a jury may be
2 empannelled to try the cause at the bar of the court, the report
3 of the commissioners, shall, under the direction of the court,
4 be given in evidence to the jury, subject to be impeached by
5 evidence from either party. 1824, 261, § 1.

SECT. 14. If neither party shall request a trial of the cause
2 by a jury as before mentioned, the report of the commissioners
3 may be accepted by the court and judgment rendered thereon.
1824, 261, § 1.

SECT. 15. The verdict of such jury, or the report of such
2 commissioners, where no trial is requested, being so accepted,
3 shall be a bar to any action brought for such damages, and such
4 owner or occupant, shall not flow such lands during any portion
5 of the period when such flowing is prohibited by the commis-
6 sioners or the jury. 1824, 261, § 1.

SECT. 16. The court shall have power to award reasonable
2 compensation to such commissioners, which shall be taxed and
3 recovered by the prevailing party. 1824, 261, § 1.

SECT. 17. Such verdict or accepted report of the commis-
2 sioners and judgment thereon, shall be the measure of the
3 yearly damages until the owner or occupant of such lands, or
4 the owner or occupant of such mill, shall, on a new complaint to
5 the court and by similar proceedings, as in the former case,
6 obtain an increase or decrease of such damages. 1821, 45, § 6.

SECT. 18. When any person whose lands shall be flowed as
2 aforesaid, shall, on filing his complaint for ascertaining or
3 increasing his damages or on bringing his action of debt, as
4 provided in the twentieth section of this chapter, move the court
5 to direct the owner or occupant of such mill to give security for
6 the payment of said annual damages, as they shall become due,
7 and the court shall so order; the owner or occupant refusing or
8 neglecting to give such security, shall have no benefit of this
9 chapter, but shall be liable to be sued for the damages occa-
10 sioned by such flowing of his lands, in an action at common
11 law. 1821, 45, § 7.

SECT. 19. The person entitled to receive such annual com-
2 pensation shall have a lien therefor, from the time of the insti-
3 tution of the original complaint, on the mill and mill dam, with
4 the appurtenances and the land under and adjoining the same,
5 and used therewith provided that it shall not extend to any sum
6 due more than three years before the commencement of the
7 action. M. R. S. 116, § 23.

SECT. 20. The party entitled to such annual compensation
2 may maintain an action of debt or assumpsit therefor, in the
3 proper tribunal, against the person who shall own or occupy
4 the said mill when the action is brought, and shall therein
5 recover the whole sum due and unpaid with costs.

M. R. S. 116, § 24.
SECT. 21. The execution on such judgment, if not paid, may
2 at any time within thirty days be levied on the premises subject
3 to the lien, and the officer may sell the same at public auction,
4 or so much thereof in common with the residue, as shall be
5 necessary to satisfy the execution; proceeding in giving notice
6 of such sale in the same manner as in making sale of an equity
7 of redemption upon execution. M. R. S. 116, § 25.

SECT. 22. Such sale shall be effectual against all persons
2 claiming the premises by any title which accrued within the
3 time covered by the lien.

M. R. S. 116, § 26.

SECT. 23. Any person entitled to the premises, may redeem the same within one year after the sale, on paying to the purchaser or the person holding under him, the sum paid therefor with interest at the rate of twelve per cent.

M. R. S. 116, § 27.

SECT. 24. No new complaint shall be brought, until the expiration of one month after the payment of the then last year shall have become due; and either party may, within that time make an offer or tender to the other as hereinafter provided.

1821, 45, § 11.

SECT. 25. The owner of the mill or dam, within said month may offer in writing to the owner of the land injured, any increase of compensation to be paid thereafter for maintaining said dam and if the owner of the land shall not agree to accept of the same, but shall bring a new complaint, for the purpose of increasing the compensation, he shall not recover any costs, unless he shall obtain an increase of damages, in the manner before mentioned in this chapter.

1821, 45, § 9.

SECT. 26. The owner of the land injured, may also within said month offer in writing to the owner of the mill or dam to accept any sum smaller than the annual compensation established, to be paid thereafter for maintaining said dam, and if the owner of the mill or dam shall decline to accept such reduced compensation, but shall bring a new complaint to obtain a reduction of the same, he shall not recover costs, unless such compensation shall be reduced to a less sum than was offered.

1821, 45, § 10.

SECT. 27. No action shall be sustained at common law for the recovery of damages occasioned by the overflowing of lands as before mentioned, except in the special cases provided in this chapter, to enforce the payment of damages after they have been ascertained by process of complaint, as aforesaid.

SECT. 28. The party prevailing shall recover costs, unless when it is otherwise expressly provided.

SECT. 29. When either party is dissatisfied with the annual compensation established, as before provided, a new complaint shall be filed and similar proceedings shall be had and conducted substantially in the manner before provided in case of an original complaint.

1821, 45, § 6.

SECT. 30. Such offers may be made by or to the respective tenants or occupants of the land and of the mill and dam in question, in like manner and with like effect as if made by the respective owners; except that no agreements founded thereon, shall bind the owners, unless made by their consent.

M. R. S. 116, § 38.

SECT. 31. When an annual compensation upon the acceptance of one party, of an offer made by the other, is established and signed by the respective owners of the mill or dam and of the land, and recorded in the office of clerk, of the court in which the former judgment was rendered, with a reference on

6 the record to the former judgment, to the book where the agree-
 7 ment is recorded, such agreement shall be as binding as a verdict
 8 and judgment on a new complaint. M. R. S. 116, § 29.

SECT. 32. A judgment against a complainant, as not being
 2 entitled to any compensation shall be no bar to a new complaint
 3 for damages, which have arisen after the former verdict, and
 4 for compensation for damages subsequently sustained.

M. R. S. 116, § 30.

SECT. 33. In case of an original complaint, the respondent
 2 may tender and bring money into court as in an action at com-
 3 mon law; and with the same advantages to himself; and if the
 4 money is accepted, the judgment shall have the same effect as
 5 if rendered on verdict.

M. R. S. 116, § 41.

SECT. 34. No complaint for flowing lands, shall abate by the
 2 death of any party thereto; but the same may be prosecuted or
 3 defended by the surviving complainants or respondents, or the
 4 executors or administrators of the deceased.

M. R. S. 116, § 43.

SECT. 35. If such complaint shall be abated or defeated for
 2 want of form, or if after a verdict for the complainant, judg-
 3 ment should be reversed, the complainant may bring a new com-
 4 plaint at any time within one year after abatement or reversal
 5 as above stated, and thereon recover such damages as have been
 6 sustained during the three years next, before the institution of
 7 the first complaints, or any time afterwards.

M. R. S. 116, § 43.

NOTES.

SECT. 1. This section contains the legal restriction as to erecting a dam across a *navigable* river which is known to exist.

SECT. 2. The principles of this section have long been established and are the acknowledged law of the land; but it has been considered useful to state them clearly in the section that they may be known to all, as a rule of action. The principles were settled before Maine was separated from Massachusetts.

SECT. 3. The statute requires the estimate of damages to be annual damages. Questions have arisen as to the person who is liable for damages, when the owners of the mill or dam are changed, in the midst of the season or when the land is flowed whether the owner in July (for instance) or the person purchasing of him. The annual damage to the land by flowing is done in the summer season principally; and no damage becomes due till the end of the season; and he who is owner *then*, seems the man to be called on. The above section, to avoid any and all difficulties has created a *lien* on the mill dam and mills, as security for the damages sustained.

SECTS. 20, 21, 22. These provide for obtaining the benefit of the lien; and such lien will generally hasten payment of damages by a sale or redemption, or by preventing a sale.

SECT. 30. Extending the provisions to *occupants* of the lands flowed, and of the mills and dam, that there may be no failure of justice as to the interest of either of the parties.

SECT. 31. This contains a new provision for establishing a continuing measure of damages by *agreement*, which shall be as binding as a verdict.

SECT. 33. Enables party to tender damages before any original complaint.

SECT. 34. This section is in unison with the prevailing disposition to remove objections and facilitate proceedings, and preventing failure of suits and of justice.

SECT. 35. This section has the same object. The provisions in the last five or six sections are taken from the Massachusetts code. Their liberality has recommended them to the commissioners.

CHAPTER 127.

OF INQUESTS OF OFFICE AND INFORMATIONS FOR INTRUSION.

- Sect.* 1. When State claims land, granted on condition—what proceedings are to be had.
2. Attorney general to file information in cases, when directed by the Legislature.
3. Form of proceedings in such cases.
4. When defendant is defaulted, judgment is to be rendered, that the State be re-seized.
5. If defendant *disclaims* all or any part of the lands claimed, the course of proceeding.
6. If defendant claims all or any part of the land, the course of proceeding.
7. What proceedings are to be had, when the breach is that defendant holds too much land.
8. Same subject.
9. Cases in which attorney may file information without direction of Legislature.
10. When there is no-ter tenant—court will order the proper notice to be given.
11. If no appearance, verdict to be for State, if not, then for defendant and for his costs.
12. Attorney may file information for lands, said to have escheated to State—court shall order notice.
13. Defendant shall set up no title, unless he claims under it.
14. If defendant shall prove title in himself, or in one under whom he claims, he shall recover costs.
15. If defendant acquires a title while process is pending the attorney shall prosecute no further.
16. When judgment is that the State be re-seized, it shall be so seized, without any further process.
17. Should any heir afterwards appear, and recover against the State or its grantee, &c.—the State shall be liable for all improvements, over and above the profits, &c.
18. For ascertaining such improvements, a bill in equity may be filed—and the course of proceedings.
19. Sheriff may sell part of the land on execution, &c.

SECT. 1. Where lands have been granted by the colony or province of Massachusetts bay, the commonwealth of Massachusetts or by this State, or shall be hereafter granted on certain conditions, alleged to have been violated, and the State shall claim to be revested in the same, the following proceedings shall be had.

1821, 48, § 1.

SECT. 2. When the Legislature shall direct, the attorney
2 general shall file an information in the supreme judicial court in
3 the county where the lands lie, stating the grant and conditions,
4 breaches and claims of the State. 1821, 48, § 1.

SECT. 3. The court shall issue a scire facias, against the per-
2 son, bodies politic, or proprietors stated as holding the lands
3 under such grant, returnable to said court, which shall be served,
4 according to law, thirty days before the return day. 1821, 48, § 1.

SECT. 4. Should the defendant not appear and answer to such
2 information, judgment shall be rendered that the State be
3 re-seized of their lands. 1821, 48, § 1.

SECT. 5. If the defendant appear and disclaim holding said
2 lands or any part of the same, the attorney general shall take
3 nothing by his information, so far as the same respects the lands
4 disclaimed, and the defendant and all claiming under him shall
5 be estopped from claiming or holding such disclaimed lands. 1821, 48, § 1.

SECT. 6. If defendant claims all or any part of such lands
2 under such grant, and shall traverse the breaches, the cause
3 shall be tried by jury in due course, and if the issue be found
4 in favor of the State, judgment shall be rendered that the State
5 be re-seized of said estate and for costs; but if the issue shall
6 be found for defendant, he shall have judgment for his costs of
7 suit, to be taxed and paid from the public treasury. 1821, 48, § 1.

SECT. 7. If the only alleged breach of condition is that the
2 defendant holds more land than he has a right to hold under the
3 grant, and the same shall be found by the jury or defendant's
4 confession, the court shall assign to the defendant, by metes and
5 bounds, so much of the land held by defendant, as shall be
6 equal in quantity to what he has a right to hold under the grant
7 and in such part thereof, as shall be judged reasonable by the
8 court. 1821, 48, § 1.

SECT. 8. Such part shall be located by persons appointed by
2 the court, at the expense of the defendant, and a plan thereof
3 returned to the court; and if confirmed by the court, they shall
4 order an attested copy of such location and plan to be filed in
5 the secretary's office, and judgment shall be rendered that the
6 State be re-seized of the residue and recover costs of suit. 1821, 48, § 1.

SECT. 9. In all other cases, where an inquest is necessary,
2 the attorney general, without order of the Legislature, may file
3 an information in said court, describing the estate claimed, and
4 stating the title asserted thereto by the State, and notice shall
5 be given as before mentioned, when there is any ter-tenant. 1821, 48, § 2.

SECT. 10. When there is not any ter-tenant, then notice shall
2 be given as the court shall order, at least ninety days before the
3 sitting of the court, to which it is returnable. 1821, 48, § 2.

SECT. 11. If no person shall appear and answer to the information; or after appearing and answering, and on trial by jury, a verdict should be found, that the State has good title to such estate, judgment shall be rendered that the State be seized thereof and recover costs, but if the verdict should be in favor of the defendant and that he has good title to the land, he shall recover his costs of suit, to be taxed and paid as before provided.

1821, 48, § 2.

SECT. 12. The attorney general may file an information, in manner before mentioned, for recovering seizin by the State for any real estate, supposed to have escheated to the State, for want of legal heirs, and on such information being filed, the court shall order such notice as they may judge proper.

1821, 48, § 3.

SECT. 13. In such case the defendant shall not be allowed to avail himself of the title of an alien or subject of another nation or sovereign, or any other person, unless he can shew that he is tenant to or agent or bailiff of such alien.

1821, 48, § 3.

SECT. 14. If on trial the defendant shall prove himself to be such tenant or agent, or that he is himself the legal owner of such estate, then he shall recover his costs, to be paid as aforesaid.

1821, 48, § 3.

SECT. 15. But if the defendant be found not to have been the legal owner of such estate, or to have any right as tenant, agent or bailiff, when the process was commenced against him, but had afterwards acquired a good title, or become tenant, agent or bailiff, the attorney general shall cease further to prosecute the suit; but when the defendant proves no title to such estate as owner, or interest therein as tenant agent or bailiff, judgment shall be rendered that the State be seized thereof, and recover rents and profits, as in case of a writ of entry between private persons.

1821, 48, § 4.

SECT. 16. When judgment, shall, on information be rendered that the State be re-seized or seized of any lands, the State shall be deemed and taken in law to be in fact so seized to all intents and purposes; and all judgments so rendered shall conclude all privies and parties, and those claiming under them—so long as such judgment shall remain in force; subject to the provisions of the following section.

1821, 48, § 5.

SECT. 17. Should any person appear, and by due process of law prove himself to have a legal title to such estate, and recover the same against the State or its grantee or tenant, the estate shall be liable for all expenses of improvement thereon made, over and above the rents and profits thereof, though the defendant, and those under whom he claimed, had not been in possession six years.

1821, 48, § 6.

SECT. 18. And for the purpose of ascertaining the amount of such improvements, the attorney general, or the tenant or grantee, of the estate, may file a bill in equity in the supreme judicial court for recovering the same, and after due notice and

5 copy of the bill served on defendant, fourteen days before court,
6 such court may try the cause with or without a jury and render
7 judgment and issue execution for the sum found due.

SECT. 19. And the sheriff by virtue of such execution, shall
2 sell at public auction so much of said land, as will be sufficient
3 to satisfy the execution and charges, unless otherwise paid.

CHAPTER 128.

OF FORCIBLE ENTRY AND DETAINER.

- Sect. 1. Any justice may have jurisdiction, except those residing in towns, where there is a municipal court.
2. On complaint, he may issue his warrant to sheriff, &c. to summon person charged to shew cause.
3. Unless cause shown, judgment to be rendered.
4. When defendant pleads title, justice is to recognize him to enter action at district court and proceedings, &c.
5. When tenant shall refuse to leave premises after notice, &c. liable to process.
6. Every municipal court shall have jurisdiction, &c.

SECT. 1. Any justice of the peace and of the quorum in the
2 county in which he resides, shall have jurisdiction in all cases of
3 forcible entry and detainer, except those arising within a city or
4 town therein, in which a municipal or police court is or may be
5 established. 1824, 268, § 1.

SECT. 2. On complaint made to him in writing, and on oath of
2 any unlawful and forcible entry into any lands or tenements, or
3 any unlawful and forcible detainer, he shall issue his warrant
4 under hand and seal, directed to the sheriff or his deputy, or
5 constable of the town, where the person charged resides, to sum-
6 mon him to shew cause why judgment should not be rendered
7 against him, which summons shall be served upon him, by deliv-
8 ering him a copy or leaving it at his last and usual place of
9 abode seven days at least, before the day set for trial. 1824, 268, § 2.

SECT. 3. On return of such service, in case of the non-ap-
2 pearance and default of the party charged, or his failing to
3 shew sufficient cause, judgment shall be rendered against him
4 for possession of the premises, and the justice shall issue a writ
5 of possession to remove him. 1824, 268, § 2.

SECT. 4. Should the defendant plead not guilty to the com-
2 plaint, and file a brief statement of title in himself, or some other
3 person under whom he claims the premises in question, the jus-
4 tice shall thereupon order him to recognize to the complainant,
5 with sufficient sureties, in such sum as the justice shall order to
6 pay all intervening damages, and costs, and reasonable interven-

ing rent for the premises; and said justice shall require the complainant to recognize to the defendant with sufficient sureties in a reasonable sum, conditioned to enter the action at the next district court, and prosecute the same to final judgment, and pay all costs adjudged against either party so refusing to recognize. Either party may appeal from the judgment of the justice, *upon issue joined*, to the next district court, recognizing, as aforesaid to pay such costs as may be adjudged against him, and if the defendant shall appeal, he shall recognize to pay such reasonable intervening rent for the premises, as such justice shall adjudge, in case his judgment shall not be reversed on such appeal. 1824, 268, § 3.

SECT. 5. Whenever a tenant whose estate in the premises is determined, shall unlawfully refuse to quit the same, after thirty days' notice in writing, given by the lessor for that purpose, he shall be liable to the provisions of this act, provided he shall not have been in quiet possession of the premises three whole years, next preceding the filing of such complaint. 1824, 268, § 4.

SECT. 6. And every municipal and police court, now established, or which may be established, in any city or town, shall have exclusive jurisdiction of all cases of forcible entry and detainer, arising in the city or town, where such court is or shall be established; and concurrent jurisdiction with justices of the peace and quorum, in such cases, arising in the counties, in which they are or shall be respectively established. 1826, 324, § 1.

CHAPTER 129.

OF WASTE AND TRESPASSES ON REAL ESTATE.

- Sect.*
1. Punishment for waste by tenant in dower, or by courtesy, &c. by owner of inheritance.
 2. A man may bring action for waste done in ancestor's time as well as his own.
 3. Trial may be had in court, with or without a view, and jury to assess damages.
 4. May bring case in nature of waste, and recover damages.
 5. Reversioner or remainder man may bring the action, &c.
 6. Action of case may be brought against executors or administrators of tenant, or prosecuted against them after his death.
 7. Trespass by a joint tenant, &c. without giving written notice, &c.
 8. Any one or more may recover damages and how appropriated.
 9. Qualification of two last sections.
 10. Trespass committed on lands of another without consent, cutting trees, &c.
 11. Strip or waste made pending an action for recovery of land, &c.
 12. Trespases on buildings, enclosure, &c.
 13. Cutting grass on another's land, &c.

- Sect. 14. Committing waste on lands attached may be restrained by injunction, &c.
 15. Trespass on lands of a deceased insolvent how punished, and how damages recovered.
 16. If committed by executor or administrator on the estate—he liable in damages to be accounted for.
 17. Administrator bond to be so altered as to embrace such cases.

SECT. 1. If any tenant in dower, or by the courtesy, or tenant for life or years shall commit or suffer any waste on the premises, the person having the next immediate estate of inheritance therein, may have an action of waste against such tenant, wherein he shall recover the place wasted, and the amount of damages done to the premises.

SECT. 2. An heir may bring an action of waste done in the time of his ancestor as well as in his own time.

SECT. 3. If any issue of fact be joined in the cause, it shall be tried by a jury in court in the usual manner with or without a view of the premises, as the court may order; and in all cases, the jury that enquire of the waste shall assess the damages.

SECT. 4. Any person entitled to such action of waste, may, instead of it, bring an action of the case in nature of waste, in which he shall recover the damages he has sustained by reason of the waste.

SECT. 5. And such an action may also be maintained by one who has the remainder or reversion in fee simple or fee tail, after an intervening estate for life, and also by one who has a reversion or remainder for life or years only; and each of them shall recover such damages as it shall appear he has suffered by the waste.

SECT. 6. An action on the case for waste may be originally commenced against the executors or administrators of the tenant, or may be prosecuted against them after the death of the tenant, when the action was brought against him.

SECT. 7. If any joint tenant, coparcener or tenant in common of undivided lands shall cut down, destroy or carry away any trees, timber, wood or underwood, standing or lying on such lands, or dig up or carry away any ore, stone or other valuable thing found thereon, or commit any strip or waste thereon, without first giving thirty days notice in writing under his hand to all other persons interested therein or to their respective agents or attornies, of his intention to enter thereon and improve the land; or if he shall do any of said acts thereon pending a petition or other suit for a partition of the same premises, he shall forfeit and pay three times the amount of the damages that shall be assessed therefor; to be recovered and appropriated as mentioned in the following section. 1821, 35, § 2.

SECT. 8. The above mentioned damages may be recovered by any one, or more of the co-tenants, without naming any one but the plaintiff; and the damages shall be appropriated, one

4 half to the person who shall sue for the same, and the other half
5 to the same person, together with all the other co-tenants
6 except the defendant in the action; to be divided among them
7 in proportion to their respective interests in the land.

1821, 35, § 2.

SECT. 9. But if in the trial of such cause, the jury shall find
2 that the defendant had good reason to believe that he was owner
3 of the land on which the alleged trespass was committed, in
4 severalty, or if he had been in the exclusive possession of the
5 same, claiming it as aforesaid for three years next before the
6 time when the alleged trespass was committed, and preventing
7 the plaintiff to occupy in common according to his asserted
8 right, single damages only shall be recovered in such action.

1837, 288.

SECT. 10. If any person shall cut down, destroy, injure or
2 carry away any fruit or ornamental trees, timber, wood, under-
3 wood, stones, gravel, ore or goods or property of any kind from
4 land not his own and without license of the owner; or shall
5 injure or throw down any fences, bars or gates, or leave such
6 gates open, or break any glass in any building, he shall be liable
7 in damages to the owner to be recovered in an action of tres-
8 pass.

1821, 33, § 1.

SECT. 11. If during the pendency of any action for the recov-
2 ery of land, the tenant shall make any strip or waste, by cutting,
3 felling or destroying any wood, timber, trees or poles standing on
4 said lands, he shall for each offence pay to the aggrieved party
5 treble damages to be recovered in an action of trespass.

1821, 35, § 4.

SECT. 12. Where any trespasses are committed on any build-
2 ing or enclosures, monuments or mile stones belonging to any
3 county, town or parish, the treasurer of such corporation may
4 sue for the damages in the name of the corporation, and if the
5 property injured belongs to a school district the treasurer of the
6 town in which the district is contained may sue in the name of
7 such district.

1821, 33, § 4.

SECT. 13. If any person shall enter on any grass land, orch-
2 ard or garden, and take therefrom without permission of the
3 owner, any grass, hay, fruit, vegetable or shrub, he shall be liable
4 to the party injured in a sum equal to three times the value of
5 the articles so taken away in an action of trespass.

1821, 33, § 6.

SECT. 14. If any person whose real estate is attached in any
2 civil action, shall do any act of waste thereon, or shall threaten
3 or make preparations to commit waste, the court in which the
4 suit is pending, or any justice thereof in vacation or term time,
5 may issue an injunction to stay such waste, with or without
6 notice at discretion; and the court may enforce obedience to
7 such injunction by all such process as the supreme judicial court
8 may legally employ in an equity case depending in such court;
9 and dissolve such injunction whenever it may be deemed proper.

SECT. 15. If any of the heirs or devisees of any person deceased, whose estate may be represented insolvent, shall, between the time when such representation shall be made and the time of the conveyance of the real estate of the deceased on sale for the payment of debts, in case the estate shall be absolutely insolvent, remove or destroy any building, or cut down, destroy or carry away any trees, standing on said land, or lying on it, for timber or fire wood, except what may be necessary for fuel and repairs, or commit any strip or waste on the land afterwards sold and conveyed as aforesaid, he shall forfeit and pay treble the value thereof, to be recovered by the executor or administrator on said estate in an action of trespass. 1835, 191, § 4.

SECT. 16. And if such executor or administrator, being heir or devisee as aforesaid, shall commit any of said trespasses or wastes, within the time limited as aforesaid, on proof before the judge of probate of the same, he shall be liable in damages to the same extent, as mentioned in the preceding section; and in both cases, the damages when recovered by the executor or administrator, or found and adjudged against him by the judge of probate, shall be accounted for in the administration account. 1835, 191, § 4.

SECT. 17. And the bond given by an executor or administrator shall be so varied from that now by law required, as to cover any liability which may accrue in the manner aforesaid. 1835, 191, § 4.

NOTES.

SECT. 1. By the statute of 1783, relating to the subject of dower, waste, by a tenant in dower was punishable by a forfeiture of the place wasted, and also, by damages. In 1821 that statute was repealed; and, in digesting the statutes of Massachusetts in that year, and in the enactment of such portion of the digested statutes as the Legislature saw proper to enact, that clause in the statute of 1783, subjecting a tenant in dower to forfeiture and damages by waste as above stated, was omitted; and no provision was made on the subject; and in the case of *Smith v. Follensbea*, 1 Maine reports 273, it was decided that an action of waste was not maintainable against the defendants, who were the assignees of a tenant in dower. The above facts furnish the principal ground of the above decision. It is difficult to perceive why a tenant by the courtesy, and a tenant for life or for years, should be punishable in the manner stated in this section, and a tenant in dower, be punished otherwise. The commissioners therefore have placed them all on the same ground, presuming that the peculiar reasons which required the decision in the case of *Smith v. Follansbea*, present no objection or argument against the section as now proposed.

SECT. 2. This is designed to make the remedy more complete.

SECT. 3. At common law, damages are estimated by a writ of inquiry committed to a sheriff to summon a jury for the purpose.

SECTS. 4, 5. Are designed to give a remedy in a milder form, in which damages may be recovered.

SECT. 6. This and the preceding sections are new, and are taken from the Mass. code; and the remedy reaches to the executors and administrators of

deceased tenants, so that the estate which has received the benefit of the waste, shall be answerable in damages.

SECT. 9. This section has been modified so as to be, as far as possible, in accordance with numerous judicial decisions, and with the statute referred to in the margin.

SECT. 14. This is also a new provision which seems necessary to protect those who have acquired a conditional interest in certain property. When the execution is levied within thirty days after judgment the title vests in the creditor from the time of the attachment. The court would doubtless before issuing an injunction, look to the grounds of the suit in which the attachment is made and proceed with caution. The commissioners respectfully propose it for enactment.

CHAPTER 130.

OF REPLEVIN OF BEASTS AND CHATTELS.

- Sect. 1. Owner of beasts distrained, may replevy them.
2. The process.
3. Writ not to be served till bond be given.
4. If lawfully distrained, what damages and judgment.
5. If unlawfully distrained, what damages.
6. Either party may appeal from judgment of the justice.
7. In what cases a cause may be transferred to supreme judicial court, or district court, and how.
8. Any chattels taken, attached or unlawfully detained, may be replevined by owner.
9. In what manner, &c.
10. Writ not to be served, till bond is given.
11. Proceedings thereon.
12. If goods when replevied were attached or seized on execution—the consequences.
13. Disposition of the money recovered by an officer.
14. Disposition of monies received by creditor from sale of goods attached or taken on execution.
15. If goods were unlawfully taken, proceedings.
16. How long attachment shall continue in force.
17. When a writ of reprisal shall issue.
18. Bond may always be resorted to.
19. How long a surety shall be held on replevin bond.
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SECT. 1. Any person whose beasts are distrained or impounded, 2 in order to recover any penalty or forfeiture, supposed to have 3 been incurred by their going at large, or to obtain any satisfac- 4 tion for any damages, alleged to have been done by them, may 5 maintain a writ of replevin against the impounder or finder 6 therefor, to be sued out and prosecuted before any justice of the 7 peace for the county in the form prescribed in chapter ———. 1821, 80, § 1. or 1834, 137, § 8.

SECT. 2. The writ shall be sued out, served and returned, 2 and the cause shall be heard and determined, in like manner as

3 is provided in the case of other civil actions before a justice of the peace except as otherwise prescribed.

M. R. S. 113, § 18.

SECT. 3. The writ shall not be served unless the plaintiff or some one in his behalf shall execute and deliver to the officer a bond to the defendant with sufficient sureties to be approved by the officer, in a penalty double the actual value of the property to be replevied, conditioned as stated in the prescribed form of the writ, and to be returned with the writ for the use of the defendant.

M. R. S. 113, § 19. 1834, 137, § 18.

SECT. 4. If it shall appear upon the non-suit of the plaintiff, or upon a trial, or otherwise, that the beasts were lawfully taken or distrained, the defendant shall have judgment for such sum as shall be found to be due from the plaintiff for the penalty or forfeiture—or for the damages for which the beasts were impounded together with all the legal fees, costs and expenses incurred by reason of the distress and also the costs of the action of replevin; or instead of such judgment the justice or court having cognizance thereof may in his or their discretion enter judgment for a return of the beasts to the defendant to be held by him for the original purpose, or repleviable by the plaintiff, and for the defendant's damages for the taking thereof by the replevin, and the costs of suit.

1821, 80, § 2.

SECT. 5. If it shall appear upon default of the defendant, or upon a trial or otherwise, that the beasts were taken or distrained, without any sufficient or justifiable cause, the plaintiff shall have judgment for his damages caused by the unjust taking and detaining the beasts and for his costs of the suit.

1821, 80, § 2.

SECT. 6. Either party may appeal from the final judgment of the justice, as in other civil actions.

M. R. S. 1, § 25.

SECT. 7. When it shall appear, that the sum demanded for the penalty, forfeiture or damages, exceeds the sum of twenty dollars, or that the property of the beast is in question, and that their value exceeds twenty dollars, or that the title to real estate is concerned or brought in question, the case shall at the request of either party, be transferred either to the district court, to be there disposed of as is provided in chapter one hundred and sixteen with respect to other civil actions brought before a justice of the peace in which the title to real estate is concerned, or brought in question; provided the party requesting such transfer shall recognize as in actions of trespass brought before a justice of the peace, in such reasonable sum as the justice shall order to enter the said action at the next term of the court, to which the action is transferred and prosecute the same with effect, and to pay all intervening damages and costs.

1821, 80, § 3.

SECT. 8. When any goods shall be unlawfully taken, or unlawfully detained from the owner or the person entitled to the possession thereof, or when any goods of that value, which

4 are attached on mesne process or taken in execution are claimed
5 by any person other than the defendant in the suit, in which
6 they are so attached and taken, such owner or person may cause
7 them to be replevied. 1821, 80, § 4. M. R. S. 27.

SECT. 9. If the value of the goods aforesaid shall exceed the
2 sum of twenty dollars the writ may be sued out of and returna-
3 ble to the district court or the supreme judicial court for the
4 county in which the goods are detained, and substantially of the
5 form prescribed in chapter one hundred and fourteen; and if
6 the goods aforesaid should not exceed the value of twenty dol-
7 lars, the writ may be sued out and returnable before a justice of
8 the peace of the county, where the goods to be replevied are
9 detained and substantially of the same form but to be made
10 applicable to the jurisdiction, and may be directed to any county
11 where any defendant may reside—said writs in both cases may
12 be sued out, served and returned, like other writs in civil actions
13 in all particulars in which a different course is not prescribed.

M. R. S. 28. Vol. 3d ch. 433, & 1833, ch. 67. M. R. S. § 28,

SECT. 10. The officer before serving the writ shall take from
2 the plaintiff or some one in his behalf a bond to the defendant
3 with sufficient sureties in double the value of the goods to be
4 replevied, conditioned as in the bond described in section third,
5 which bond shall be returned to the court from which the writ
6 issued, with the writ for the use of the defendant.

Mass. R. S. 3. § 29.

SECT. 11. If it shall appear upon the non-suit of the plaintiff,
2 or upon a trial or otherwise that the defendant is entitled to a
3 return of the goods, he shall have judgment therefor accord-
4 ingly, with damages for the taking thereof by the replevin with
5 his costs and a writ of return and restitution thereupon accord-
6 ingly. 1821, 80, § 4. M. R. S. 5, § 30.

SECT. 12. If the goods when replevied were taken in execu-
2 tion, or if they were attached, and judgment be afterwards ren-
3 dered for the attaching creditor, and if in either case the service
4 of the execution be delayed by means of the replevin, the
5 damages to be assessed for the defendant, in case of a judgment
6 for a return, shall be not less than at the rate of twelve per cent.
7 by the year, on the value of the goods for so long time, as the
8 service of the execution shall be so delayed.

SECT. 13. All sums recovered in an action of replevin by
2 any officer, for or on account of any goods attached or taken on
3 execution by him, or recovered in an action upon the bond,
4 given upon replevin of such goods, shall be applied and disposed
5 of, as far as they will go—in the following manner:

6 *First*—To pay the lawful fees and charges of the officer and
7 the reasonable expenses of the action of replevin, and the action
8 on the bond, so far as they are not reimbursed by the costs that
9 may be recovered;
10 *Secondly*—To pay to the creditor, at whose suit the goods were
11 attached or taken in execution, the sum, if any recovered by

12 him in that suit, or as much thereof as shall remain unpaid, with
13 interest therefor, at the rate of twelve per cent. by the year, for
14 such time, if any, as the money shall have been withheld from
15 the creditor, or the service of his execution delayed by reason
16 of the replevin; and

17 *Thirdly*—If the attaching creditor in such case, shall not
18 recover judgment in the suit in which the attachment was made,
19 if any balance shall remain of the money so recovered by the
20 officer after paying what is due to the creditor, as before pro-
21 vided, such balance or the whole amount, as the case may be,
22 shall be applied and disposed of in the same manner as would
23 and ought to have been done with the surplus, if any, of the
24 proceeds of sale, in case the same goods had been sold on exe-
25 cution. M. R. S. 113, § 3, 12. 12, § 406.

SECT. 14. All sums received by such creditor for the pro-
2 ceeds of sale of any goods, that had been attached or taken on
3 execution, and which are afterwards returned, and all sums
4 returned for the value of any such goods as are not returned;
5 and also all sums recovered from the officer for the insufficiency
6 of the sureties in the bond, shall be applied toward the discharge
7 of the judgment, recovered by the creditor; but all sums, re-
8 ceived as interest or damages for the delay of his execution,
9 shall be retained to his own use, and shall not go in discharge
10 of the judgment. M. R. S. 113, § 33.

SECT. 15. If it shall appear upon default of the defendant, or
2 upon a trial, or otherwise, that the goods were unlawfully taken
3 or attached, or unlawfully detained, by the defendant, the plain-
4 tiff shall have judgment for his damages caused thereby and for
5 his costs of the suit. M. R. S. 113, § 34.

SECT. 16. If the goods which are replevied had been attached
2 they shall in case of judgment for a return be held liable to the
3 attachment, until final judgment in the suit, in which they were
4 attached, and for thirty days thereafter, in order to their being
5 taken in execution, and if such final judgment be rendered
6 before the return of the goods, or if the goods when replevied,
7 were seized and held on execution, they shall be held subject to
8 the same attachment or seizure for thirty days after the return,
9 in order that the execution may be served thereon, or the service
10 thereof completed in like manner as it might have been, if the
11 goods had not been replevied.

1821, 80, § 4. M. R. S. 113, § 16.

SECT. 17. When the officer to whom the writ of return and
2 restitution shall be directed shall not be able to find in his pre-
3 cinct the beast or other property which by the precept is directed
4 to be returned, he shall certify that fact in his return, and the
5 court whence the same is sued may upon motion grant a writ
6 of reprisal substantially of the form prescribed in chapter one
7 hundred and fourteen against the plaintiff in replevin, to take
8 the goods or beasts of the plaintiff not exempted from attach-
9 ment, of the full value to be delivered to the defendant and held

10 and disposed of by him according to law—until the plaintiff
 11 shall restore the beast or other property by him taken on the
 12 writ of replevin. 1821, 80, § 5.

SECT. 18. The foregoing provisions shall not preclude the
 2 defendant from resorting to his remedy on the replevin bond, or
 3 to his remedy against the officer for the insufficiency of the
 4 sureties on the bond, to recover the value of the goods,
 5 together with the damage or loss occasioned by the replevin
 6 thereof, notwithstanding he may have endeavored to recover the
 7 same by the writs of return and of reprisal as herein before
 8 provided. M. R. S. 113, § 39.

SECT. 19. No action shall be maintained against any person,
 2 as surety in a replevin bond, unless the writ be served on him
 3 within one year after the final judgment in the action of replevin,
 4 or if the action shall not be entered by the plaintiff, and the
 5 defendant shall not obtain judgment upon a complaint, such
 6 writ against the surety may be served on him within one year
 7 after the end of the term at which the action of replevin ought
 8 to have been entered and not afterwards.

M. R. S. 113, § 40.

CHAPTER 131.

OF BASTARD CHILDREN AND THEIR MAINTENANCE.

- Sect. 1.* Pregnant women, &c. may accuse a man as the father, before a justice of the peace—form of complaint.
2. Justice may issue a warrant against man accused.
 3. When brought before justice, to give bond, &c.
 4. On refusal to do it, to be committed.
 5. If woman be not delivered at next court, cause to be continued.
 6. His sureties may surrender him in court, and proceedings thereon.
 7. Complainant must file a declaration, &c.
 8. In case she accuses same man, in time of travail, &c. she may be a witness.
 9. If defendant is found guilty, &c. he shall be adjudged to be the father of the child, and charged with its maintenance, &c. with the mother.
 10. If found not guilty, he shall be discharged.
 11. No woman after having made her accusation, shall discharge or settle with the father without the consent of overseers of poor, &c.
 12. If father has lain in jail ninety days, he may take poor debtor's oath, &c.
 13. After his discharge the mother or town may recover of him any money which he was ordered to pay.
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SECT. 1. When any woman, being pregnant with a child,
 2 which, if born alive, may be a bastard, or who has been deliv-
 3 ered of a bastard child, shall accuse any man of being the father
 4 thereof, before any justice of the peace and request a prosecu-

5 tion against the person accused, such justice shall take her
6 accusation and examination on oath respecting the person
7 accused and the time and place (as correctly as either can be
8 described) when and where the child was begotten, and all such
9 other circumstances as he may deem useful in the discovery of
10 the truth. 1821, 72, § 1.

SECT. 2. And such justice may issue his warrant for the appre-
2 hension of such person, directed to the sheriff of any county,
3 in which the person accused is supposed to reside, accompanied
4 by such accusation and examination. 1836, 210, § 2.

SECT. 3. When the person is brought before such or any
2 other justice, he may require him to give bond, with sufficient
3 sureties, in such reasonable sum as he shall order, to the com-
4 plainant, conditioned for his appearance at the next district
5 court to be held in the county in which she resides, and for his
6 abiding the order of court thereon. 1821, 72, § 1.

SECT. 4. If the accused person shall refuse or neglect to give
2 such bond, said justice shall commit him to the jail of the county
3 of such justice, until such bond shall be given. 1821, 72, § 1.

SECT. 5. If at such next court the complainant shall not have
2 been delivered of her child, or be unable to attend court, or for
3 other good reason, the cause may be continued, and the bond
4 shall remain in force until final judgment, unless it shall become
5 void, as mentioned in the following section. 1821, 72, § 1.

SECT. 6. The sureties of the accused may surrender him in
2 court at any time before final judgment, and thereupon they
3 shall be discharged : and he shall be committed until a new
4 bond shall be given. 1836, 210, § 2.

SECT. 7. Before proceeding to trial the complainant must file
2 a declaration, stating that she had been delivered of a bastard
3 child, which was begotten by the accused ; the time and place
4 when and where it was begotten, with as much precision as the
5 case will admit ; that being put on the discovery of the truth
6 during the time of her travail, she accused the respondent of
7 being the father of the child, and that she had been constant in
8 such accusation. To this declaration the proper plea, is, the
9 general issue of not guilty. 1 Greenleaf, 304.

SECT. 8. When the complainant, having made the said accu-
2 sation, and been examined on oath as before mentioned, and
3 being put upon the discovery of the truth, respecting the same
4 accusation, at the time of her travail, shall thereupon accuse
5 the same man with being the father of the child of which she is
6 about to be delivered, and shall continue constant in such accu-
7 sation, and shall prosecute him as the father of such child before
8 such court, the man shall be held to answer to such complaint,
9 and she shall be a witness in the trial of the cause, unless she
10 would be an incompetent witness in any other cause, by reason
11 of a conviction of some crime. 1821, 72, § 1.

SECT. 9. If on such issue the jury shall find the respondent
2 guilty, or if the facts in the declaration filed shall be admitted

3 by default or on demurrer, he shall be adjudged by the court
 4 the father of such child and stand charged with the maintenance
 5 thereof, with the assistance of the mother, as the court shall
 6 order, and shall give a bond with sufficient sureties, and approved
 7 by the court to the complainant to perform the said order, and
 8 also a bond with sufficient sureties, approved as aforesaid, to the
 9 town that might be chargeable for the maintenance of such
 10 child; and he shall be committed till he shall make and execute
 11 such bonds: which latter bond shall be deposited with the clerk
 12 of the court for the use of such town. 1821, 72, § 1.

SECT. 10. If on trial of said cause the jury shall find the
 2 respondent not guilty, the court shall order him to be discharged,
 3 and the verdict in either case shall be final. 1821, 72, 1.

SECT. 11. No woman whose accusation and examination on
 2 oath shall have been taken by a justice of the peace at her
 3 request as aforesaid; shall be allowed to make any settlement
 4 with the father, or give him any discharge, which shall be given
 5 in evidence on the trial of any such complaint to bar or affect
 6 the same, if it shall be objected to in writing by the overseers
 7 of the poor of the town interested in the support of such mother
 8 or child. 1821, 72, § 1.

SECT. 12. When the father of such bastard child shall have
 2 remained ninety days in jail, without being able to comply with
 3 the order of court—he may be liberated by taking the “poor
 4 debtor’s oath” in the same manner as persons now or hereafter
 5 may, who are committed on execution, provided he shall give
 6 the like notification of his intention to take the benefit of said
 7 oath, to be served on the complainant if then living, and also on
 8 the clerk of the town, where the child, of which he has been
 9 adjudged the father, has its legal settlement, if in this State—
 10 said notice to be given fifteen days before the day appointed for
 11 taking the oath. 1821, 72, § 2. 1831, 487, § 1.

SECT. 13. The mother of such child and said town, may,
 2 after such liberation of such prisoner, recover of him by action
 3 of debt, any sum of money which ought to have been paid pur-
 4 suant to the order of court.

NOTES.

SECT. 7. This is a new section, but is merely declarative of what has for
 thirty years been required in practice by the courts in Massachusetts, and for sev-
 eral years in this State.

SECT. 13. This provision merely authorizes as law, what the plainest principles
 of justice seem to require.

CHAPTER 132.

OF PERSONAL PROPERTY SEIZED, AND LOST GOODS; AND PROCEEDINGS THEREON.

- Sect.* 1. Person entitled to property, may seize and hold it, unless.
 2. Claimant may have it restored to him on bond.
 3. How value is to be ascertained.
 4. If there is no claimant, inventory and appraisment to be made.
 5. If value exceed twenty dollars, libel to be in district court.
 6. How notice to be given.
 7. Court may try with or without a jury, &c.
 8. If libel is not supported, property may be restored with costs, and also with damages, where no probable cause of seizure.
 9. When value is not more than twenty dollars, libel shall be filed with a justice, who, after due notice, may decide the case.
 10. Either party may appeal.
 11. If appeal is not prosecuted, decree may be affirmed on complaint.
 12. Depositions may be used in such trials.
 13. Duty of finder of lost goods of value of \$3, or more.
 14. Duty of finder of goods of \$10, or more.
 15. Same subject—further duty.
 16. If owner appear in one year—what proceedings.
 17. If no owner appear—what disposition made.
 18. Penalty for finder's neglect.

SECT. 1. When any personal property shall be forfeited for
 2 any offence, and no special mode is prescribed for recovering
 3 the same, any person entitled thereto, in whole or in part, may
 4 seize and keep the same until final judgment, unless they are
 5 restored on the bond, as hereinafter mentioned. 1821, 81, § 1.

SECT. 2. If the person claiming the same for himself or
 2 another, shall give bond with sufficient surety or sureties to the
 3 party seizing, to pay, the appraised value thereof, when and if
 4 the same shall be decreed forfeited, then the same shall be
 5 restored to such owner or claimant. 1821, 88, § 1.

SECT. 3. The value shall be ascertained by the appraisment
 2 of three disinterested men, mutually chosen by the parties, or
 3 if they cannot agree, by a justice of the peace of the same
 4 county. 1821, 88, § 1.

SECT. 4. If no person claims the property, after it has been
 2 so seized, the party seizing shall cause an inventory and ap-
 3 praisment of the same, to be made by three disinterested per-
 4 sons, under oath, appointed by a justice of the same county;
 5 which value shall be the rule for deciding where the libel shall
 6 be filed. 1821, 88, § 1.

SECT. 5. If the property seized shall exceed twenty dollars,
 2 the party seizing shall within twenty days after the seizure, but
 3 not afterwards, file a libel in the office of the clerk of the dis-
 4 trict court, in the county where the offence was committed,
 5 stating the cause of seizure and praying for a decree of forfeit-
 6 ure. The clerk shall thereupon make out a notice to all per-

7 sons to appear at such court at the time appointed, to shew
8 cause why such decree should not be passed. 1821, 88, § 2.

SECT. 6. Such notice shall be published in some newspaper
2 printed in the same county, if there be one, if not, in an adjoin-
3 ing county or in Portland, at least fourteen days before the time
4 of trial. 1821, 83, § 2.

SECT. 7. The court may, where there is a claimant, hear
2 and determine the cause by a jury or without, if the parties
3 agree; but where there is no claimant, the court shall decree
4 the forfeiture and disposition of the property according to law;
5 and a sale and distribution of the proceeds after deducting all
6 proper charges; and may allow costs against the claimant.
1821, 88, § 2.

SECT. 8. If the libel shall not be supported or be discon-
2 tinued, the court shall decree a restoration of the property with
3 costs. And if the jury or the court, shall find the seizure with-
4 out probable cause, reasonable damages also shall be assessed
5 and decreed for the complainant.

SECT. 9. When the property seized shall not exceed the value
2 of twenty dollars, the libel shall be filed before a justice of the
3 peace, of the county, where the offence was committed; and
4 after notice of the kind mentioned in the fifth section has been
5 posted at some public place in the same county seven days at
6 least, before the day of trial, such justice shall try and decide
7 the cause, and make such decree therein as the law requires.
1821, 88, § 3.

SECT. 10. Either party may appeal to the next district court
2 in the same county (recognizing accordingly to prosecute his
3 appeal with effect) which court may decide the same and decree
4 what law and justice shall require. 1821, 88, § 3.

SECT. 11. If the appeal shall not be prosecuted, the court on
2 complaint may affirm the decree of the justice with costs.
1821, 88, § 3.

SECT. 12. In such cause depositions duly taken may be used
2 before the justice, or the district court. 1821, 88, § 3.

SECT. 13. Whoever shall find any money or goods of the
2 value of three dollars or more, the owner whereof is unknown,
3 he shall within ten days next following, give notice thereof in
4 writing to the clerk of the town in which they are found, and
5 cause a notification thereof to be posted up in some public place
6 in the same town: and if there be any public crier in such town,
7 shall cause the same to be cried publicly therein on three sev-
8 eral days. 1821, 130, § 1.

SECT. 14. If the money or goods, so found, be of the value
2 of ten dollars or more, the same shall be cried and notice given
3 thereof by posting as aforesaid in two towns adjoining, in
4 addition to the requirement in the preceding section.
1821, 130, § 1,

SECT. 15. Every finder of lost goods of the value of ten dol-
2 lars or more, shall also within two months after finding, and

3 before using the same to their disadvantage, procure from
 4 the town clerk or a justice of the peace a warrant, directed to
 5 two persons not interested, except as inhabitants of the town, to
 6 be appointed by said clerk or justice of the peace, returnable
 7 within seven days of the date, into the town clerk's office, to
 8 appraise the said goods under oath. 1821, 130, § 1, 2.

SECT. 16. If the owner of such lost money or goods appear
 2 within one year, after notice given to said clerk as aforesaid,
 3 and shall give reasonable evidence of his right thereto to the
 4 finder, he shall have restitution of the same or the value thereof,
 5 allowing and paying all necessary charges including a reason-
 6 able compensation to the finder for his trouble, to be liquidated
 7 and adjudged by some justice of the peace in the county, if the
 8 owner and finder do not agree. 1821, 130, § 3.

SECT. 17. If no owner shall appear within one year as afore-
 2 said then such money or lost goods shall remain to the finder,
 3 he paying one half of the value thereof, all necessary charges
 4 having been first deducted, to the treasurer of said town: in
 5 case of the neglect of the finder, then to pay the same on
 6 demand, after converting the same to his own use; and the
 7 same may be recovered in an action to be brought by said treas-
 8 urer in the name of the town.

SECT. 18. If any finder of any lost money or goods of the
 2 value of three dollars or upwards shall neglect to give notice
 3 thereof to the town clerk, and cause the same to be cried and
 4 advertised, in time and manner as provided in the first and
 5 sections of this chapter, he shall forfeit the full value of
 6 such money or goods, one half to the use of the town, and the
 7 other half to him who shall sue for the same; and shall more-
 8 over remain responsible to the owner of such lost money or
 9 goods.

CHAPTER 133.

OF DEPOSITIONS AND MODES OF TAKING THEM, AND OF WITNESSES.

- Sect. 1. Cases in which depositions may be used.
 2. Who may take depositions in pending actions.
 3. When a suit is deemed to be pending for the purpose.
 4. Reasons for which they may be taken.
 5. Summons to deponent and notice to adverse party.
 6. Mode of serving such notice.
 7. Who is to be considered attorney.
 8. Notice to one of several plaintiffs or defendants, sufficient.
 9. Time to be allowed for adverse party's travel.
 10. Justice, &c. may give *verbal* notice.
 11. Form of notice to adverse party.
 12. Form of summons to deponent.

- Sect.* 13. Witness may be compelled to depose—and how.
 14. How taken out of the State, not under commission.
 15. Deponent to be sworn, &c. &c.
 16. Who may write the deposition.
 17. Form of caption.
 18. Deposition to be delivered in court—or sealed up.
 19. When such deposition cannot be used.
 20. When objections to competency, or questions may be made.
 21. When depositions may be used in a second suit.
 22. Depositions taken out of State, may be admitted or rejected by the court at discretion.
 23. Depositions may be taken out of the State, under commission of the courts—as they direct.
 24. How to be taken, to be used before Legislature.
 25. Mode of taking deposition—in *perpetuam*.
 26. Same subject.
 27. Same subject.
 28. Same to be recorded in ninety days.
 29. When they may be used in evidence.
 30. Such depositions may be taken out of State.
 31. Manner of taking them.
 32. Same subject.
 33. Same subject.
 34. Same subject—on interrogatories.
 35. Another mode, by filing statement in the clerk's office and giving notice before court.
 36. If a witness summoned by any judge, &c. to appear and give his deposition, and his fees have been tendered to him—shall neglect to appear—a *capias* may be issued.
 37. If witness refuses to depose—he may be committed.
 38. Certain deponents may affirm.
 39. Punishment—if perjury be committed.
 40. Mode of summoning a witness to appear and testify before a court in another State.
 41. Mortgagee may be compelled to disclose the amount due on the mortgage.
 42. And furnish a statement thereof in twenty-four hours.
 43. If not so furnished, his deposition may be taken, and the mortgagee be compelled to give it.
 44. Who are competent witnesses.
 45. How records may be certified.
 46. Printed copies of Maine statutes, when proof.
 47. Printed copies of statutes of other States, how proved.
 48. Unwritten foreign law, how proved.
 49. Statute law of foreign countries, how proved.
 50. What fees to be paid or tendered to a witness.
 51. Consequences of his non-attendance.
 52. Mode of swearing witnesses.
 53. Same subject.
 54. Certain infamous persons, not to be deemed competent witnesses, unless, &c.

SECT. 1. Depositions taken for any of the causes and in the
 2 manner hereinafter mentioned, may be used in all civil suits or
 3 causes, petitions for partition of land, libels for divorce, prose-
 4 cutions for the maintenance of bastard children, petitions for
 5 review, and in trials before arbitrators, referees and county com-
 6 missioners.

SECT. 2. Any justice of the peace, and any notary public, may take depositions to be used in any pending cause, he not being interested in such cause, nor being, nor having been, counsel or attorney in the same. 1821, 85, § 1.

SECT. 3. But no suit, petition, libel or prosecution shall, for the purposes of this chapter, be considered as pending, till the notice required, as is hereinafter mentioned, or that which was ordered by the court, shall have been duly given.

SECT. 4. Depositions to be used in pending actions may be taken for either of the following causes, viz:— 1821, 85, § 1.

First—When the deponent is so aged, infirm or sick—as not to be able to attend the court, or at other place of trial.

Second—When the defendant resides out of—or is absent from the State.

Third—When the deponent shall be bound to sea on a voyage, or is about to go out of the State by sea or land, before the session of the court where the deposition is to be used, and not expected to return till after such session, in season to attend the trial.

Fourth—When the deponent lives more than thirty miles from the place of trial.

Fifth—When the deponent is confined in prison and such imprisonment shall be continued until after trial of the cause.

SECT. 5. On application of either party to a justice of the peace, or notary public, for the purpose of procuring the deposition of a witness, such justice or notary may issue a summons to the deponent to appear before him at a designated place and time to give his deposition, and also issue notice to the adverse party to be present at such time and place, if he should see fit; or such notice to the adverse party may be made returnable before any other justice of the peace or notary, who shall be named in such notice, as the person who is to take the deposition. 1821, 85, § 2.

SECT. 6. The notification to the adverse party shall be served on him or his attorney by giving to him or leaving at his last and usual place of abode an attested copy thereof, and the service may be made by a sworn officer, or by any other person and proved by his affidavit. 1821, 85, § 2.

SECT. 7. But no person shall, for the purposes of this chapter, be considered the attorney of another, unless he has endorsed the writ, or endorsed his name on the summons left with the defendant, or appeared for his principal in the cause, or given notice in writing that he is attorney of such adverse party. 1821, 85, § 2.

SECT. 8. Where there are several plaintiffs or defendants, notice may be given by the said justice or notary to one or more of them; and that shall be deemed sufficient. 1821, 85, § 2.

SECT. 9. No written notice as aforesaid shall be valid, unless the adverse party be allowed between the service of the notice,

3 and the time appointed for taking the deposition, time for him to
4 travel from his usual place of abode to the place of trial, not
5 less than at the rate of one day for every twenty miles travel
6 (exclusive of Lord's days.) 1821, 85, § 2.

SECT. 10. Every justice of the peace or notary may give
2 verbal notice to the adverse party, and that shall be deemed
3 sufficient. 1821, 85, § 2.

SECT. 11. The notice to the adverse party, if in the State,
2 shall be in substance as follows:—

3 ——— ss. To ——— of ——— in the county of ———

4 Greeting.

5 Whereas A. B. of ——— has requested that the deposition C.
6 D. of ——— may be taken to be used in an action of ———
7 pending between you and the said A. B. and house of ——— in
8 ——— and the ——— day of ——— at ——— of the clock in
9 ——— noon are the time and place appointed for said deponent to
10 testify what he knows relating to said action, you are hereby
11 notified that you may be present and put such questions as you
12 may think fit. Dated this ——— day of ——— 18 —.

13 Justice of Peace.

SECT. 12. The justice of the peace or notary public, shall,
2 when requested also issue a summons to the deponent, in sub-
3 stance as follows, viz:— 1821, 85, § 4.

4 ——— ss. To C. D. ——— in the county of ———

5 Greeting.

6 Whereas A. B. of ——— in the county of ——— has requested
7 me to take your deposition, to be used in an action now pending
8 between him and E. F. of ——— in the county of ——— and
9 the house of ——— in the town of ——— and the day of ———
10 at ——— of the clock in the ——— noon, are the time and
11 place appointed for taking the same deposition, you are there-
12 fore required in the name of the State of Maine, then and there
13 to appear to testify what you know relating to said action.
14 Dated this ——— of ——— in the year ———.

15 Justice of the Peace.

16 which summons may be served, and the service thereof proved
17 as described in the case of said notification.

SECT. 13. Any witness may be compelled to give his deposi-
2 tion at any place within ten miles of his place of abode, in like
3 manner and under the same penalties as he may be summoned
4 and compelled to attend as a witness in court. 1821, 85, § 4.

SECT. 14. When any deposition shall be taken out of the
2 State, and not under a commission, the adverse party or his
3 attorney shall be duly notified to attend. 1821, 85, § 6.

SECT. 15. The deponent shall be first sworn to testify the
2 truth, the whole truth and nothing but the truth relating to the
3 cause or matter for which the deposition is to be taken; and he
4 shall then be examined, first by the party producing him on
5 verbal or written interrogatories, and then by the adverse party,
6 and by the justice, or the parties afterwards if they see cause.

1821, 85, § 3.

SECT. 16. The deposition shall be written by the justice or notary, or by the deponent or by some disinterested person, in the presence and under the direction of such justice or notary; and after the same has been carefully read to or by the deponent, and shall then be subscribed by him. 1821, 85, § 3.

SECT. 17. The justice or notary shall then make out a certificate and annex the same to the deposition therein stating the following facts—

First—That the deponent was sworn according to law—and when.

Second—By whom the deposition was written.

Third—If it was written by the deponent or some interested person, he must name him, and that he wrote it in the presence and under the direction of the justice or notary.

Fourth—Whether the adverse party was notified to attend.

Fifth—Whether he attended or not.

Sixth—The cause in which the deposition is to be used, and the names of the parties thereto.

Seventh—The court or tribunal in which it is to be tried.

Eighth—The place and time of trial—and

Ninth—The cause of taking the deposition.

SECT. 18. The deposition shall be delivered by the justice to the court or referees before whom the cause is to be tried, or be enclosed and sealed up by him and directed to such court or referees, and be kept sealed, till opened by their order. 1821, 85, § 3.

SECT. 19. When a deposition has been so taken—it shall not be used on trial of the cause, if the adverse party shall then make it appear that the cause for taking such deposition no longer exists, but that the deponent is within thirty miles of the place of trial and able to attend the trial in person. 1821, 85, § 5.

SECT. 20. Objections to the competency of a deponent, or the propriety of any questions proposed to him or answers given by him, may be made when the deposition is produced, in the same manner as if the witness were personally examined on the trial; but when any deposition is taken on written interrogatories, all objections to any interrogatory shall be made before it is answered; and if the interrogatory be not withdrawn, the objection shall be noted thereon; or otherwise the objection shall not afterwards be allowed. M. R. S. 94, § 26.

SECT. 21. When a plaintiff shall become non-suit or discontinue a suit, and shall commence another action for the same cause, and between the same parties or their representatives, all depositions lawfully taken for the first suit, of the taking of which the adverse party had due notice, may be used in the second suit, provided they have been duly filed in the court where the first cause was pending, and have remained on file from the time the first suit was discontinued, until the commencement of the second. M. R. S. 94, § 27.

SECT. 22. Depositions taken out of the State by a justice of the peace or notary public, or other person lawfully empowered to take depositions, may be admitted or rejected by the court at their discretion. 1821, 85, § 6.

SECT. 23. The justices of the supreme judicial court and of the district court may issue commissions to take depositions without the State, to be used in depending suits in the State, on such terms and conditions as they may from time to time prescribe. 1821, 85, § 7.

SECT. 24. When a deposition is to be used in case of the contested election of a person returned as a member of the house of representatives, a copy of the remonstrance against the legality of the election shall be served on such member at least thirty days previous to the session of the Legislature, and such representative elect may summon any witness before a justice to give his deposition and he shall be subject to like penalties and liabilities, in case of disobedience as are mentioned in the thirteenth section of this chapter. 1825, § 10.

SECT. 25. When any person wishes to perpetuate the testimony of any witness, he shall make a statement in writing, briefly setting forth, in substance his title, interest or claim in or to the subject, to which the desired testimony relates, and the names of all persons who are supposed interested therein, and also the name of each witness proposed to be examined, and shall deliver the statement to any judge or register of probate, notary public, or clerk of the supreme judicial court or justice of the peace and quorum, requesting the person selected to take the deposition of such witness.

M. R. S. 94, § 34. 1821, 101, § 1.

SECT. 26. And the person so selected for the purpose shall cause notice to be given of the time and place of taking such deposition, to all the persons named in the statement as interested; which may be given and proved in like manner as in case of taking depositions in pending actions.

1821, 85, § 8.

SECT. 27. The deponent shall be sworn and examined, and the deposition be written, read and subscribed in the same manner, as depositions taken to be used in pending actions; and the person taking such deposition shall annex to it a certificate under his hand, at the time of taking it; and that it was taken in perpetual remembrance of the thing; and shall insert therein the name of the person at whose request it was taken, and of all those who were notified to attend and did attend.

1821, 85, § 8.

SECT. 28. And the said statement, deposition and certificate, shall within ninety days after taking the same be recorded in the registry of deeds in the county where the land or any part of it lies, if the deposition relates to real estate; and if not, then in the county where the parties or some of them reside.

1821, 85, § 8.

SECT. 29. All depositions taken to perpetuate the testimony of witnesses being recorded as mentioned in the preceding section, or a copy thereof attested by the register of deeds, may be used in the trial of any cause, whether pending at the time the deposition was taken, or commenced afterwards, between the person at whose request it was taken and either of the persons named in the statement and duly notified or those claiming under either, concerning the title, claim or interest set forth in the statement subject to the same objections as if it had been originally taken for the suit. *Section 29, Act of 1823, 211.*

SECT. 30. Depositions to perpetuate the testimony of witnesses living with out the State, may be taken in any other State or in any foreign country upon a commission to be issued by the supreme judicial court or district court, in the manner hereinafter provided. *M. R. S. 94, § 40.*

SECT. 31. The person desirous to procure such deposition, may apply to either of said courts, and file a statement of the kind described in the twenty-fifth section of this chapter; and if the subject of the deposition relates to real estate in this State, such statement shall be filed in the county or counties where the same lies; and if not, then in the county where some of the parties reside. *M. R. S. 94, § 41.*

SECT. 32. The court shall order notice to be served on each of the persons named in said statement and living in the State, fourteen days before the time appointed for hearing the parties. *M. R. S. 94, § 42.*

SECT. 33. The court on hearing the parties, or the applicant, if no adverse party appears, may issue a commission, if they see cause, for taking such deposition, in like manner as in a cause pending. *M. R. S. 94, § 43.*

SECT. 34. The deposition shall be taken upon interrogatories filed by the applicant and cross interrogatories, by any party adversely interested, substantially in the same manner as when taken to be used in pending causes. *M. R. S. 94, § 44.*

SECT. 35. Or the person wishing to take the deposition, may file his statement in the clerk's office in vacation, and cause notice to be given to the persons named therein, as interested, fourteen days at least before the next term of the court, at which time the parties may be heard. *M. R. S. 94, § 45.*

SECT. 36. Whenever any judge or register of probate, notary public or clerk of the supreme judicial court, or any justice of the peace and of the quorum, shall have summoned any person to appear before him, to give his deposition to be used in any cause pending in any court, in this or in any other State, or to give his deposition to perpetuate the testimony of any witness, and such summons shall have been served and returned by a sheriff—deputy sheriff or constable, or in the manner prescribed in the sixth and twelfth sections of this chapter, and proof of such service is entered on such summons and legal fees shall have been tendered to such witness a reasonable time before the

12 day appointed for taking his deposition, and such witness shall
13 refuse to attend, such judge, register, notary, clerk or justice,
14 may adjourn the time of taking such deposition to a future hour
15 or day, as may be convenient, and issue a *capias* directed to a
16 proper officer to apprehend such witness and bring him before
17 such judge, register, notary, clerk or justice, at the time and
18 place to which such adjournment was ordered. 1833, 86, § 1.

SECT. 37. And if such witness, being so brought before such
2 judge, register, notary public, clerk or justice, shall refuse to
3 depose and answer such questions as may be propounded to him
4 by either of the parties or persons interested, under the direction
5 of the person taking the deposition, he may commit such witness
6 to the prison of the county, for a contempt in like manner, as
7 the supreme judicial court or district court might commit any
8 witness, refusing to testify in open court. 1833, 86, § 2.

SECT. 38. Any person conscientiously scrupulous of taking
2 an oath, when lawfully required, may make his affirmation under
3 the pains and penalties of perjury, and the same shall be deemed
4 to have the same force and effect, as his oath would have, on the
5 same occasion. 1821, 85, § 9.

SECT. 39. Any person wilfully, falsely, and corruptly swearing
2 or affirming, in giving or making any deposition or affidavit
3 required in this chapter, shall incur the same penalties, as if the
4 testimony had been given in open court, and wilful perjury com-
5 mitted in giving the same. 1821, 85, § 10.

SECT. 40. And when a clerk of a judicial court, in any other
2 State shall certify officially in writing that there is pending in
3 such court, a criminal cause; and that a person in this State is
4 supposed to be a material witness, in the cause for the State, or
5 the accused, any justice of the peace when applied to shall, on
6 the back of such certificate, issue a summons requiring such
7 witness to appear and testify at such court and if any such per-
8 son, so summoned, and having tendered to him, a sum equal to
9 twelve and one half cents per mile, from the abode of the wit-
10 ness to the court, and one dollar and fifty cents at the end of
11 every day for such witness attendance, and having no reasonable
12 excuse, shall neglect so to appear and testify as aforesaid, shall
13 forfeit and pay three hundred dollars to him who shall sue for
14 the same in this State in action of debt, but no such witness
15 shall be bound to go more than five hundred miles for such
16 purpose. 1839, March 8.

SECT. 41. Whenever a creditor has or shall have attached on
2 mesne process, the right in equity which the defendant has or
3 shall have of redeeming any real estate mortgaged, and shall
4 have recovered judgment and execution against such debtor,
5 and is desirous of having such right sold on execution according
6 to law, he may demand of the mortgagee, or person claiming
7 under him, a disclosure in writing, under his hand, of the sum
8 then due and secured by such mortgage, together with the con-
9 dition of such mortgage. 1834, 126, § 1.

SECT. 42. And it shall be the duty of such mortgagee or person claiming under him, within twenty-four hours of such demand, to furnish such statement to the creditor, and be liable for all damages, occasioned by a neglect so to furnish the same.

1834, 126, § 2.

SECT. 43. And the creditor may, after the expiration of said twenty-four hours, if such disclosure is not furnished as aforesaid, apply to such judge, register, notary, clerk, or justice of the county, in which, such mortgagee or person claiming under him resides—and such magistrate shall thereupon proceed to take the deposition of such person, in relation to the facts required to be given to him by the statement aforesaid—for perpetuating the testimony of such person, and the knowledge of the facts testified; and such judge &c. may make use of all such power to compel a disclosure of the facts demanded in such statement, as are mentioned in the thirty-seventh section of this chapter.

1834, 126, § 3.

SECT. 44. No person shall be deemed an incompetent witness, by reason of having committed any crime, unless he has been convicted thereof in this State, but the conviction of any person in any court without the State of a crime, which if it had been convicted in this State, would render him an incompetent witness, may be given in evidence to affect his credibility.

M. R. S. 94, § 56.

SECT. 45. The records and proceedings of any court of another State, or of the United States, shall be admissible in evidence in all cases in this State, when authenticated by the attestation of the clerk, prothonotary or other officer having charge of the record of such court, with the seal of such court annexed.

M. R. S. 94, § 57.

SECT. 46. The printed copies of all statutes, acts and resolves, of this State, whether of a public or private nature, which shall be published under the authority of the government, shall be admitted as sufficient evidence thereof in all courts and on all occasions whatever.

M. R. S. 94, § 58.

SECT. 47. The printed copies of statutes of any other of the United States, or of the territories thereof, if purporting to be published under the authority of the respective governments, or if commonly admitted and read as evidence in their courts, shall be admitted in all our courts of law, and on all occasions as prima facie evidence of such laws.

M. R. S. 94, § 59.

SECT. 48. The unwritten law of any other of the United States or of the territories thereof, may be proved as facts by parole evidence, and the books of reports of cases adjudged in their courts, may also be admitted in evidence of such law.

M. R. S. 94, § 60.

SECT. 49. The existence and tenor or effect of all foreign laws, may be proved as facts by parole evidence, but if it shall appear that the law in question is contained in a written statute

4 or code, the court may, in their discretion reject any evidence
5 of such law that is not accompanied by a copy thereof.

M. R. S. 94, § 61.

SECT. 50. No person shall be obliged to attend as a witness
2 unless the fees are paid or tendered to him which are allowed
3 by law for one day's attendance, and travel to and from the place
4 of attendance. 1821.

SECT. 51. Any person obliged to attend, who shall fail so to
2 attend, without reasonable cause, shall be liable to payment of
3 all damages thereby occasioned to the aggrieved party; and
4 such failure shall be considered a contempt of court; and may
5 be punished as such, by a fine not exceeding twenty dollars.

1821.

SECT. 52. The usual mode of administering oaths now in
2 practice, with the ceremony of holding up the hand, shall be
3 observed; unless the court or magistrate, shall be satisfied that
4 such person has any peculiar mode of swearing which he may
5 deem more solemn.

M. R. S. 94, § 7.

SECT. 53. Every person believing in any other than the
2 christian religion, may be sworn according to the peculiar cere-
3 monies of his religion.

M. R. S. 94, § 10.

SECT. 54. No person convicted by any court of law in this
2 State of the crime of treason, murder, arson, perjury, suborna-
3 tion of perjury, burglary, robbery, larceny, forgery of any kind,
4 or of uttering and passing any forged instrument in writing as
5 true, knowing the same to be forged, or of passing counterfeit
6 coin or bills of any bank, knowing the same to be counterfeit,
7 or of being possessed of any such coin or bank bills within this
8 State, knowing the same to be counterfeit, with intent to utter
9 and pass them as true, or of any assault with intent to commit
10 the crime of murder, and sentenced according to law upon any
11 such conviction shall be admitted as a competent witness in
12 the trial of any civil or criminal cause, unless his competency
13 shall have been restored by a pardon.

NOTES.

SECT. 20. This section prescribes a *uniform* rule on a subject about which different rules have prevailed in different courts at different times. The reason of the distinction which is made in this section between depositions taken in common form, and those taken under commission, seems to be this: that in the former case, no council may be present at the caption, and the party may not know or suppose that questions proposed to the deponent are liable to any objection, and therefore he made none; but in the *latter* case, counsel are almost invariably employed to prepare the interrogatories, and the opposing counsel shall then state his objection, when he proposes his own interrogatories; he thus gives notice of his objection, and reserves to himself the benefit of it.

SECT. 21. This section is entirely new ; but its value seems unquestionable at first view. In case it should become a law, it would save expense and labor, preserve the rights of all parties, and in many cases might save great delay.

SECT. 25. This section provides a more formal mode of proceeding when the object is to perpetuate the testimony of witnesses ; presenting to the magistrate the facts as to the witnesses, the cause, and the parties, and the names of all persons supposed to be interested. The section also gives power to other persons than notaries of the public and *two* justices of the peace and of the quorum.

SECT. 27. This section requires the magistrate taking the deposition to name in his certificate all the persons by him notified.

SECT. 30. At present there is no statute directing any mode for taking by commission, the depositions of witnesses living or being without the State, in order to perpetuate their testimony. This section, and the five following, point out in plain language the mode of proceeding.

SECT. 44. This and the remaining sections are taken from the Mass. code. This is only an enactment of a principle of law, settled in that Commonwealth, on grounds which are equally applicable in this State, as the commissioners believe ; and for this reason they have adopted it.

SECT. 45. This dispenses with the necessity of the certificate of the presiding judge under the seal of the court, that full faith and credit may be given to the attestation of the clerk or prothonotary of such court, as required by the act of Congress relative to the mode of certifying records of other States.

SECT. 46. This section only declares the law as now understood and practised.

SECT. 47. The provision of this section seems to recommend itself.

SECT. 48. This section is merely declarative of the common law as in force in this State.

SECT. 49. This section gives to the court a discretion, when they deem it proper, to relax the principle of the common law as to the proof of statute law.

SECT. 53. Merely affirmative of common law.

SECT. 54. This is a new section. It is deemed expedient expressly to declare by statute, what offences shall be considered sufficient to render a witness incompetent, if he has been convicted of either, and sentence has been passed on such conviction.

CHAPTER 134.

OF COMMISSIONERS TO TAKE ACKNOWLEDGMENT OF DEEDS OR OTHER CONTRACTS, AND DEPOSITIONS IN OTHER STATES, &c.

- Sect.* 1. Governor may appoint commissioners—and their powers and duties.
2. Legal effect of their official acts and certificates.
3. May take and certify depositions.
4. To be sworn before performing any acts—seal described.
-

SECT. 1. The governor shall have power to appoint one or
2 more commissioners in any other of the United States or the
3 territories thereof or the district of Columbia, who shall continue
4 in office during the pleasure of the governor, and shall have
5 authority to take the acknowledgment and proof of the execu-
6 tion of any deed or other conveyance or lease of any lands lying
7 in this State ; and of any contract, letter of attorney or any

8 other writing, under seal or not, to be used or recorded in this
9 State. 1837, 290, § 1.

SECT. 2. Such acknowledgment or proof, so taken according
2 to the laws of this State and certified by any such commissioner,
3 under his seal of office, annexed to, or endorsed on such instru-
4 ment, shall have the same force and effect, as if the same had
5 been made before a judge or justice of the peace or other officer
6 authorized to perform such acts in this State.

1837, 290, § 1.

SECT. 3. Every commissioner appointed as before mentioned,
2 shall have power to administer an oath, which may be lawfully
3 required in this State, to any person willing to take it; and to
4 take and duly certify all depositions to be used in any of the
5 courts of this State, in conformity to the laws thereof, either on
6 interrogatories proposed under commission from a court of this
7 State, or by consent of parties, or on legal notice given to the
8 opposite party; and all such acts shall be as valid, as if done
9 and certified according to law by a magistrate in this State.

SECT. 4. Every such commissioner, before performing any
2 duty or exercising any power in virtue of his appointment,
3 shall take and subscribe an oath or affirmation before a judge or
4 clerk of one of the superior courts of the State in which such
5 commissioner shall reside, well and faithfully to execute and
6 perform all the duties of such commissioner under and by virtue
7 of the laws of Maine, which oath and a description of his seal
8 of office, shall be filed in the office of the secretary of this
9 State. 1837, 290, § 3.

CHAPTER 135.

OF THE SELECTION AND SERVICE OF JURORS.

- Sect.*
1. Persons composing the board to prepare list of jurors.
 2. They shall prepare list once in three years.
 3. Persons exempted.
 4. After the list is approved by town, their names to be written on tickets.
 5. To be kept in a box, number required.
 6. Persons convicted, &c. their names to be withdrawn.
 7. County to be divided into districts by commissioners and how.
 8. Same subject.
 9. Copy of such division, to be sent to clerk of court.
 10. Clerk to issue venires—and by what rule.
 11. Only two grand and two traverse jurors from one town unless, &c.
 12. Grand jurors to attend the district court through the year.
 13. Venires for such jurors to be issued forty days before court.
 14. Sheriffs to distribute them to constables, &c.—how meetings notified.
 15. Mode of drawing jurors at such meetings.
 16. Same subject.
 17. Date of draft to be entered on the tickets.
 18. Constable to notify jurors.

Sect. 19. His return.

20. When tickets are renewed, minutes to be transferred from the old.
21. Penalty for selectmen's and clerk's neglect.
22. Same for constable's neglect.
23. Same for town's neglect.
24. Same for neglect of clerk of court or sheriff.
25. Same for juror's neglect to attend.
26. Same if he belongs to Portland.
27. Same for fraud by selectmen or town clerk.
28. Appropriation of fines.
29. Same subject.
30. Jurors need not attend law term at Belfast.
31. None to attend such terms in other counties, except, &c.

SECT. 1. The selectmen of each town, shall continue to keep
 2 one jury box ; and such selectmen together with the treasurer
 3 and clerk of each town, shall constitute a board for preparing
 4 lists of jurors to be laid before such town for their approval ;
 5 and the said town shall have power, by a majority of the legal
 6 voters in legal town meeting assembled, to make alterations in
 7 such lists, by striking out such names therefrom, as they may
 8 think proper to erase, but shall not be allowed to insert any
 9 other names therein. 1821, 84, § 1. 1834, 136, § 1.

SECT. 2. Such board shall once at least, in every three years
 2 prepare a list of such persons, under the age of seventy years
 3 in such town, as they shall judge best qualified to serve as jurors,
 4 being persons of good moral character and qualified to serve as
 5 jurors, and qualified as the constitution directs, to vote in the
 6 choice of representatives. 1821, 84, § 1.

SECT. 3. The following persons shall be exempted from serv-
 2 ing as jurors, and their names shall not be placed on the said
 3 lists, namely—the governor, councillors, judges and clerks of
 4 the common law courts, secretary and treasurer of the State,
 5 loan officers and revenue officers, judges and registers of pro-
 6 bate, registers of deeds, settled ministers of the gospel, officers
 7 of any colleges, preceptors of incorporated academies, physi-
 8 cians and surgeons, regularly authorized, cashiers of incorpo-
 9 rated banks, sheriffs and their deputies, councillors and attorneys
 10 at law, county commissioners, constables and constant ferrymen.
 1821, 84, § 1.

SECT. 4. The said board after the list of jurors, shall have
 2 been approved by the town, as mentioned in the first section,
 3 and having written their names upon tickets, they shall place
 4 them in the jury box, and the same shall be held and kept by
 5 the town clerk, and the persons whose names shall be contained
 6 in the box shall be liable to be drawn and serve on any jury, at
 7 any court for which they may be drawn once in every three
 8 years, except as provided in the sixteenth section, and not
 9 oftener. 1821, 84, § 1.

SECT. 5. It shall be the duty of each town, to provide and
 2 have constantly kept in the box, ready to be drawn, when
 3 required, a number of jurors, not less than one, and not more

4 than two, for every hundred persons, in such town, according to
5 the last census taken, next before preparing the box.

1821, 84, § 2. 1823, 214, § 2.

SECT. 6. If any person whose name shall be in the box, shall
2 be convicted of any scandalous crime, or be guilty of any gross
3 immorality, his name shall be withdrawn from the box by the
4 board. 1821, 84, § 3.

SECT. 7. The county commissioners in each county, within
2 one year after every new census, and as much oftener as a con-
3 siderable change of population shall render it useful and
4 expedient, shall divide such county into at least four districts,
5 and into more, not exceeding twelve, if it should be found con-
6 venient in practice. 1821, 83, § 4.

SECT. 8. Each district shall contain so many adjoining towns,
2 as shall make the number of inhabitants in each division as
3 nearly equal, according to the last census for the time being, as
4 may be without dividing a town—and such districts shall be
5 numbered numerically. 1821, 83, § 4.

SECT. 9. The commissioners shall cause a copy of such divi-
2 sion to be delivered to the clerk of the courts in such county as
3 soon as may be after the division is made. 1821, 83, § 4.

SECT. 10. The clerk of the courts in such county, shall issue
2 venire, in due form, directed to the constables of as many
3 towns in one jury district, and for as many jurors as shall be, as
4 near as may be, in proportion to the number of jurors sent for
5 in the other districts in the county, to serve at the same court,
6 always collecting the grand and traverse jurors, so far as shall
7 be practical and convenient, as uniformly from all parts of the
8 county, as the situation of towns, number of their inhabitants
9 and a practical rotation and equalization of the service of
10 jurors will permit.

SECT. 11. No more than two grand jurors and two traverse
2 jurors shall be taken from the same town, to serve at the same
3 court, unless from necessity, some extraordinary occasion, or
4 to equalize their services upon the principles before mentioned.

SECT. 12. The grand jurors who shall be returned to serve at
2 the district court shall serve at every term of said court, through-
3 out the year. 1821, 84, § 5.

SECT. 13. Venires for such jurors shall be issued forty days
2 at least, before the second Monday of September annually.

1821, 84, § 5.

SECT. 14. The sheriff of each county, as soon as he receives
2 venires for jurors, shall immediately send them to the constables
3 of the respective towns to which they are directed; and on
4 receipt of such venires, each constable shall notify the freehold-
5 ers, and other inhabitants of the town, qualified to vote in the
6 election of representatives, in the manner annual town meetings
7 are notified, and especially the selectmen and town clerk, (unless
8 a different mode has been agreed upon at a legal town meeting,
9 which any town is hereby authorized to do, in respect to town

10 meetings for the drawing of jurors only) to assemble and be
11 present at the draft and selection of the jurors called for; which
12 meeting shall be six days before the sitting of the court, to
13 which the venire is made returnable.

1821, 84, § 5.

SECT. 15. At such meeting the town clerk, or in his absence,
2 one of the selectmen, shall carry into the meeting, the jury box,
3 containing the names of the persons approved as aforesaid, the
4 box shall be unlocked in the meeting, and the tickets mixed by
5 the major part of the selectmen present; and one of the select-
6 men shall draw out as many tickets as there shall be jurors
7 required, and the persons whose names are thus drawn, shall be
8 returned as jurors, unless from sickness, absence beyond sea,
9 without the limits or in different parts of the State, they shall be
10 considered by the town as unable to attend the court for which
11 they are drafted; or had served on a jury within three years from
12 that day.

1821, 84, § 6.

SECT. 16. In either of the above cases, or in case of coroners
2 being drawn at a time when the duties of a sheriff shall be
3 devolved on him, by reason of vacancy in that office, others shall
4 be drawn in their stead, but any person being thus excused or
5 who shall be returned, and shall not attend court, or shall when
6 appearing there, be excused, shall not be excused on another
7 draft, should it happen within the term of three years, notwith-
8 standing the minute made on his ticket; and whenever it shall
9 happen that all those persons whose names are in the box of any
10 town, shall have served on the jury within three years, the select-
11 men shall draw out of the box such number of men as may be
12 required, provided they have not served as jurors within eighteen
13 months, and in such case the clerk shall certify on the venire
14 that all persons whose names are contained in the jury box, have
15 served upon the jury within three years.

1823, 214.

SECT. 17. When a juror has been drawn and not excused by
2 the town, the selectmen who drew his ticket, shall endorse
3 thereon the date of the draft, and return the same into the box.

1821, 84, § 7.

SECT. 18. The constable shall notify the persons thus drawn
2 to serve as jurors, four days at least before the sitting of the
3 court, at which they are to attend, by reading the venire and
4 endorsement thereon to them, or leaving at their usual place of
5 abode a written notification of their having been drawn and
6 also of the time and place of the sitting of the court where they
7 are to attend.

1821, 84, § 7.

SECT. 19. And he shall make a seasonable return of the venire
2 with his doings thereon.

SECT. 20. Whenever there is a renewal or exchange of any
2 of the tickets in the box, for others, of the same persons, the
3 selectmen shall transfer from the back of the old tickets, to the
4 new ones, the minutes of such drafts as had been made within
5 the three preceding years.

SECT. 21. If the selectmen or town clerk of any town, shall
2 neglect to perform the duties required of them or him in this
3 chapter, so that the jurors called for from the town to which
4 they belong, shall not be returned, such selectmen shall, and
5 such town clerk shall be fined not less than ten, nor more than
6 fifty dollars each. 1823, 214, § 2.

SECT. 22. And such constable shall be fined a sum not
2 exceeding twenty dollars, for neglecting the performance of the
3 duties required of him in this chapter.

SECT. 23. And any town which shall neglect to perform the
2 duties required of it, shall be fined a sum not exceeding one
3 hundred dollars. 1823, § 20.

SECT. 24. If the clerk of the court or sheriff of the county
2 shall neglect to perform the duties required of them respec-
3 tively, so as to prevent a compliance with any of the provisions
4 of this chapter, he shall be fined a sum not exceeding fifty
5 dollars. 1823, § 20.

SECT. 25. And any juror not being an inhabitant of Portland
2 who after being notified and returned, shall unnecessarily fail
3 in his attendance, shall be fined as for contempt, not exceeding
4 twenty dollars.

SECT. 26. And any juror who is an inhabitant of Portland
2 who shall so fail of attendance at court, he shall be fined not
3 exceeding forty dollars as for contempt, the fines in this and
4 the preceding section, to be divided among the jurors who shall
5 attend and serve.

SECT. 27. Any town clerk or selectman who shall be guilty
2 of any fraud in practising on the box previous to the draft, or in
3 the drawing a juror, or in returning the name of a juror into the
4 box which had been fairly drawn, and drawing another in his
5 stead, or in any other mode, shall be fined not exceeding eighty
6 dollars.

SECT. 28. All fines, imposed by the twenty-first, twenty-
2 second, twenty-third and twenty-fourth sections shall be for the
3 use of the county, in which the offender dwelt, at the time of
4 the neglect; and be recovered by indictment, information or
5 action by the treasurer of the county, to be commenced within
6 twelve months after commission of the offence.

SECT. 29. All fines imposed by the twenty-seventh section,
2 shall be to the use of the State, to be recovered on indictment,
3 one moiety to the use of the State, and the other to the prosecu-
4 tor thereof.

SECT. 30. At the supreme judicial court held at Belfast in the
2 county of Waldo, on the eighth Tuesday next after the fourth
3 Tuesday of May annually, no grand or traverse jurors shall be
4 summoned to attend. 1834, 115, § 1.

SECT. 31. In each county in which two terms of the supreme
2 judicial court are annually holden, no traverse jurors shall be
3 summoned to attend at the full or law term, unless the court
4 shall otherwise order. 1836, 196, § 2.

CHAPTER 136.

OF THE PREVENTION OF FRAUDS AND PERJURIES IN CONTRACTS AND IN ACTIONS *FOUNDED THEREON*.

- Sect.* 1. Cases in which a *written* promise is necessary.
 2. *Consideration* need not be in writing.
 3. Representation as to person's ability—character, &c.—must be in writing.
 4. Contract for sale of goods to amount of thirty dollars or more must be in writing, unless, &c.
 5. A person bound by contract to convey lands, &c., may be compelled by bill in equity to convey.
 6. Same subject.
 7. Same subject and kind of decree.
 8. Conveyance made under such decree to be good.
 9. How decree may be carried into execution.
 10. Same subject.
 11. Provision in case of death of the person entitled to the conveyance.
 12. If the person entitled to a conveyance, shall not commence such suit, the heirs, &c. of the person bound to convey, may apply for power to convey.

SECT. 1. No action, shall be brought and maintained in any
 2 of the following cases—
 3 *First*—to charge an executor or administrator upon any
 4 special promise to answer damages out of his own estate; or
 5 *Secondly*—to charge any person upon any special promise to
 6 answer for the debt, default, or misdoings of another; or
 7 *Thirdly*—to charge any person upon an agreement made in
 8 consideration of marriage; or
 9 *Fourthly*—upon any contract for the sale of lands, tenements
 10 or hereditaments, or of any interest in or concerning them; or
 11 *Fifthly*—upon any agreement that is not to be performed
 12 within one year from the making thereof—unless the promise,
 13 contract or agreement, upon which such action shall be brought,
 14 or some memorandum or note thereof, shall be in writing, and
 15 be signed by the party to be charged therewith, or by some per-
 16 son thereunto lawfully authorized. 1821, 53, § 1.

SECT. 2. The consideration of any such promise, contract or
 2 agreement need not be set forth or expressed in the writing
 3 signed by the party to be charged therewith, but may be proved
 4 by any other legal evidence.

M. R. S. 174, § 2. 17 Mass. 122.

SECT. 3. No action shall be brought and maintained, to
 2 charge any person upon, or by reason of any representation or
 3 assurance, made concerning the character, conduct, credit, abil-
 4 ity, trade or dealings of any other person, unless such represen-
 5 tation or assurance shall be made in writing and signed by the
 6 party to be charged thereby, or by some person thereunto by
 7 him lawfully authorized. M. R. S. 174, § 3.

SECT. 4. No contract for the sale of any goods, wares or
 2 merchandize, for the price of thirty dollars or more, shall be

3 allowed to be good, unless the purchaser shall accept part of
4 the goods so sold, and actually receive the same, or give some-
5 thing in earnest to bind the bargain, or in part payment or, that
6 some note or memorandum in writing of the said bargain be
7 made and signed by the party to be charged by such contract,
8 or by his agent thereunto, by him lawfully authorized.

1821, 53, § 3.

SECT. 5. When any person who is bound by a contract in
2 writing to convey any real estate, shall die before making the
3 conveyance, the other party may have a bill in equity in the
4 supreme judicial court, to enforce a specific performance of the
5 contract by the heirs, devisees, or by the executor or adminis-
6 trator of the deceased party, such bill to be filed within one
7 year after the grant of administration.

1821, 52, § 13. 1826, 347, § 2. M. R. S. 74, § 8.

SECT. 6. The court shall hear and decide every such case
2 according to the proceedings in chancery, and shall make such
3 decree therein, as justice and equity may require.

M. R. S. 74, § 9.

SECT. 7. If it shall appear that the plaintiff is entitled to have
2 a deed of conveyance, the court may authorize and require the
3 executor or administrator of the deceased party to convey the
4 estate in like manner as the deceased person might and ought to
5 have done, if living; and if his heirs or devisees or any of them,
6 are within the State, and competent to act, the court may direct
7 them or any of them, instead of the executor or administrator,
8 to convey the estate in the manner before mentioned, or to join
9 with the executor or administrator in such conveyance.

M. R. S. 74, § 10.

SECT. 8. Every conveyance made in pursuance of such decree,
2 shall be effectual to pass the estate contracted for, as fully as if
3 made by the contractor himself.

M. R. S. § 74, § 11.

SECT. 9. If the defendant in such suit shall neglect or refuse
2 to make a conveyance according to the decree, the court may
3 enter judgment, that the plaintiff shall recover judgment for
4 possession of the land contracted for, to hold according to the
5 terms of the intended conveyance, and may issue a writ of seizin
6 thereupon, in the form used in a real action; and the plaintiff
7 by force of said writ, having obtained possession of the premises,
8 shall hold the same in like manner, as if conveyed in pursuance
9 of the decree.

M. R. S. 73, § 12.

SECT. 10. The preceding section shall not prevent the court
2 from enforcing their decree, by any other proper process accord-
3 ing to chancery proceedings.

SECT. 11. If the person to whom the conveyance was to be
2 made, shall die before such suit is brought or before the con-
3 veyance is completed; any person who would be entitled to the
4 estate under him as heir, devisee or otherwise, in case the
5 conveyance had been made according to the contract may com-
6 mence such suit or prosecute it, if commenced; and the con-

7 veyance shall thereupon be so made as to vest the estate in the
8 same persons, who would have been so entitled it it.

M. R. S. 74. § 14.

SECT. 12. If the party to whom any such conveyance was to
2 be made, or those claiming under him, shall not commence a
3 suit, as before provided; and if the heirs of the deceased party
4 are under age or otherwise incompetent to convey the lands,
5 contracted for; the executor or administrator of the deceased
6 may file a bill in equity in the supreme judicial court, setting
7 forth the contract and the circumstances of the case, whereupon
8 the court may by their decree, authorize and require such
9 executor or administrator to convey the estate in the manner
10 the deceased should have done; and such a conveyance shall
11 be deemed a performance of the contract on the part of the
12 deceased, and sufficient to entitle his heirs, executors or adminis-
13 trators, to demand a performance thereof on his part.

M. R. S. 74, § 15.

NOTES.

SECT. 2, Is new, but is in strict accordance with solemn decisions in Mass. and also in this State.

SECT. 3, Is also new. It is intended as a safeguard and a preventive against misrepresentation and misconstruction in case of *verbal* communications respecting the particulars mentioned in the section. It serves also to prevent controversies respecting the facts stated or representations made, when the whole is verbal.

All the following sections are founded on the statute of 1821 cited in the margin; but they extend the power of the court. The act of 1821 merely authorizes the court on the application of an obligee or contractor, to grant *power* to the executor or administrator of a deceased obligee or contractor to make and execute a deed of conveyance of the land to the obligee or contractor on payment, &c. but gives no power to *compel* the execution of such deed, &c. The above sections give this power and provide with clearness how it may be exercised. This amendment of the law has been made in Mass. and our law being the same *here* as it *was there*, the commissioners have proposed it for enactment.

CHAPTER 137.

OF RECOGNIZANCES FOR DEBTS.

- Sect.* 1. Persons who may enter into recognizance.
2. Form of it.
3. To be acknowledged before the justice and delivered to the creditor.
4. Creditor to file recognizance with clerk of court, &c.
5. Clerk to issue execution, &c.
6. Proper officers bound to serve the execution.
7. Clerk may renew executions.

- Sect.* 8. If the original sum did not exceed twenty dollars execution to be so framed as not to run against *land* of debtor.
9. If creditor die, his executor or administrator may sue out execution—and form to be varied according to fact.
10. If debtor die, *scire facias* must issue to executor or administrator.
11. After three years, creditor may have *scire facias*, or bring debt.
12. If there are several creditors and one dies, the rights of all concerned shall be same as in case of judgment.
13. Persons injured by suing out, or service of an execution, may have relief by *audita querela*.
14. Justice's fees.

SECT. 1. Any person capable of binding himself by a common bond, may enter into a recognizance for the payment of a debt, as hereinafter mentioned and may thereby subject his person or his goods and estate to be taken in execution for such debt.

SECT. 2. Such recognizance may be taken before any justice of the peace, and shall be in substance as follows—

3 “I, A. B. of ——— in the county of ——— do owe unto C.
 4 “D. of ——— in the county of ——— the sum of ——— to
 5 “be paid to the said C. D. on the ——— day of ——— and if
 6 “I shall fail of the payment of said debt at the time aforesaid, I
 7 “will and grant that the said debt shall be levied of my goods
 8 “and chattels, lands and tenements, and in want thereof upon
 9 “my body.
 10 “In testimony whereof I have hereto set my hand and seal this
 11 “——— day of ——— in the year ———.” 1821, 77, § 1.

SECT. 3. After such recognizance shall have been signed, and sealed, and acknowledged before said justice, and his certificate thereof signed by him, the same shall then be delivered to such creditor or conusee. 1821, 77, § 1.

SECT. 4. Should the debt not be paid at the time appointed, and the conusee be desirous to have a writ of execution on the recognizance, he may deliver the same to the clerk of the district court of the county in which the same was taken; and such clerk shall record the same in a book kept for that purpose, and place the original on the files of the court.

SECT. 5. The clerk of the court may thereupon without any order of court at any time within three years after such debt became due, issue an execution on such recognizance in the name of the State, varying the established form of execution so far only as necessary, and adding to the principal sum due, interest thereon from the time it became due, and also any interest secured by the recognizance in the mean time.

SECT. 6. All proper officers shall be bound to execute the same, and shall be answerable for their neglect in like manner as in case of execution issued on a judgment.

1821, 77, § 1.

SECT. 7. The clerk may renew such execution from time to time, as executions on judgment; and all such executions may

3 be directed to the proper officers of any county and be there
4 executed. 1821, 77, § 1.

SECT. 8. But if the sum originally due on such recognizance,
2 did not exceed the sum of twenty dollars, then the clerk shall
3 not issue the execution against the *lands* of the conusor.

SECT. 9. If the conusee die before the debt shall be fully paid,
2 his executor or administrator may sue out execution in the same
3 manner as the conusee might, had he been living, without suing
4 out a *scire facias*, and the execution shall be varied accord-
5 ingly. 1821, 77, § 1.

SECT. 10. If the conusor die before the debt shall be fully
2 paid, no execution shall issue of course; but the conusee may
3 have a writ of *scire facias*, or an action of debt to recover the
4 same as in case of a judgment. 1821, 77, § 1.

SECT. 11. After the expiration of said three years from the
2 time set for payment in the recognizance, the conusee may have
3 a *scire facias* or action of debt against the party liable, as in
4 case of a judgment. 1821, 77, § 2.

SECT. 12. When there are several conusors, and one or more
2 of them shall die before the debt is paid, the rights of the sur-
3 viving conusees, and the obligations of the surviving conusors,
4 shall be the same as in case of a judgment.

SECT. 13. Any person injured by the suing out or service of
2 any such execution, shall have his remedy by writ of *audita*
3 *querela*, or otherwise as in case the execution had been sued out
4 upon a judgment.

SECT. 14. The justice shall be entitled to fifty cents for
2 taking and recording a recognizance, and the clerk the like sum
3 for recording it.

NOTES.

SECTS. 4 and 5. These two sections are new. As by the existing law an execution issuing on such a recognizance, when the sum due thereon exceeded twenty dollars, it may be extended on real estate. It has been found by experience that when such evidences of title are or may be scattered over a county in justice's offices, where the records may be exposed to injury or loss, the commissioners therefore have proposed that the clerk of the district court should receive the recognizance and issue execution thereon returnable to that court, and file the recognizance among his court papers.

CHAPTER 138.

OF REFERENCE OF DISPUTES, BY CONSENT, BEFORE A JUSTICE OF THE PEACE.

- Sect.* 1. What controversies may be submitted.
 2. Manner and form of submission, &c.
 3. Submission of all demands.
 4. How a special demand submitted.
 5. No revocation but by consent of parties.
 6. Parties may vary the form of the submission as to the time of reporting.
 7. Disposition of report—and what.
 8. Power of referees.
 9. Court may accept, reject or recommit report.
 10. All referees must hear the parties, but a major part of them may decide the cause; and the presence of the dissenting referee must appear in the report or by the endorsed certificate of the dissenter.
 11. Referees may decide question of cost except their own fees.
 12. Report may be made to any court by written consent.
 13. Either party may bring writ of error.

SECT. 1. All controversies which may be the subject of a personal action may be submitted, to one or more referees in the manner provided in this chapter. 1821, 78, § 1.

SECT. 2. The parties may appear personally or by attorney before any justice of the peace, and there sign and acknowledge an agreement in substance as follows—
 “Know all men by these presents that — of — in the county of — and — of — in the county of — have agreed to submit the demand made by the said — against the said — which is hereunto annexed” (and all other demands between the parties as the case may be) to the determination of — the report of whom or the major part of whom being made within one year from this day to the district court for the said county of — the judgment thereon shall be final. And if either of the parties shall neglect to appear before the referees after proper notice given to them of the time and place appointed by the referees for hearing the parties the referees may proceed in his absence.
 Dated this — day of — in the year —

1821, 78, § 1.
 The foregoing agreement having been subscribed by the parties shall be acknowledged by them or their attorneys as their voluntary act before the said justice or any other justice.

1824, 262, § 1.
 SECT. 3. If all demands between the parties are submitted to the decision of the referees, no specific demand need be annexed to the agreement.

SECT. 4. If a specific demand only is submitted the same shall be annexed to the agreement and signed by the party making it; and such demands shall be stated in such a manner

4 as to be readily understood, and be as certain, in substance, as
5 the case will admit. 1821, 78, § 1.

SECT. 5. Neither party shall have power to revoke the sub-
2 mission without the consent of the other. M. R. S. 114.

SECT. 6. When the parties are so disposed they may agree
2 upon the time when the report shall be made, and, in this par-
3 ticular, vary from the form stated in the second section, without
4 being confined to one year. M. R. S. 114.

SECT. 7. The report of the referees shall be delivered by one
2 of the referees to the court to which it is to be returned, accord-
3 ing to the agreement, or it shall be sealed up and transmitted
4 to such court, and remained sealed till opened by the clerk.

SECT. 8. The referees agreed upon according to the provis-
2 ions of this chapter shall have the same authority as those
3 appointed by a rule of said court. 1821, 78, § 4.

SECT. 9. The court to which the report shall be made, may
2 accept, reject or recommit the same for further consideration ;
3 and they shall give notice to the parties of the time and place
4 of a new hearing ; and when the report is accepted, judgment
5 shall be entered thereon, and execution be issued as in cases
6 of submission by rule of court. M. R. S. 114.

SECT. 10. All the referees must meet and hear the parties,
2 but a majority may make the report which shall be as valid as
3 though signed by all of them, provided that it appear on the
4 face of the return, or by the dissenting referee, that all of them
5 attended and heard the parties. M. R. S. 114.

SECT. 11. The referees may allow such costs as they may
2 judge reasonable, or none to either party ; unless some special
3 provision be made in the submission upon the subject—but the
4 court may reduce the compensation of the referees if it should
5 appear reasonable so to do. M. R. S. 114.

SECT. 12. The report may be made to any court held within
2 the time limited in the submission provided that the parties or
3 their attorneys shall sign an agreement to that effect, naming
4 the court, which agreement shall be annexed by the referees to
5 their report. 1821, 78, § 3.

SECT. 13. Either party may bring a writ of error to reverse
2 the said judgment ; and on a hearing of the cause the court
3 shall give such judgment as the district court ought to have
4 rendered. M. R. S. 114.

SECT. 14. Any one of the referees, being a justice of the
2 peace, may take the acknowledgment of the parties to the sub-
3 mission—and any referee or auditor, may swear witnesses, ap-
4 pearing before them in the cause. M. R. S. 114.

NOTES.

- SECT. 5. A new one, declarative of a settled principle.
 SECT. 6. A new section granting a convenient power to parties not now possessed.
 SECT. 7. This section changes the existing law, and does not allow the report to be opened, except in court.
 SECT. 9. This merely declares a right which the courts have been always in the habit of exercising.
 SECT. 10. This declares the law as now settled.
 SECT. 11. This changes the existing law as to the power of the court over the costs, in one point.
 SECT. 13. Merely enacts as law what has for thirty years been the practice.
 SECT. 14. This gives a new power, and a very convenient one. Many submissions have been held irregular where one of the referees took the acknowledgment of the parties.

CHAPTER 139.

OF TIMBER AND CORD WOOD AND HOW IT MAY BE DISPOSED
 OF IN CERTAIN SPECIFIED CASES.

- Sect. 1. Owners of certain interests in woodland may apply for leave to fell and sell the wood.
 2. Supreme J. court, may grant leave, after notice and hearing.
 3. May appoint commissioners for the purpose of felling and selling the wood, and disposition of proceeds.
 4. Trustees to be appointed to take and hold the property—giving bond.

SECT. 1. Any person seized of a freehold estate, or of a
 2 remainder, or reversion in fee simple or fee tail, in a lot or tract
 3 of woodland or timber land, on which the trees are of an age,
 4 and growth, fit to be cut, may apply to the supreme judicial
 5 court, in any county for leave to fell and sell such trees and
 6 invest the proceeds of the sale for the use of the persons inter-
 7 ested in such woodland; and such court after due notice given
 8 to all interested therein, and a hearing of the parties, if any
 9 appear, may appoint one or more persons to examine the land,
 10 and make a report of their examination to the court; and there-
 11 upon, the court, if they think proper, may license and order, on
 12 such terms and condition as they shall require, the whole or a
 13 part of such trees to be felled and sold, and the proceeds of the
 14 sale to be brought into court, subject to its further order.

1821, 34, § 1.

SECT. 2. The court shall appoint one or more commissioners,
 2 who shall superintend the felling of said trees, and the sale of
 3 them, and account to the court for the proceeds; and who shall

4 also give bond to the clerk of the court, or such other person as
5 they shall appoint for the faithful performance of the trust.

1821, 34, § 2.

SECT. 3. The court may cause the net proceeds of the sale,
2 after deducting necessary expenses to be invested in other real
3 estate in this State, or in public stocks, at their discretion to be
4 held to the same uses, and subject to the same limitation as the
5 land; and the income or profits thereof to be paid to the per-
6 sons entitled to the income and profits of the land, or apportioned
7 among the several persons interested in the estate, as the court
8 shall deem just and equitable.

1821, 34, § 2.

SECT. 4. The court may appoint one or more trustees to take
2 and hold such estate or stocks for the said uses; who shall give
3 bond with sufficient sureties to said clerk or other person as
4 aforesaid, for a faithful discharge of his duty; and they shall be
5 removable by said court at pleasure.

1821, 34, § 2.

CHAPTER 140.

OF HABEAS CORPUS.

- Sect.* 1. Who are entitled to the writ, as a *matter of right*.
2. Who *are not*.
3. Persons described in preceding application to whom to apply for writ.
4. How it may be returnable.
5. What facts to be stated in application and proof.
6. If on inspection of mittimus, &c. the imprisonment appears lawful, no writ shall issue.
7. If by the copy of the precept, it appears the party is committed on mesne process for want of bail, what proceedings are to be had.
8. If officer, having custody of applicant refuses a copy of precept, on demand proved, the writ shall be issued forthwith.
9. When the writ is issued on application of any person named in second section—form of the writ.
10. Officer to whom writ is directed to make return—in what time—and on what terms.
11. Persons making the return, shall bring the person in custody with him.
12. When the party is sick, the fact shall be stated in return, and a justice of the court may proceed to the place—adjourn, &c.
13. On return of the writ, the causes of imprisonment, shall be examined—may adjourn examination as necessary.
14. When it appears by the return that a third person is interested he must be notified.
15. Party may deny any of facts stated in the return and may allege and prove other material facts, and after hearing of parties—such order to be made as is proper.
16. If no legal cause, what proceedings to be had.
17. Same subject.
18. Form of writ when issued on application of a person not restrained by any officer, &c.
19. By whom it may be issued.
20. By whom served.

- Sect.* 21. How the person restraining applicant, may be designated, when his name is not known.
22. How the person restrained, may be described, when his name is not known, &c.
23. When in the cases mentioned in the eighth and eighteen sections, what shall be the form of return.
24. To be signed and sworn to—except, &c.
25. Until judgment rendered, party may be bailed.
26. Penalty for refusing a copy of precept and return for four hours, &c.
27. If the officer or person to whom writ is directed, refuse to receive or obey it—what proceedings to be had.
28. If attachment be issued against sheriff or deputy—how it may be directed.
29. If the person to whom writ is directed refuses to obey it—court, &c. may issue a precept to any officer, &c. to take and bring forth the person for whose benefit the writ issued—proceedings there to be had.
30. No person who has been discharged on habeas corpus shall again be imprisoned, unless, &c. &c.
31. Any person ordered to be committed on a criminal charge to prison, to be carried there as soon as may be, &c.
32. No penalty in this chapter, shall bar damages, &c.
33. In certain cases, a third person may appear for the party injured.
34. Supreme court, or a justice thereof may bail any person, except, &c. &c. notwithstanding any of the preceding provisions of this chapter.
35. When a person has been committed for not finding sureties, who may bail him, and how.
36. Any court may issue a writ of habeas corpus to bring any person before them for trial in any cause or to testify, &c.
37. A minor, under the age of twenty-one years enlisting in the United States army may be entitled to all the benefits of this chapter.

SECT. 1. Every person, deprived of his personal liberty by the
 2 act of another, except in the cases mentioned in the following
 3 section, shall be entitled to, and have a right to prosecute a
 4 writ of habeas corpus, according to the provisions of this chap-
 5 ter, to obtain relief, if unlawfully confined. 1821, 64, § 1.

SECT. 2. The following persons shall not, *of right* be entitled
 2 to demand and prosecute such writ :
 3 *First*—Persons committed to and confined in prison for treason
 4 or felony or suspicion thereof, or as accessories before the fact
 5 to a felony, when the same is plainly and specially expressed in
 6 the warrant of commitment.
 7 *Second*—Persons convicted, or in execution upon *legal* process,
 8 criminal or civil.
 9 *Third*—Persons committed on mesne process in any civil
 10 action, on which they are liable to be arrested and imprisoned.

M. R. S. 111, § 2.

SECT. 3. Every application from a person, described in the
 2 preceding section, for such writ shall be made to the supreme
 3 judicial court, if in session in the county where the applicant is
 4 confined ; and, if not, then to any justice of such court ; and
 5 when issued by the court, it shall be made returnable thereto ;
 6 but if at the time of such return the court shall have been
 7 adjourned without day, or for more than seven days, it may be

8 returned before any justice of said court and be heard and deter-
9 mined by him. 1821, 64, § 1. M. R. S. 111, § 3.

SECT. 4. When issued by a justice of said court, it may be
2 made returnable before said court, or before himself or any other
3 justice of the court. 1821, 64, § 2.

SECT. 5. The application shall be in writing, signed by the
2 applicant, and under oath.—He shall state therein the place
3 where he is imprisoned or confined, and by whom he is deprived
4 of his liberty, and shall produce to the said court or justice a
5 copy of the precept by virtue of which he is restrained of his
6 liberty, under the attestation of the officer holding the precept.

1821, 64, § 1.

SECT. 6. If, on inspection of the copy of such precept, it
2 shall appear to such court or justice that such applicant is law-
3 fully imprisoned, or restrained of his liberty by virtue thereof,
4 a writ of habeas corpus shall not be granted.

SECT. 7. If, by the copy of such precept it shall appear that
2 the applicant is committed and imprisoned on mesne process for
3 want of bail, and if such court or justice thereof shall be of
4 opinion that excessive bail is demanded, such court or justice
5 shall decide what bail is reasonable, and he shall, on giving
6 such bail to the plaintiff, be discharged. 1821, 64, § 5.

SECT. 8. If the prison keeper or other officer, having the
2 custody of the applicant, shall refuse or unreasonably delay to
3 deliver to such applicant, an attested copy of the precept, by
4 which he restrains him, on demand thereof being made; such
5 court or justice thereof, on proof of such demand and refusal,
6 shall, forthwith issue the writ of habeas corpus as prayed for.

1821, 64, § 6.

SECT. 9. When such writ is issued by the supreme judicial
2 court, on the application of any person described in the second
3 section of this chapter, it shall be substantially as follows—that
4 is to say—

STATE OF MAINE.

6 (L. s.) C—— ss.— To A. B. of ——

Greeting.

8 We command you that the body of C. D. in our prison at ——
9 under your custody (or by you imprisoned and restrained of his
10 liberty as the case may be) as it is said, together with the day
11 and cause of his taking and detaining, by whatsoever name the
12 said C. D. shall be called or charged, you have before our
13 supreme judicial court holden at —— in and for our county of
14 —— immediately after the receipt of this writ, to do and receive
15 what our said court shall then and there consider concerning
16 him in this behalf; and have you there this writ.—Witness ——
17 at —— this —— day of —— in the year ——.

18 Clerk.

19 The like form shall be used by any justice of said court (chang-
20 ing what should be changed) when such writ shall be awarded
21 by him. 1821, 64, § 2.

SECT. 10. When such writ shall be offered to the officer, to whom it is directed, he shall receive the same and on payment or tender of such sum as said court or justice thereof, shall direct, shall make due return thereof, within three days after receiving it, if the place of return, be within twenty miles of imprisonment; and if it is more than twenty miles, and less than one hundred miles, he shall return it within seven days; and if more than one hundred miles, he shall return it within fourteen days; provided that if the writ was issued against such officer, on his refusal or neglect to deliver on demand, to the applicant a copy of the precept, by which he restrained such applicant of his liberty, then the officer shall be bound to obey the writ; without payment or tender of expenses, as above mentioned in this section. 1821, 64, § 3.

SECT. 11. The person making the return, shall at the same time bring the body of the party, if in his custody or power, or under his restraint, according to the command of the writ, unless prevented by the sickness or infirmity of the party. 1821, 64, § 3.

SECT. 12. When by reason of sickness or infirmity of the party, he cannot, without danger be brought to the place appointed in the writ, that fact shall be stated in the return, and if proved to the satisfaction of the court, or justice thereof to be true; any justice of the court may proceed to the place where the party is confined and there make his examination or may adjourn the same to another time, or make such other order in the case as law and justice may require. M. R. S. 111, § 57.

SECT. 13. On the return of the writ, the said court or justice thereof shall without delay proceed to examine the causes of imprisonment or restraint; but may adjourn such examination from time to time as circumstances may require. M. R. S. 111, § 18.

SECT. 14. When it appears that the party is detained on any process under which any other person has an interest in continuing such imprisonment or restraint, the party shall not be discharged until notice has been given to such other person, or his attorney, if within the State, or within thirty miles of the place of examination to appear and object if he see cause:— and if imprisoned on any criminal accusation, he shall not be discharged, until sufficient notice shall have been given to the attorney general or other attorney for the State, that he may appear and object, if he should think fit. M. R. S. 111, § 19.

SECT. 15. The party imprisoned or restrained may deny any of the facts stated in the return or statement, and may allege any other facts that are material; and the court or justice thereof, may, in a summary way, examine the cause of imprisonment or restraint, and hear evidence produced by any person interested both in support of such imprisonment or restraint and

7 against it, and thereupon may dispose of the party as law and
8 justice shall require.

M. R. S. 111, § 21. 1821, 64, § 8.

SECT. 16. If no legal cause be shown for the imprisonment
2 or restraint of the party, the court or justice thereof shall dis-
3 charge him; but this section shall not be construed as applying
4 to the case of a person committed on mesne process where
5 excessive bail is demanded or the provisions of the seventh sec-
6 tion of this chapter.

M. R. S. 111, § 22. 1821, 64, § 1.

SECT. 17. If the party is imprisoned and detained for any
2 offence which is bailable, he shall be admitted to bail if suffi-
3 cient bail be offered, and if not, he shall be remanded with an
4 order of the said court or justice thereof, expressing the sum in
5 which he shall be held to bail, and the court at which he shall
6 be bound to appear—and any justice of the peace may, at any
7 time before the sitting of the court, bail the party pursuant to
8 such order.

M. R. S. 111, § 23. 1821, 64, § 1.

SECT. 18. In cases of imprisonment or restraint of personal
2 liberty by any person, not a sheriff, deputy sheriff—coroner,
3 constable or jailor—or marshal, deputy marshal or other officer
4 of the courts of the United States—the writ shall be in the fol-
5 lowing form viz—

STATE OF MAINE.

7 (Seal.) To the sheriffs of our several counties, and their res-
8 pective deputies, Greeting.

9 We command you that the body of C. D. of ——— impris-
10 oned and restrained of his liberty, as it is said, by A. B. of
11 ——— you take and have before our supreme judicial court,
12 holden at ——— immediately after receipt of this writ, to do
13 and receive what our court shall then and there consider con-
14 cerning him in this behalf; and summon the said A. B. then and
15 there to appear before our said courts to shew cause of the tak-
16 ing and detaining of the said C. D. and have you there this writ,
17 with your doings thereon. Witness our ——— at ———
18 this ——— day of ——— in the year ———
19

Clerk.

M. R. S. 111, § 5.

SECT. 19. Such writ may be issued by the supreme judicial
2 court or district court when sitting in any county in which the
3 applicant for the writ shall be restrained, or by any justice of
4 either of said courts; and the above form of the writ, shall be
5 changed so far as is necessary, when issued by the district court
6 or any justice of either of said courts.

SECT. 20. The writ may be served in any county of the State.

M. R. S. 111, § 6.

SECT. 21. The person having custody of the prisoner may
2 be designated by the name of his office, if he have any, or by
3 his own name; or if both are unknown or uncertain, he may be

4 described by an assumed name; and any one who is served with
5 the writ, shall be deemed the person thereby intended.

M. R. S. 111, § 10. Laws of N. York.

SECT. 22. The person detained and to be produced, shall be
2 designated by his name, if known; and if unknown or uncertain,
3 he may be described in any other way, so as to make known
4 who is intended. M. R. S. 111, § 11.

SECT. 23. In cases provided for in the eighth section of this
2 chapter, the person who makes the return, and in the cases
3 provided for in the eighteenth section thereof, the person in
4 whose custody the prisoner shall be found, shall state in writing
5 to the court or justice thereof before whom it is to be returned,
6 plainly and unequivocally—

7 *First*—whether he has or has not the party in his custody or
8 power or under his control.

9 *Second*—If he has, he shall state at large the authority and
10 the time and whole cause of such imprisonment or restraint upon
11 which the party is detained—and

12 *Third*—if he has had the party in his custody or power or
13 under his restraint, he shall state particularly to whom, at what
14 time, for what cause, and by what authority such transfer was
15 made. M. R. S. 111, § 12. 1826, 64, § 1.

SECT. 24. Such return or statement shall be signed by the
2 person making it, and sworn to by him, unless he is a sworn
3 public officer, and makes his return in his official capacity.

M. R. S. 111, § 15.

SECT. 25. Until judgment be given by the court or justice
2 thereof, the party may be bailed to appear from day to day, or
3 be remanded, or committed to the sheriff of the county, or
4 placed in such custody as the case may require.

M. R. S. 111, § 26.

SECT. 26. If any officer shall refuse or neglect for four hours
2 to deliver a true and attested copy of the warrant or precept or
3 process by which he detains any prisoner, to any person who
4 shall demand such copy and tender fees therefor, shall forfeit
5 and pay to such prisoner two hundred dollars. 1821, 64, § 6.

SECT. 27. If any person or officer to whom such writ of
2 habeas corpus shall be directed, shall refuse to receive the
3 same, or shall neglect to obey and execute the same as required
4 in this chapter, and no sufficient cause shall be shown for such
5 refusal or neglect he shall forfeit to the aggrieved party, four
6 hundred dollars, and the court or judge before whom the writ
7 was returnable, shall proceed forthwith by attachment, as for a
8 contempt, to compel obedience to the writ, and to punish the
9 person guilty of the contempt. 1821, 64, § 9, 10.

SECT. 28. If such an attachment be issued against a sheriff
2 or his deputy, it may be directed to a coroner or any other per-
3 son designated therein, who shall have power to execute the
4 same; and if the sheriff or his deputy, should be committed on

5 such process, he may be committed to the jail in any county
6 other than his own. M. R. S. 111, § 29.

SECT. 29. Upon the refusal of the person to whom the writ
2 is directed, to obey and execute the same, the court or judge
3 may also issue a precept to any officer, or other person therein
4 named, commanding him to bring forth the person, for whose
5 benefit the writ was issued, before such court or judge, and the
6 prisoner shall thereupon be discharged, bailed or remanded, in
7 like manner, as if it had been brought in upon the writ of
8 habeas corpus. M. R. S. 111, § 20.

SECT. 30. No person who has been enlarged by a habeas
2 corpus writ, shall again be imprisoned or restrained of his lib-
3 erty for the same cause, unless he shall be indicted therefor or
4 convicted thereof, or committed for want of bail, or unless after
5 a discharge for defect of proof or some material defect in the
6 commitment, in a criminal case, he shall be arrested on suffi-
7 cient proof and committed by legal process for the same offence.

1821, 64, § 12.

SECT. 31. Any person ordered to be committed to prison on
2 any criminal charge, shall be carried to such prison as soon as
3 may be, and shall not be delivered from one officer to another,
4 except for easy and speedy conveyance; nor removed without
5 his consent from one county to another, unless by habeas cor-
6 pus; and if any one who has in his custody or under his power,
7 any person entitled to a writ of habeas corpus, whether issued
8 or not, shall transfer such person to the custody of another, or
9 change his place of confinement, with intent to elude the ser-
10 vice of such writ, he shall forfeit and pay to the party aggrieved
11 the sum of four hundred dollars. 1821, 64, § 11.

SECT. 32. No penalty established by this chapter shall bar
2 any action at common law for damages; for false imprisonment.

1821, 64, § 11.

SECT. 33. When any person shall be unlawfully carried out
2 of the State, or imprisoned in a secret place, any other person
3 may appear for him in any action brought for the same, who
4 shall stipulate for the payment of costs, as the court shall order.

1821, 64, § 11.

SECT. 34. Nothing in this chapter shall be construed to
2 restrain the supreme judicial court, in term time, or any justice
3 thereof in vacation, from bailing any person whatever or for
4 whatever offence committed, at their discretion, whenever the
5 circumstances of the case may require it, excepting persons
6 committed by the governor and council, senate or house of
7 representatives, and for the causes mentioned in the constitution.

1821, 64, § 1.

SECT. 35. When any person is confined in jail, for a baila-
2 ble offence, or for not finding sureties on a recognizance, any
3 justice of the district court or two justices of the peace and of
4 the quorum, on application made to them, may enquire into the

5 case and admit any such person to bail ; and exercise the power
6 concurrently with any one of the justices of the supreme judicial
7 court—and may issue a writ of habeas corpus and cause such
8 person to be brought before them for the purpose expressed in
9 this section ; and may take such recognizance. 1821, 68.

SECT. 36. Any court may issue a writ of habeas corpus, when
2 necessary, to bring before them any prisoner for trial in any
3 cause pending in any such court or to testify as a witness in a
4 cause therein pending, when his personal attendance may be
5 deemed necessary for the attainment of justice.

SECT. 37. If any minor under the age of twenty-one years
2 shall be enlisted within this State into the army of the United
3 States, without the consent in writing of his parent, guardian or
4 master, he shall be entitled to all the benefits of this chapter,
5 on the application of such minor or of his parent, guardian or
6 master, to the district court. 1821, 64, § 7.

NOTES.

This chapter is formed from the statute of 1821, with some changes and additions, intended to render its provisions more explicit and expressive of the law as understood and administered in certain parts of it.

SECT. 2. This is designed to draw the line between those cases where a party may demand a writ of habeas corpus as matter of *right*, and those in which he cannot so demand it. For instance, when a person is in prison under a legal sentence for a crime, or on execution for debt.—To grant the writ would be useless,—because, when by the return, the imprisonment appears to be lawful, the prisoner cannot be discharged. But when the prison keeper refuses a copy of the precept by which he holds him, so that the court cannot judge of the legality of the commitment, the 8th section provides that the writ shall at once be issued.

In the case of commitment on mesne process, the prisoner is not entitled to the writ, except for ascertaining whether excessive bail has been demanded ; if so, the court will reduce the amount, but not discharge the person. In the cases where the applicant is restrained in prison by legal process, the writ can only be issued by the supreme judicial court, or a justice thereof. In all *other* cases, *that* court or the *district* court or any justice of either may issue it. The questions arising in the latter cases, are presumed to be less involved and intricate.

SECT. 14. This section is taken from the code of New York and Massachusetts.—Justice seems to require it.

SECTS. 21 and 22. These are also from the laws of New York and the Massachusetts code ; and in many cases, they may be found absolutely necessary.

SECT. 25. A new provision, which may be often found convenient, and therefore should be made known.

SECT. 28. Taken from Massachusetts code : a provision which seems necessary to carry out the designs of the preceding section.

SECT. 23. Varying from the existing statute, by providing special facts to be returned and sworn to, to prevent fraud and deception, and oppressive proceedings.

SECT. 30. The latter clause of this section is borrowed from the laws of New York.

CHAPTER 141.

OF THE WRIT OF AUDITA QUERELA.

- Sect.* 1. Form of writ and mode of service.
 2. In what county and court to be brought.
 3. Proceedings in court.
 4. Special damages may be alleged and recovered.
 5. Pleadings and exceptions.
 6. Proceedings when plaintiff is in jail.
 7. Effect of a surrender to jail.

SECT. 1. The writ of audita querela, may be sued out in the
 2 form of a writ of attachment or summons; and shall be sealed,
 3 signed, tested and endorsed as other writs.

1821, 65, § 1, 2, 4, 5.

SECT. 2. When brought to set aside and annul proceedings
 2 had on a writ of execution, it shall be sued out of the same court,
 3 from which execution issued; but in all other cases, it shall be
 4 sued in the county and court, having jurisdiction of the cause,
 5 according to the provisions of law as to personal actions.

1821, 65, § 1.

SECT. 3. If the defendant, after having been duly served with
 2 process, shall not appear, he shall be defaulted; and if he ap-
 3 pears, a trial shall be had as in common civil actions.

1821, 65, § 3.

SECT. 4. The complainant in his writ may also set forth and
 2 declare for any special damages he may have suffered, by means
 3 of the service of such execution, and on proof of such damages,
 4 he shall have judgment and execution for the same, in like man-
 5 ner as he could recover them in a subsequent suit, and instead
 6 of such mode.

1821, 65, § 6.

SECT. 5. The defendant may plead the general issue or any
 2 special matter in bar; and exceptions may be alleged to the
 3 rulings, instructions, and opinion of the court, as prescribed in
 4 case of civil actions, unless by law, an appeal is allowable.

1821, 65, § 7, 8.

SECT. 6. When the plaintiff is in prison by virtue of such
 2 execution, the court before which such action is brought may
 3 admit him to bail, to be approved by the court; and the bond
 4 shall be conditioned, that if final judgment be rendered for the
 5 defendant, the complainant shall within thirty days after such
 6 judgment, surrender himself to the jail keeper to be detained on
 7 the execution, and also such final judgment, as shall be rendered
 8 for the respondent.

1821, 65, § 9.

SECT. 7. If the plaintiff shall surrender himself to jail, he
 2 shall be in lawful custody on such execution, and there detained
 3 until discharged according to law.

CHAPTER 142.

OF THE WRIT FOR REPLEVYING A PERSON.

- Sect.* 1. Who is entitled to the writ.
 2. What court to issue from.
 3. Form of writ and bond.
 4. Plaintiff not to be delivered without bond.
 5. Officer answerable for sureties.
 6. If action is maintained, what judgment.
 7. If not maintained, what judgment.
 8. If defendant is entitled as bail—what judgment.
 9. If defendant has eloiigned plaintiff—what proceedings.
 10. Defendant may be enlarged on giving bail.
 11. Officer's return may be traversed, what proceedings, if so.
 12. If *not* traversed, what proceeding.
 13. Form of both writs of reprisal.
 14. How defendant may be enlarged, when so committed.
 15. If plaintiff's body is produced, then what.
 16. Same subject.
 17. Either party may appear.
 18. A third person may sue out writ, on behalf of the plaintiff.

SECT. 1. If any person is imprisoned, restrained of his liberty
 2 or held in duress, unless by force of a lawful writ, warrant or
 3 other process, civil or criminal, issued by a court of competent
 4 authority, he shall be entitled as of right, to the writ, for reple-
 5 vying a person, and to be thereby delivered in the manner
 6 herein provided. 1821, 66, § 1.

SECT. 2. The writ shall be issued from and returnable to the
 2 district court, in the county in which the plaintiff is confined;
 3 and shall be directed to the sheriff or coroner of such county,
 4 and shall be served as soon as may be, and fourteen days before
 5 the return day. 1821, 66, § 2.

SECT. 3. The writ shall be in the form heretofore established,
 2 except that the proviso shall be as follows; "provided that the
 3 "said A. B. (the plaintiff) shall before his deliverance, give
 4 "bond to the defendant in such sum as you shall judge reasona-
 5 "ble, and with two sufficient sureties, with condition to appear
 6 "at said court to prosecute his replevin against the defendant,
 7 "and to have his body there to be redelivered, if thereto ordered
 8 "by the court, and to pay all such damages and costs as may be
 9 "awarded against him; and if the plaintiff is delivered by you
 10 "at a day before the sitting of said court, you are to summon
 11 "the defendant to appear at said court." 1821, 66, § 2.

SECT. 4. No person shall so be delivered by such writ until a
 2 bond shall be given as prescribed in the preceding section; and
 3 the bond shall be returned to the court with the writ.

1821, 66, § 2.

SECT. 5. The officer serving the writ, shall be answerable for
 2 the sufficiency of the sureties. 1821, 66, § 2.

SECT. 6. If the plaintiff shall maintain his action by proving
2 the alleged unlawful imprisonment or restraint he shall be dis-
3 charged, and recover his costs. 1821, 66, § 3.

SECT. 7. If he shall not maintain his action, the defendant
2 shall recover his costs, and such damages as the jury may assess,
3 or the court, if the parties consent, or in case of a default.

1821, 66, § 3.

SECT. 8. If it shall appear that the defendant is bail for the
2 plaintiff, or that as his child, ward, apprentice or otherwise he is
3 entitled to the custody of the plaintiff, he shall have judgment
4 for a redelivery of the body of the plaintiff, to be held or dis-
5 posed of according to law. 1821, 66, § 3.

SECT. 9. If it shall appear that the defendant has elogned
2 the plaintiff's body, so that the officer cannot deliver him, the
3 court shall, on motion in behalf of the plaintiff, issue a writ of
4 reprisal to take the body of the *defendant*, and him safely keep
5 so that he may be at the then next term of the court, to traverse
6 the return of the said writ for the replevying the plaintiff.

1821, 66, § 4.

SECT. 10. The defendant may be enlarged by giving bail in
2 such sum as the officer shall require, with two sureties having
3 sufficient in the county, for his appearance at court.

1821, 66, § 4.

SECT. 11. At such court, the defendant may traverse the
2 return on the writ, for replevying the plaintiff, and if it shall
3 appear that he is not guilty of eloigning the plaintiff, he shall
4 be discharged and recover his costs.

1821, 66, § 4.

SECT. 12. If such return shall not be traversed, or, if upon
2 such traverse, it shall appear that the defendant is guilty of
3 eloigning the plaintiff, an alias writ of reprisal, shall issue, and
4 thereupon he shall be committed to the common jail, there to
5 remain irrepleviable until he shall produce the body of the
6 plaintiff, or prove his death. 1821, 66, § 4.

SECT. 13. Both the two writs shall be substantially in the
2 form heretofore established and used for the same in this State.

1821, 66, § 4.

SECT. 14. The defendant after having been committed on an
2 *alais* writ of reprisal may suggest the death of the plaintiff;
3 and the court shall empanel a jury to try the fact, at the expense
4 of the defendant, and if the death is proved, the defendant
5 shall be discharged. 1821, 66, § 4.

SECT. 15. If the defendant shall, at any time after the return
2 of elongation, produce the body of the plaintiff in court, the
3 court shall deliver the plaintiff from imprisonment, upon his
4 giving to the defendant such bond as is before directed to be
5 taken by the officer when the plaintiff is delivered by him; and
6 for want of the bond, he shall stand committed to abide the
7 judgment on the writ for replevying the plaintiff.

SECT. 16. When the body of the plaintiff is produced, as
2 mentioned in the last section, the suit shall be tried in the man-
3 ner before mentioned. 1821, 66, § 4.

SECT. 17. Either party may appeal to the supreme judicial
2 court, in like manner as in common civil actions and in case of
3 an appeal from any order or judgment upon the writ of reprisal,
4 the whole case in the original writ for replevying the plaintiff,
5 shall be carried up to the supreme judicial court, and shall there
6 be disposed of as it should have been in the district court.

SECT. 18. The writ of replevin may be sued out by any per-
2 son in behalf of the plaintiff, without any express power for
3 that purpose, he giving bond as before mentioned when sued by
4 the plaintiff himself.

CHAPTER 143.

OF WRITS OF ERROR AND CERTIORARI.

- Sect.* 1. Writs of error may be issued in term time or vacation, from the supreme
judicial court.
2. Shall not stay execution, unless bond be given by plaintiff, &c.
3. Judge of S. J. court, or clerk to approve bond, &c.
4. Bond to be filed in court, and execution stayed.
5. Prevailing party shall recover costs—damages allowed on affirmation.
6. Proceedings on writs of error to be in conformity to the usage of the
State.
7. No writ of error shall issue in a capital case, except by a judge after
notice to attorney general, &c.
8. In other criminal cases it shall not stay sentence, unless judge so orders.
9. In case judgment be stayed, may make such order as is proper, as to
the custody or security of plaintiff.
10. Writ must be sued out in six years after judgment.
11. Writ of certiorari to be issued by S. J. court, on application, &c.
12. Court may award costs, on application, or final adjudication.
13. Application must be within six years except in those cases where it is
otherwise specially provided.

SECT. 1. Writs of error, in civil cases, may issue of course
2 out of the supreme judicial court, in vacation as well as term
3 time, and shall be returnable to the same court.

M. R. S. 112, § 10.

SECT. 2. No writ of error shall operate to stay or supersede
2 execution in any civil action, unless the plaintiff in error, or
3 some person in his behalf, shall give bond to the defendant with
4 one or more sureties, with condition that the plaintiff shall
5 prosecute his suit to effect, and shall pay and satisfy such judg-
6 ment as shall be rendered thereon. M. R. S. 112, § 11.

SECT. 3. The sufficiency of the sureties, and the sum for
2 which the bond shall be given, shall be determined by any judge

3 of the supreme judicial court, or by the clerk from whose office
4 the writ of error is issued, according to such general rules, as
5 the court may from time to time establish.

M. R. S. 112, § 12.

SECT. 4. When such bond shall be given, it shall be filed in
2 the clerk's office for the use of the defendant, which shall be
3 deemed a delivery of the bond, and no execution shall be there-
4 after issued on the judgment complained of, during the pen-
5 dency of the writ of error; and if execution shall have been
6 already issued, the clerk shall make out and sign a certificate of
7 the issuing of the writ of error and the filing of the bond; and
8 after notice of such certificate to the officer holding the execu-
9 tion, all further proceedings thereon shall be stayed.

M. R. S. 112, § 13.

SECT. 5. The prevailing party on a writ of error in any civil
2 action, shall, in all cases be entitled to his costs against the
3 adverse party; and if the judgment is affirmed, the court shall
4 adjudge to the defendant in error, damages for his delay, not
5 less than at the rate of six per cent., nor exceeding twelve per
6 cent. a year on the amount recovered by the former judgment;
7 and in such case they may also, in their discretion, award double
8 costs to the defendant.

M. R. S. 112, § 14.

SECT. 6. The proceedings upon writs of error, as to the
2 assignment of errors, the scire facias to the defendant, and the
3 pleadings and judgments and all other matters not herein pro-
4 vided for, shall be according to the course of common law, as
5 modified by the practice and usage in this State, and such gen-
6 eral rules as may be made by the supreme judicial court.

M. R. S. 112, § 15.

SECT. 7. No writ of error, upon a judgment for any capital
2 offence, shall issue, unless allowed by one of the justices of the
3 supreme judicial court, after notice given to the attorney general
4 or other attorney for the State.

M. R. S. 112, § 16.

SECT. 8. Upon all other judgments in criminal cases, writs of
2 error shall issue of course; but they shall not stay or delay the
3 execution of the sentence or judgment, unless they shall be
4 allowed by a justice of the supreme judicial court, with an
5 express order thereon for a stay of all proceedings on such judg-
6 ment or sentence.

M. R. S. 112, § 17.

SECT. 9. When a stay of proceedings shall be ordered as pro-
2 vided in the preceding section, the judge may at the same time
3 make such order as the case may require for the custody of the
4 plaintiff in error or for letting him to bail, or the party may, upon
5 a writ of habeas corpus, procure his enlargement upon giving
6 bail, if entitled thereto.

M. R. S. 112, § 18.

SECT. 10. No judgment in any case shall be reversed or
2 avoided for any error or defect, unless the writ of error thereon
3 be sued out within six years next after the entering up of judg-
4 ment, or within six years next after this chapter shall become a
5 law.

M. R. S. 112, § 19.

SECT. 11. All writs of certiorari, to correct errors in proceedings that are not according to the course of the common law, shall be issued from the supreme judicial court, according to the practice heretofore established, and subject to such further regulations as shall be made from time to time by the supreme judicial court. M. R. S. 112, § 21.

SECT. 12. Upon every application for a certiorari, and also on the final adjudication, when a certiorari is granted, the court may, in their discretion, award costs against any party who shall appear and undertake to maintain or object to the proceeding in question. M. R. S. 112, § 22.

SECT. 13. No such application for a writ of certiorari shall be sustained unless made therefor within six years next after the proceeding which is complained of, or within six years after this chapter shall take effect.

NOTE.

The statutes now in force in this State merely recognize the existence of writs of error and of certiorari, and the power of courts to issue them ; but make no provision as to those particulars which compose the several sections in the foregoing chapter. They are all copied from the revised statutes of Mass. where they are arranged, presenting all the principles which apply to such writs. The commissioners hope and trust that the Legislature will give it the form and character of statute law. The limitation has been reduced to six years, as there seems to be no good reason for extending it beyond that term.

CHAPTER 144.

OF THE ACTION OF DOWER.

- Sect.* 1. If dower is not assigned to a widow on demand, she may recover it by action.
2. Must demand of him who is seized of the freehold, and not sue under one month after.
3. Mode of demand of a corporation, which must be made 60 days before action is brought.
4. Pleadings in such action.
5. Dower and damages may *both* be recovered.
6. Actions must be brought against tenant of the freehold at the time, &c. provision as to damages, in a certain case.
7. Second action may be brought in case, &c.—against the man of whom demand was made.
8. Warrant to sheriff, to cause dower to be set out, and the manner of proceeding.
9. Mode of assigning in certain special cases.
10. A woman divorced from her husband, may recover her dower, &c.

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 to her satisfaction 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.

1821, 40, § 1.

SECT. 2. She must demand her dower of the person who is seized of the freehold at the time of making the demand, and shall not commence her action to recover the same before the expiration of one month after making such demand, nor after the expiration of one year from the same time; but this shall not preclude her making a new demand and commencing an action thereon, if an action should not be brought within one year after the first demand.

1821, 40, § 1.

SECT. 3. When any corporation is the tenant of the freehold, she must demand her dower in writing of any officer of such corporation, on whom by law, a writ in a civil action against the same may be served, but she shall not commence her action against such corporation before the expiration of sixty days, nor after the expiration of one year from such demand, but a second demand may be made, if necessary as provided in the preceding section.

1839, 1.

SECT. 4. In an action of dower the defendant may plead in abatement that he is not tenant of the freehold, but not in bar of the action.

1839, 2.

SECT. 5. If the demandant recovers judgment for her dower she shall also in the same action recover her damages for the detention thereof.

1839, 2.

SECT. 6. The action shall be brought against the person who is tenant of the freehold at the time the suit is commenced; but if he is not the same person against whom demand is made, he shall be liable for damages only for the time during which he held the possession.

M. R. S. 102, § 4.

SECT. 7. In the case mentioned in the preceding section, if the demandant shall recover her dower and damages in the writ of dower, she may afterwards maintain an action on the case, against the *prior* tenant of the freehold, of whom her demand was made, for the rents and profits for the time during which he held the premises after the making of the demand.

M. R. S. 102, § 5.

SECT. 8. When judgment for her dower is rendered in favor of the demandant, a writ of seizin, shall be issued requiring the proper officer to cause her dower to be assigned and set out to her by three disinterested persons to be appointed by the plaintiff, defendant and officer, as in case of the levy of an execution on land; they shall be duly sworn to set out the same equally and impartially, and as conveniently as may be, and according to their best skill and judgment, and the officer shall make return of the writ and doings thereon, to the court with the

10 assignment of dower endorsed thereon, or annexed thereto,
11 which being accepted shall be conclusive. 1821, 40, § 2.

SECT. 9. When the estates out of which the dower is to be
2 assigned, consists of a mill or other tenement, which cannot be
3 divided, without damage to the whole, the dower may be assigned
4 of the rents and profits thereof, to be had and received by the
5 demandant as tenant in common with the other owners of the
6 estate. 1821, 40, § 3.

SECT. 10. Any woman who is divorced from her husband,
2 may recover her dower in the manner before provided, against
3 her former husband, or whoever shall be the tenant of the free-
4 hold. 1821, 71, § 5.

NOTES.

SECT. 2. A provision, which is new, is contained in it, namely, that the widow shall not commence an action *after* one year from the time she made her demand. This has been introduced so that the tenant of the freehold shall not be held in suspense, and be compelled to keep a long account of rents and profits. If she does not bring such action within one year, then she must make a *new* demand, and lose the benefit of the *first*, &c.

SECT. 3. Demand on a corporation; may be made a second time.

SECTS. 6 and 7. Are new—the object of them is to provide a mode of recovery of damages, when the tenant in possession, after a demand made on him, sells to another person before action is commenced. The 6th section provides that the action shall be brought against the *tenant in possession*, and he shall be answerable for damages only, for the time during which he held; and the 7th gives him a special action on the case against the prior tenant to recover of him the balance of the damages.

SECT. 8. A new provision has been introduced by the commissioners, namely, that the sheriff, instead of appointing the persons to set off the dower, as has been the usual practice, he shall proceed as in the levy of an execution—thus the parties interested may have a voice.

SECT. 9. This section requires the sheriff to return the warrant, and his proceedings for the acceptance of the court.

SECT. 10. The statutes of this State give a woman dower when divorced from the bond of matrimony, in all cases.

CHAPTER 145.

OF REAL ACTIONS.

- Sect. 1. All writs abolished but writs of entry.
2. Saving in favor of infants, &c.
3. Writ of entry—form of action, &c. *how to be served*.
4. Substance of the declaration.
5. Same subject.
6. What demandant must prove.
7. No such action maintained without a right of entry.

- Sect. 8. No descent or discontinuance shall defeat such right.
 9. Any person in possession, a dis-seizor for certain purposes.
 10. Any person who has ousted demandant also, though claiming less than a freehold.
 11. What demandant must prove on trial.
 12. Who may join in such action.
 13. May recover land and damages also.
 14. Demandant may recover according to title proved.
 15. Mode of estimating rents and profits.
 16. Same subject.
 17. Same subject.
 18. Same subject limited.
 19. If demandant dies or one tenant, what proceedings.
 20. Betterments allowed after six years' possession.
 21. Description of premises demanded.
 22. How judgment may be rendered—rejected offer.
 23. Benefit of following sections may be had on default, &c.
 24. Form of request for estimate of improvements, &c.
 25. Proceedings when premises are abandoned.
 26. Mode of payment of estimated value.
 27. Same subject.
 28. Same subject.
 29. Execution may be extended on the land.
 30. What proceedings when the tenant is evicted.
 31. What, when there is no abandonment.
 32. Limitation of the above provision.
 33. Strip and waste prohibited.
 34. Agreement of parties equal to a verdict.
 35. Tenant may file a statement and an offer of a sum.
 36. Damages and costs may be offset.
 37. Disqualification of certain jurors.
 38. Execution may issue after a year, in case, &c.
 39. What constitutes a possession and improvement.
 40. Proceedings in case before writ of possession served.
 41. In such case, how the writ shall be issued.
 42. Either party may have a view.
 43. Proceedings when a *life estate* only is demanded.
 44. Remedy for a tenant ousted after six years' possession.
 45. How the remedy is obtained.
 46. Pending actions not affected by this chapter.

SECT. 1. All writs of right and of formedon, and all writs of entry, except that which is provided for in this chapter, shall be abolished from and after the ——— day of ——— in the year one thousand eight hundred and ——— except as is provided in the following sections. M. R. S. 101, § 51.

SECT. 2. If any person, who on the said ——— day of ——— shall be entitled to maintain any of the said actions which are to be abolished on that day, shall be within the age of twenty-one years, a married woman, insane, imprisoned or without the limits of the United States, the action may be brought at any time within five years after the disability shall cease, or after the death of the person disabled; provided that no such action shall be maintained, after it would have been barred by the statutes of limitation in force at, and immediately before the time when this chapter shall take effect.

M. R. S. 101, § 51.

SECT. 3. Any estate of freehold, whether in fee simple, fee
2 tail or for life, may be recovered by a writ of entry; and such
3 writ, and also the writ in an action of dower, shall be served,
4 not only in the usual manner by attachment and summons, but
5 by a delivery, by the officer, to the tenant, or by leaving at his
6 last and usual place of abode, an attested copy of the writ.

M. R. S. 101, § 51. 1821, 59, § 4.

SECT. 4. The demandant shall declare on his own seizin
2 within twenty years then last past, without naming any particu-
3 lar day, and shall allege a disseizin by the tenant, but need not
4 aver a taking of the profits.

M. R. S. 101, § 52.

SECT. 5. He shall set forth the estate he claims in the premi-
2 ses, whether in fee simple, fee tail or for life, and if for the
3 latter, then whether for his own life or the life of another; but
4 shall not be required in any case to state in the writ the origin
5 of his title or the deduction of it to himself; but on the appli-
6 cation of the tenant, the court may direct the demandant to file
7 in the case an informal statement of the title on which he relies,
8 and the origin of it.

M. R. S. 101, 52.

SECT. 6. The demandant shall not be required to prove an
2 actual entry under his title, but proof that he is entitled to such
3 an estate in the premises as he claims, as heir, devisee, purchaser,
4 or otherwise, and also that he has a right of entry therein, shall
5 be deemed sufficient proof of the seizin alleged in the declara-
6 tion.

M. R. S. 101, § 52.

SECT. 7. And no such action shall be maintained, unless at
2 the time of commencing the action, the demandant had such
3 right of entry into the premises.

M. R. S. 101, § 52.

SECT. 8. No descent or discontinuance of any kind, or how-
2 ever occasioned, which may hereafter occur, shall take away or
3 defeat any right of entry for the recovery of real estate.

M. R. S. 101, § 52.

SECT. 9. Every person alleged to be in possession of the
2 demanded premises in such writ of entry, claiming any freehold
3 therein, may be considered as a disseizor for the purpose of try-
4 ing the right, whatever may be the manner of his original entry
5 on the premises; but under the general issue the defendant may
6 shew that he was not in possession of the premises demanded
7 when the action was commenced; and proof of such fact shall
8 defeat the action; and if he was in possession of only a part of
9 the demanded premises when the action was commenced, he
10 shall describe such part in a statement signed by him or his
11 attorney and filed in the case; and if on trial the facts contained
12 in such statement shall be proved to be true, the demandant shall
13 recover judgment for no more than the part so described therein.

M. R. S. 101, § 52.

SECT. 10. If the person in possession have actually ousted
2 the demandant, or withheld the possession of the premises, he
3 may, at the election of the demandant, be considered a disseizor

4 for the purpose of trying the right, though he should claim
5 therein an estate less than a freehold. M. R. S. 101, § 52.

SECT. 11. In the trial upon such writ of entry, on the general
2 issue, if the demandant shall prove that he is entitled to such
3 estate in the premises as he has alleged and had a right of entry
4 into the same on the day when the action was commenced, he
5 shall recover the premises, unless the tenant in possession shall
6 prove a better title in himself.

SECT. 12. Persons claiming as tenants in common, joint
2 tenants or coparceners, may all join or any two or more of them
3 may join in a suit for recovery of lands, or any one may sue
4 alone for his own particular share. 1821, 59, § 21.

SECT. 13. When a demandant recovers judgment in a writ of
2 entry, he shall also be entitled to recover in the same action
3 damages against the tenant for the rents and profits of the pre-
4 mises from the time when the demandant's title accrued, subject
5 to the limitations hereinafter contained; and he shall also
6 recover damages for any destruction or waste of the buildings or
7 other property for which the tenant is by law answerable.

M. R. S.

SECT. 14. The demandant may in all cases, recover any spe-
2 cific part of the premises, or any undivided portion thereof, to
3 which he shall prove a title, though such part or portion may be
4 less than is demanded. Com. Law.

SECT. 15. The rents and profits for which the tenant shall be
2 liable, shall be the clear annual value of the premises for the
3 time during which he was in possession thereof, after deducting
4 all lawful taxes and assessments on the premises, that shall have
5 been paid by the tenant, and all the necessary and ordinary
6 expenses of cultivating the land, or collecting the rents, profits
7 or income of the premises.

SECT. 16. In estimating the rents and profits, the value of the
2 use, by the tenants, of any improvements made by himself, or
3 those under whom he claims, shall not be computed nor allowed
4 to the defendant. 12 Mass. R. 314.

SECT. 17. The tenant shall never be liable for the rents and
2 profits for any longer time than six years, nor for any waste or
3 other damage committed before that time, unless the rents and
4 profits are allowed by way of set-off to his claim for improve-
5 ments, as hereinafter provided.

SECT. 18. Nothing contained in this chapter shall prevent the
2 demandant from maintaining an action for mesne profits, or for
3 damage done to the premises, against any person, except the
4 tenant in a writ of entry, who may have had possession of the
5 premises, or who may be otherwise liable to such action.

SECT. 19. In case of the death of the demandant at any time
2 before judgment, his heir, when the death has been suggested
3 on record, may appear and prosecute the suit in the same manner
4 as if it had been originally commenced by him. And if there

5 are several demandants, and any one of them shall, during the
6 pendency of such action die, or being a femme sole, shall inter-
7 marry, the writ shall not thereby abate; but the death or inter-
8 marriage being suggested on record, the cause shall proceed in
9 the name of the heir of the deceased, jointly with the survivors,
10 and in the name of the husband and wife as to her share; and
11 when there are several tenants, and any of them die before
12 judgment, the action shall proceed against the surviving tenant
13 or tenants, for so much of the premises as they hold.

1822, 186, § 2.

SECT. 20. When the demanded premises have been in the
2 actual possession of the tenant or those under whom he claims
3 for six successive years or more before commencement of the
4 action, such tenant shall be allowed a compensation for the
5 value of any buildings and improvements on the premises made
6 by him or those under whom he claims, to be ascertained and
7 adjusted in the manner hereinafter provided. 1821, 47, § 1.

SECT. 21. But in such action, the premises demanded shall
2 be so defined and described in the declaration, that the defend-
3 ant may know, with reasonable certainty, what lands and tene-
4 ments are intended; otherwise the court, before which the
5 action is depending, may direct a nonsuit. And if the tenant or
6 the person under whom he claims, has been in possession of a
7 tract of land, lying in one body, for six years or more before the
8 commencement of the action, and only a part of such tract is
9 demanded, and the tenant alleges that the demandant has as
10 good title to recover the whole tract, as he has to recover the
11 tract demanded, the tenant may request the jury to ascertain,
12 and by their verdict to decide that fact; and if they find that
13 the demandant has as good a title to demand the whole tract, as
14 the part demanded, they shall proceed no further; but on such
15 verdict the court shall enter judgment that the writ abate, unless
16 the declaration shall be so amended as to include the whole
17 tract; which amendment the court may allow without costs.

1826, 344, § 1.

SECT. 22. If the tenant shall consent that the demandant
2 may recover a specified part of the demanded premises, and
3 enter notice thereof on record, in open court, then by consent
4 of the demandant judgment may be rendered in favor of him
5 for such part, and for the defendants for the residue; and if the
6 demandant shall not consent to such offer, and shall not recover
7 for any other part of the premises he shall not recover any costs,
8 but the defendant shall recover costs from the time of such
9 rejected offer.

1826, 344, § 1, 4.

SECT. 23. The tenant shall enjoy the benefit of the provisions
2 in the following sections, as to the increased value of the prem-
3 ises, as well when the cause is determined by the court in favor
4 of the demandant upon demurrer or default as when by verdict.

1826, 344, § 4.

SECT. 24. The tenant may file a claim in writing to compensation for buildings and improvements on the premises, and a request for an estimation, by the jury, of the increased value of the premises by reason thereof, and the demandant may file a request in writing that the jury would also estimate what would have been the value of the premises, at the time of trial, provided no buildings had been erected or improvements made; both which estimates it shall be their duty to make, and in their verdict state to the court. 1821, 47, § 2.

SECT. 25. If after such verdict has been given, the demandant shall at the same term of the court, or at a subsequent term, if the cause should be continued, make his election on record to abandon the premises to the tenant, at the value estimated by the jury, then judgment shall be rendered against the tenant for the sum so estimated by the jury, and costs. 1821, 47, § 2.

SECT. 26. At the end of one year, execution may issue for such sum, with one year's interest thereon, and costs, unless the tenant shall then have deposited with the clerk of the court, or in his office, for the demandant's use, one year's interest of said sum, and one third part of said principal sum, and all the costs, if taxed and filed, in which case no execution shall issue at that time. 1821, 47, § 2.

SECT. 27. If within two years after the rendition of judgment, the tenant shall pay one year's interest on the balance of the judgment due; and one third part of the original judgment, then execution shall be further stayed, otherwise it may issue for two third parts of the original amount of the judgment and interest thereon. 1821, 47, § 2.

SECT. 28. If the tenant shall within three years after the rendition of judgment pay into the clerk's office the remaining third part and interest thereon, having made the several payments aforesaid, then the execution shall never issue, otherwise it may for the third part aforesaid and one year's interest thereon, and the premises shall be held bound as security for the amount of the judgment, liable to be taken in execution, in whole or in part, satisfaction of said sum or any unpaid part of the same. 1821, 47, § 1.

SECT. 29. Such execution may be extended on said land or any part of it, and set off on execution upon appraisment according to law; or the same may be sold on the execution in the same manner as an equity of redemption may be sold; and in either case, subject to the right of redemption as in those cases. 1821, 47, § 1.

SECT. 30. Should the tenant or his heirs be evicted from the land abandoned to him as aforesaid, by a better title of any claimant, and if such tenant shall have given notice to the demandant or his heirs to aid him in the defence of such claimant's action, the tenant, his executors or administrators may recover back the money he shall have paid, with lawful interest

7 of said demandant or his representatives; but if no such notice
8 was given to the party, in an action brought against him for
9 the price paid for the premises may show that he was evicted
10 by force of a title better than that of the original demandant.

1821, 47, § 1.

SECT. 31. When the demandant shall not elect to abandon
2 the premises to the tenant in the manner stated in this chapter,
3 no writ of possession shall issue on the judgment rendered on
4 the verdict, nor any new action be sustained for the land, unless
5 the demandant shall within one year from the rendition thereof,
6 have paid into the clerk's office of the same court, or to such
7 person as the court may appoint, for the use of the tenant, such
8 sums as shall have been assessed for the buildings and improve-
9 ments as aforesaid, with all interest thereon. 1821, 47, § 1.

SECT. 32. Nothing contained in this chapter concerning rents
2 and profits, or the estimate and allowance of the value of the
3 buildings and improvements, shall be construed to extend to
4 any action between a mortgagor and mortgagee, his heirs or
5 assigns, or to any case where the tenant or the person under
6 whom he claims, entered into possession of the premises and
7 occupied under contract with the owner, which was known to
8 the tenant when he entered.

1821, 47, § 1. 1 Greenleaf, 348.

SECT. 33. No tenant after judgment has been entered against
2 him for the appraised value of the premises shall unnecessarily
3 cut wood or take away any timber, or make any strip or waste
4 on the land, till the amount of such judgment shall have been
5 satisfied. 1821. 1 Greenleaf, 348.

SECT. 34. Whenever the parties agree that the value of the
2 buildings and improvements on the land demanded, and the
3 value of the land shall be ascertained by persons named on the
4 record, for that purpose, their estimates as reported by them and
5 recorded, shall, for all the purposes of this chapter be deemed
6 equal in its effect as the verdict of a jury.

SECT. 35. Whenever the tenant in any stage of such an
2 action, shall, in open court file a statement, in which he shall
3 name the sum at which he consents that the buildings and
4 improvements made on said land, and also the value of the
5 demanded premises should be estimated, then, if the demandant
6 shall consent to the same, judgment shall be rendered according
7 to such consent of parties in like manner as if said sums had
8 been found by verdict but if the demandant shall not so con-
9 sent, and the jury shall not reduce the value of the buildings
10 and improvements below the sum offered, nor increase the value
11 of the premises above the sum offered, he shall not recover costs
12 arising after such offer, but the tenant shall recover his costs
13 arising after such offer, and have a separate judgment and exe-
14 cution therefor, subject to the provisions of the following section.

1821, 47, § 4.

SECT. 36. In all cases where the demandant does not abandon the premises to the tenant, the court may, on the written application of either party, during the term when judgment is entered, order the costs recovered by the defendant to be offset against the appraised value of the buildings and improvements on the land, a record of which order shall be made; and the court shall thereupon enter judgment, as shall be proper, according as the balance and its amount, may be in favor of one party or the other. 1828, 397.

SECT. 37. No person shall be allowed to sit as a jurymen in the trial of a cause when the value of buildings and improvements made on the demanded premises, and the value of the premises are to be estimated as aforesaid, who, as proprietor or occupant, shall, be interested in a similar question. 1821, 47, § 6.

SECT. 38. The expiration of a year after the rendition of judgment shall not prevent the issuing of execution or writ of possession in the cases mentioned in the twenty-sixth, twenty-seventh and twenty-eighth sections of this chapter; but it may be taken out at any time within three months after any default of payment by the tenant.

SECT. 39. A possession and improvement of land by a tenant shall be deemed within the provisions of this chapter, though such land be not surrounded wholly by a fence, or rendered inaccessible by other obstructions, if such possession and improvement shall have been open, notorious and exclusive, and comporting with the usual management, and improvement of a farm by its owner, and though a portion of it may be woodland and uncultivated. 1821, 47, § 5.

SECT. 40. If after judgment has been rendered for the demandant in a writ of entry, either party die before a writ of possession is executed, or the cause otherwise disposed of, according to the foregoing provisions, any money payable by the tenant may be paid by his executors or administrators or by any person who is entitled to the estate under him, to the demandant or his executors or administrators, with the like effect as if both parties were living. M. R. S. 101, § 44.

SECT. 41. The writ of possession, whenever issuable in such case, shall be issued in the name of the original demandant against the original tenant, though either of them or both be dead; and when executed, it shall enure to the use and benefit of the demandant or whoever is then entitled to the premises under him, in like manner as if it had been executed in the life time of the parties. M. R. S. 101, § 45.

SECT. 42. Either party may have a view by the jury of the place in question, if the court shall be of opinion that such view is necessary to a just decision; provided that the party moving for the same shall advance such sum to the jury, as the court shall order, to be taxed against the adverse party, if the

6 cause be decided against him on the merits or through his
7 default.

SECT. 43. If the demandant in a writ of entry shall claim an
2 estate for life only in the premises; and if he shall pay any sum
3 allowed to the tenant for improvements, he or his executors or
4 administrators, at the termination of his estate shall be entitled
5 to receive of the remainder man or reversioner the value of such
6 improvements as they then exist, and shall have a lien therefor
7 on the premises in like manner as if they had been mortgaged
8 for payment thereof; and he may keep possession thereof accord-
9 ingly till the same be paid; and if the parties cannot agree on
10 the then existing value, it may be settled in the same manner as
11 in case of the redemption of mortgaged property.

M. R. S. 101, § 46, 47.

SECT. 44. When any person shall make entry into lands or
2 tenements, of which the tenant then in possession or those under
3 whom he claims have been in actual possession for the term of six
4 years or more before such entry made upon him or them, against
5 his or their consent, and shall withhold from such tenant the
6 possession thereof, such tenant shall have a right to recover of
7 him so entering or of his executors or administrators in an action
8 of assumpsit for money laid out and expended, the increased
9 value of the premises by virtue of the buildings and improve-
10 ments made by the tenant or those under whom he claims.

SECT. 45. Such right and value shall be ascertained by the
2 same principles as regulate such right and value under the pro-
3 visions of this chapter.

SECT. 46. All real actions which shall be depending in court
2 or duly commenced, at the time this chapter shall become a
3 law, shall proceed and be conducted to final judgment or other
4 final disposal, in like manner as if this chapter had never been
5 enacted.

NOTES.

SECT. 12. This and ten other sections of this chapter, as appears by the marginal references, are taken from the Mass. revised statutes, and are designed to change the course of proceedings in real actions and render them plain and simple. As the laws in force in this State, there is a catalogue of real actions of various, and many of them encumbered with much intricate and technical learning, both as to the commencement and trial of such causes. All this has been attended with trouble and delay. A complete change has been made in Mass.; and the commissioners, and there can be no question that in this State all concerned would find the proposed change a welcome improvement, in harmony with that spirit of improvement which distinguishes the present day. This new mode of proceeding in real actions is intended and adapted to carry into effect the principles contained in the 12th section of the chapter relating to wills and

devise of real property, and explained in the notes to that section. If the Legislature should adopt and enact the provisions of that section, and of the first section of the chapter of conveyances by deed, and explained in the notes to that section, there will then be a harmony between those sections and the present chapter. Should the hopes of the commissioners not be realized in this respect, many of the provisions of this chapter will be wholly improper, and worse than useless.

In the 1st and 2d Sections the commissioners have left a blank for the insertion of the day on which the revised statutes shall go into operation. The same day is intended to be inserted in each of those sections. It is presumed that the revised code, after it shall have been made acceptable to the Legislature, may be enacted in the year eighteen hundred and forty; but whatever day may be the day fixed, the guard contained in the second section, will be secured.

SECTS. 3, 4, 5, 6, are new and designed to simplify the proceedings.

SECT. 8. This is to prevent the application of a principle of the common law, by which a right of entry may be lost. This principle has been abolished in New York and Massachusetts as needless. This section and also the 7th are designed to remove all doubts.

SECT. 9. This changes the common law as to the effect of the plea of the general issue, for the sake of convenience.

SECT. 12. The principle of this section has been settled by several decisions, but as doubts have been entertained, it is proposed to remove them by this section.

SECT. 13. This section is entirely new. It is taken from the Mass. code. It has never been usual—or even practised in this State to assess damages in any real action but that of dower; but the advantages of the section are, that they save time and expense.

SECTS. 15 and 16. These merely prescribe the rule to be observed in the estimation and adjustment of rents and profits.

SECT. 30. This is merely cautionary, in the latter part.

SECT. 41. This is new; but designed to guard the rights of all concerned, in case of the death of parties.

CHAPTER 146.

OF LIMITATION OF PERSONAL ACTIONS.

- Sect.*
1. Limitation of different actions.
 2. Same of actions against sheriff.
 3. Same of assault and battery.
 4. Exception as to witnessed notes.
 5. As to cases where a different limitation is provided.
 6. Case of open and mutual accounts current.
 7. Saving of rights of infants, &c.
 8. General limitation as to all actions not before named.
 9. Saving in case of failure of service of writ, abatement of suit, arrest of judgment, &c.
 10. Provision in case of death of a person entitled to sue, or liable to suit before expiration of time limited.
 11. Saving in favor of aliens, during a war, &c.
 12. Limitation of actions for penalties by an individual, &c.
 13. Same of actions and indictment by the State.
 14. Same of writ of error.
 15. What constitutes the commencement of an action.
 16. Fraudulent concealment of cause of action.
 17. No promise unless in writing, shall take a case out of statute of limitations.

- Sect.* 18. Promise of one defendant shall not revive the action against another defendant.
19. When action is barred as to one defendant, and not the other, how judgment shall be rendered.
20. In case of action on contract, if it appear on plea of abatement that there was a joint contractor against whom the action is barred, how judgment shall be rendered.
21. Endorsement of partial payments, effect thereof.
22. Same subject.
23. Presumption of payment, when allowed.
24. Application of the limitation to accounts filed in set-off.
25. Provisions of this chapter as to new promise not to apply to promise made before this chapter becomes a law.
26. Saving as to action against persons out of the State.
27. Limitations as to executors and administrators.

- SECT. 1. The following actions shall be commenced within
2 six years next after the cause of action shall accrue, and not
3 afterwards—namely—
- 4 *First*—All actions of debt founded upon any contract or lia-
5 bility, not under seal, except such as are brought upon the
6 judgment or decree of some court of record of the United
7 States, or of this, or some other of the United States.
- 8 *Second*—All actions upon judgments, rendered in any court
9 not being a court of record.
- 10 *Third*—All actions for arrears of rent.
- 11 *Fourth*—All actions of assumpsit or upon the case, founded on
12 any contract or liability, express or implied.
- 13 *Fifth*—All actions for waste, and all actions of trespass on
14 land, and all actions of trespass, except those of trespass for
15 assault, battery and false imprisonment.
- 16 *Sixth*—All actions of replevin and other actions for taking,
17 detaining or injuring goods or chattels.
- 18 *Seventh*—All other actions on the case, except actions for slan-
19 derous words and for libels. 1821, 52, § 1.

SECT. 2. All actions against a sheriff, except for escape of
2 prisoners committed on execution, for the negligence or miscon-
3 duct of his deputies, shall be commenced within four years next
4 after the cause of the action shall accrue.

1821, 52, § 16.

SECT. 3. All actions of assault and battery and for false
2 imprisonment, and all actions for slanderous words and for libels,
3 shall be commenced within two years next after the cause of
4 action shall accrue. 1821, 52, § 16.

SECT. 4. All actions for the escape of prisoners committed
2 on execution, shall be actions on the case, and shall be com-
3 menced within one year after the cause of action shall accrue.
1824, 91.

SECT. 5. No scire facias shall be served on bail, unless within
2 one year next after judgment rendered against the principal.

1821, 67, § 8.

SECT. 6. All actions against an endorser of a writ, must be
2 commenced within one year next after judgment entered in the
3 original action.

SECT. 7. None of the foregoing provisions shall apply to any
2 action brought upon a promissory note which is signed in the
3 presence of an attesting witness, nor to an action brought upon
4 any bills, notes or other evidences of debt, issued by any bank.
1821, 67, § 8. 1838, 343.

SECT. 8. Nor shall any of the provisions in this chapter be
2 construed to apply to any case or suit, which by any particular
3 statute, is limited to be commenced within a different specified
4 time, but such suits may be commenced within such time.

SECT. 9. In all actions of debt or assumpsit, brought to
2 recover the balance due upon a mutual and open account current,
3 the cause of action shall be deemed to have accrued at the time
4 of the last item proved in such account.

2 Mass. R. 217. M. R. S. 120. 4 Greenleaf, 337.

SECT. 10. If any person entitled to bring any of the before
2 mentioned actions, shall at the time when the cause of action
3 accrues be within the age of twenty-one years, a married woman,
4 insane, imprisoned, or without the limits of the United States,
5 such person may bring the actions within the times in this chap-
6 ter respectively limited, after the disability shall be removed.

1821, 529.

SECT. 11. All personal actions on any contract, not limited
2 by any of the foregoing sections, or any other law of the State,
3 shall be brought within twenty years after the accruing of the
4 cause of action.

M. R. S.

SECT. 12. When a writ shall fail of a sufficient service or
2 return by any unavoidable accident, or by the default or negli-
3 gence of any officer to whom it was delivered or directed; or
4 when such writ shall be abated, or the action otherwise avoided
5 and defeated, for any matter of form, or by the death of either
6 party; or if a judgment for the plaintiff shall be reversed on a
7 writ of error; in such cases the plaintiff may commence a new
8 action on the same demand, within six months after the abate-
9 ment or determination of the original suit, or reversal of the
10 judgment in the same; and if the cause of action by law sur-
11 vives, his executor, administrator, in case of his death, may com-
12 mence such new action within said six months.

1821, 52, § 11.

SECT. 13. If any person entitled to bring any of the actions
2 before mentioned, or liable to any such action, shall die before
3 the expiration of the time herein limited therefor, or within thirty
4 days after the expiration of said term, and if the cause of action
5 survives by law, the action may be commenced by or against
6 the executor or administrator of the deceased person, as the case
7 may be, at any time within two years after administration or
8 letters testamentary granted and not afterwards, if barred by
9 this chapter.

1821, 52, § 12.

SECT. 14. If any person shall be disabled to prosecute an action in this State, by reason of his being an alien, subject or citizen of any country at war with the United States, the time of continuance of such war shall not be deemed any part of the respective periods, herein limited for the commencement of any of the before mentioned actions. M. R. S. 120.

SECT. 15. All actions and suits for any penalty or forfeiture on any penal statute brought by any person to whom the penalty or forfeiture is given in whole or in part, shall be commenced within one year next after the offence was committed and not afterwards. 1821, 62, § 14.

SECT. 16. If not so prosecuted by any individual, a prosecution by suit, indictment or information may be commenced therefor, in the name and for the use of the State, at any time within two years next after the offence was committed, and not afterwards. 1821, 62, § 14.

SECT. 17. No judgment shall be reversed in any case, unless the writ of error brought for reversing the same, be sued out within twenty years next after the rendition of such judgment, but any person, entitled to such writ, who shall, at the time such title accrued to him, be within the age of twenty-one years, a married woman, insane, imprisoned or out of the limits of the United States, then such person, his heirs, executors, or administrators, may sue out the same within five years after the removal of the disability aforesaid. 1821, 52, § 10.

SECT. 18. The time when a writ is actually made, with an intention of service, shall be deemed the commencement of a suit in respect to the limitations in this chapter.

7 Greenleaf, 370.

SECT. 19. If any person liable to any of the actions mentioned in this chapter, shall fraudulently conceal the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within six years after the person entitled to the action shall discover that [he] has just cause of action, but not afterwards. 3 Mass. R. 201.

SECT. 20. In actions of debt or upon the case founded upon any contract, no acknowledgment or promise shall be allowed as evidence of a new or continuing contract, whereby to take any case out of the operation of the provisions of this chapter, or to deprive any party of the benefit thereof, unless such acknowledgment or promise be an express one, and made or contained in some writing, signed by the party chargeable thereby.

M. R. S. 120, § 13.

SECT. 21. If there are two or more joint contractors, or joint executors, or administrators of any contractor, no such contractor, executor or administrator, shall lose the benefit of the provisions of this chapter, so as to be chargeable by reason only of any acknowledgment or promise made or signed by any other or others of them. M. R. S. 120, § 44.

SECT. 22. In actions commenced against two or more joint contractors, or joint executors or administrators of any contractor, if it shall appear on trial, or otherwise that the plaintiff is barred by the provisions of this chapter, as to one or more of the defendants, but is entitled to recover against any other or others of them, by virtue of a new acknowledgment or promise or otherwise, judgment shall be rendered for the plaintiff as to any of the defendants against whom, he has a right to recover, and for the other defendant or defendants against the plaintiff.

M. R. S. 120, § 15.

SECT. 23. If in any action on contract the defendant shall plead in abatement that any other person ought to have been jointly sued, and issue be joined on that plea, and if it shall appear on the trial that the action was, by reason of the provisions of this chapter, barred against the person so named in the plea the said issue shall be found for the plaintiff.

M. R. S. 120, § 16.

SECT. 24. Nothing contained in the preceding four sections, shall alter, take away, or lessen the effect of payment of any principal or interest made by any person; but no endorsement or memorandum of any such payment, written or made on any promissory note, bill of exchange, or other writing, by or on behalf of the party, to whom such payment shall be made, or purport to be made, shall be deemed sufficient proof of payment, so as to take the case out of the operation of the provisions of this chapter.

M. R. S. 120, § 17.

SECT. 25. If there are two or more joint contractors or joint executors, or administrators of any contractor, no one of them shall lose the benefit of the provisions of this chapter so as to be chargeable by reason only of any payment, made by any other or others of them.

M. R. S. 120, § 18.

SECT. 26. Every judgment and decree of any court of record of the United States, or of this or any other State, shall be presumed to be paid and satisfied, at the expiration of twenty years after any duty or obligation accrued by virtue of such judgment or decree to do or perform the matter or thing therein required.

1821, 52, § 13.

SECT. 27. All the provisions of this chapter shall apply to the case of debt or contract, alleged or filed by way of set-off on the part of defendant; and the time of such limitation of such debt or contract shall be computed in like manner, as if an action had been commenced therefor, at the time when the plaintiff's action was commenced, unless deprived of the benefit of the set-off, by the nonsuit or other act of the plaintiff, and when the party so filing the set-off is thus defeated of a judgment on the merits of such debt or contract, he may commence a new action thereon within the time limited, as provided in the ninth section of this chapter, for bringing a new action for the reasons therein mentioned.

1821, 52, § 13.

SECT. 28. None of the provisions of this chapter, respecting the acknowledgment of a debt or a new promise to pay it, shall apply to any such acknowledgment or promise made before this chapter shall take effect as law; but every such last mentioned acknowledgment or promise though not in writing, shall have the same effect as if no provision relating thereto had been made as contained in this chapter.

SECT. 29. If at the time when any cause of action mentioned in this chapter, shall accrue against any person, he shall be out of the State, the action may be commenced within the time herein limited therefor, after such person shall come into the State, and if after any cause of action shall have accrued the person against whom it shall have accrued, shall be absent from, and reside without the State, the time of his absence shall not be taken as any part of the time limited for the commencement of the action. 1821, 52, § 9. M. R. S. 120, § 9.

SECT. 30. No executor or administrator, after having given bond and notice of his appointment as provided in chapter one hundred and twenty shall be held to answer to the suit of any creditor of the deceased, unless it shall be commenced within four years from the time of his giving bond as aforesaid, excepting in the cases mentioned in said one hundred and twentieth chapter where the provisions are distinctly stated.

SECT. 31. No writ of certiorari shall be granted unless the application therefor shall be made and filed within twenty years next after the judgment complained of was rendered, provided that the saving clause in the fourteenth section of this chapter shall apply to this section also.

NOTES.

SECT. 6. This section is new, but seems necessary to remove doubts and avoid apparent inconsistencies.

SECT. 9. In this section the words "other than such accounts as concern the trade of merchandize, between merchant and merchant, their factors and servants," which are contained in the existing statute, are omitted in the revised section. The change has been made in the Mass. and New York codes; and in conformity to the decisions in Massachusetts and this State, cited in the margin, and it removes all doubt on a point, which has been long a perplexing one.

SECT. 11. This is copied from the Mass. code, and seems to be in harmony with the principles of justice. For this reason the commissioners have introduced it.

SECT. 14. This section is in accordance with the construction given by the supreme court in this State, and renders the law plain as well as certain.

SECT. 20. This is a very important section, which has been copied from the code of Mass. In that State, a statute was passed in the year 1834, establishing the principle stated in this section. The law on this subject has been altered in England, by an act of Parliament, passed some years since; so that a verbal acknowledgment or promise to pay a debt, made within six years next before the commencement of an action, will not take it out of the statute of limitations.

Such being the law in Massachusetts, it is for the Legislature to decide whether the citizens of this State should not enjoy a similar protection as is enjoyed in a large commercial State, whose citizens and our own have such connections in business.

SECT. 21. This section, also, is to put an end to contradictory decisions by declaring that a written new promise, by one joint contractor, shall not bind another.

SECTS. 22 and 23. These are only directory as to the manner in which the principles of the two preceding sections shall be applied, and the effect of them realized.

SECT. 24. This seems to be only an enactment of a principle well settled, that a mere endorsement of part of a note, made by the party holding it, shall not be deemed sufficient proof of payment to take the case out of the statute.

SECT. 26. This section is declarative of a principle of the common law.

CHAPTER 147.

OF LIMITATIONS OF REAL ACTIONS AND OF RIGHTS OF ENTRY.

- Sect.* 1. Rights of entry and of action barred in twenty years.
 2. Computation to be made from the time the right first accrued, &c.
 3. As to the time when such right first accrues.
 4. Limitation of the principle of the preceding section.
 5. Further as to time of entry.
 6. Actions by ministers and other sole corporations. When they may be brought.
 7. Saving as to infants, married women, &c.
 8. If the person first entitled to make an entry, die during continuance of disabilities, provision made, &c.
 9. If tenant in tail, &c. shall die before the expiration of the time limited for bringing action, what the consequences as to entry.
 10. Saving in favor of minors, &c. when this chapter shall become a law.
 11. Definition of disseizin, &c.
 12. Limitations of actions by the State, and saving in favor of demandants, when writ fails of service, or action abated, &c. or judgment arrested.
 13. Descent or discontinuance, shall not affect the right of entry.
 14. Rights of way, &c. may be acquired in twenty years.
 15. Mode in which to prevent such acquisition.
 16. Mode of giving the requisite notice.
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SECT. 1. No person shall commence any real or mixed action
 2 for the recovery of lands, or make an entry thereon, unless
 3 within twenty years after the right to make such entry or bring
 4 such action first accrued, or within twenty years after he or those
 5 under or from whom he claims, shall have been seized or
 6 possessed of the premises, except as hereinafter provided.

1821, 62, § 3.

SECT. 2. If such right or title first accrued to an ancestor or
 2 predecessor of the person who brings the action or makes the
 3 entry, or to any other person from, by or under whom he claims
 4 the said twenty years, shall be computed from the time when the

5 right or title, so first accrued, to such ancestor, predecessor or
6 other person. M. R. S. 119.

SECT. 3. In the construction of this chapter, the right of
2 entry, or of action to recover land, shall be deemed to have
3 first accrued at the respective times hereinafter mentioned.

4 *First*—When a person shall be disseized, his right of entry
5 shall be deemed to have accrued at the time of such disseizin.

6 *Second*—When he claims as heir or devisee of one who died
7 seized, his right shall be deemed to have accrued at the time of
8 such death, unless there is a tenancy by the courtesy or other
9 estate, intervening after the death of such ancestor or deviser in
10 which case his right shall be deemed to accrue, when such
11 intermediate estate shall expire, or when it would have expired
12 by its own limitation.

13 *Third*—When there is such an intermediate estate, and in all
14 cases, when the party claims by force of any remainder or
15 reversion, his right, so far as it is affected by the limitation
16 herein prescribed, shall be deemed to accrue when the interme-
17 diate estate would have expired by its own limitation, notwith-
18 standing any forfeiture thereof, for which he might have entered
19 at an earlier time. M. R. S. 119.

SECT. 4. The preceding clause shall not prevent any person
2 from entering when entitled to do so by reason of any forfeiture
3 or breach of condition, but if he claims under such a title, his
4 right shall be deemed to have accrued when the forfeiture was
5 incurred or the condition broken. M. R. S. 119.

SECT. 5. In all cases not specially provided for, the right of
2 entry shall be deemed to have accrued, when the claimant or
3 the person under whom he claims, first became entitled to the
4 possession of the premises under the title upon which the entry
5 or action is founded. M. R. S. 119.

SECT. 6. If any minister or other sole corporation, shall be
2 disseized, any of his successors may enter upon the premises,
3 or may bring an action for the recovery of them, at any time
4 within five years after the death, resignation or removal of the
5 person disseized, notwithstanding the twenty years after the
6 disseizin shall have expired. M. R. S. 119.

SECT. 7. If, at the time when such right of entry or of action
2 upon or for any lands shall first accrue, the person entitled to
3 such entry or action, shall be within the age of twenty-one
4 years, or a married woman, insane, imprisoned or absent from
5 the United States, such person, or any one claiming from, by or
6 under him, may make the entry, or bring the action at any time
7 within ten years after such disability shall be removed, notwith-
8 standing the twenty years before limited in that behalf shall
9 have expired. 1821, 62, § 5.

SECT. 8. If the person first entitled to make such entry or
2 bring such action, shall die during the continuance of any of
3 the disabilities mentioned in the preceding section, and no deter-
4 mination or judgment shall have been had of or upon the title,

5 right or action which accrued to him, the entry may be made on
 6 the action brought by his heirs, or any other person claiming
 7 from, by or under him, at any time within ten years after
 8 his death, notwithstanding the said twenty years shall have
 9 elapsed, but no such further time for making such entry, or
 10 bringing such action, beyond what is herein before prescribed,
 11 shall be allowed by reason of the disability of any other person.

M. R. S. 119. C. Mass. R. 328.

SECT. 9. When a tenant in tail or a remainder man in tail,
 2 shall die before the expiration of the period herein before lim-
 3 ited for making any entry, or bringing an action for lands, no
 4 person claiming any estate which such tenant in tail or remain-
 5 der man might have barred, shall make an entry, or bring
 6 an action to recover such land, but within the period during
 7 which the tenant in tail, or remainder man, if he had so long
 8 lived, might have made such entry or brought such action.

M. R. S. 119.

SECT. 10. The limitations herein before prescribed as to the
 2 time within which an action may be brought to recover any
 3 land shall take effect from and after the thirty-first day of
 4 December, eighteen hundred and forty, and if any person who
 5 shall then be entitled to bring any real action which is to be
 6 abolished after that day (as is mentioned in chapter)
 7 shall then be within the age of twenty-one years, a married
 8 woman, insane, imprisoned or without the limits of the United
 9 States, the action may be brought at any time within five years
 10 after such disability shall cease, or after the death of the person
 11 so disabled : provided that no such action shall be maintained
 12 after it would have been barred by the statutes of limitation in
 13 force and immediately before the time when this chapter shall
 14 become a law.

SECT. 11. To constitute a disseizin, or such exclusive and
 2 adversary possession of lands, as to bar or limit the right of the
 3 true owner thereof to recover the same, it shall not be necessary
 4 that such lands shall be surrounded with fences or rendered
 5 inaccessible by water, but it shall be sufficient if the possession,
 6 occupation and improvement are open and notorious and com-
 7 porting with the ordinary management of a farm, although that
 8 part of the same which composes the woodland belonging to
 9 such farm, and used therewith as a wood lot, shall not be
 10 enclosed as before mentioned. 1826, 62, § 6.

SECT. 12. No real or mixed action for the recovery of any
 2 lands shall be commenced by or on behalf of the State, unless
 3 within twenty years from and after the day on which this chapter
 4 shall become a law, or within twenty years next, after the time
 5 of the accruing of the title to the State. But when any writ in
 6 a real or mixed action shall fail of sufficient service or return by
 7 an unavoidable [cause,] or by the default or negligence of any
 8 officer to whom it was delivered, or directed for service, or when
 9 such writ shall be abated, or the action otherwise avoided or

10 defeated for any matter of form, or by the death or intermarriage
 11 or other disability of any demandant, accruing since the last
 12 continuance, or if a judgment for the demandant shall be
 13 reversed on a writ of error, the demandant may commit a new
 14 action at any time within six months after abatement or deter-
 15 mination of the first suit—or reversal of the judgment of the
 16 same. M. R. S. 119.

SECT. 13. No descent or discontinuance of any kind, or
 2 however occasioned, which may hereafter occur, shall take away
 3 or defeat any right of entry or of action for recovery of real
 4 estate. M. R. S. 119.

SECT. 14. No person shall acquire any right or privilege of
 2 way, air or light, nor any other easement—from, in, upon or over
 3 the land of another by the adverse use and enjoyment thereof,
 4 unless such use shall have been continued uninterrupted for
 5 twenty years. M. R. S. 60.

SECT. 15. And the owner of the land in such cases for the
 2 purpose of preventing such right as is mentioned in the preced-
 3 ing section, may give notice in writing to the person claiming
 4 such right or privilege of his intention to contest such right or
 5 easement; and such notice being served and recorded as here-
 6 inafter stated, shall be deemed an interruption of such use, and
 7 prevent the acquisition of a right thereto by continuance of the
 8 use thereof for any length of time.

SECT. 16. And such notice may be given by an officer as in
 2 civil actions, by his giving to such claimant, or his agent or
 3 guardian if in the State, an attested copy of such writing, or by
 4 leaving the same at his dwelling house; or if not resident in the
 5 State then a copy may be left with tenant or occupant, if there
 6 be one, of the estate; and if not, then such copy shall be affixed
 7 to the house or other conspicuous part of the premises; and the
 8 return of the officer shall be made on the original writing; and
 9 the whole be recorded in the registry of deeds in the county or
 10 registry district, within which such estate lies, within three
 11 months from the time of such service. And such notice may be
 12 given by the agent or guardian of the owner of the land.

NOTES.

SECT. 1. As it is proposed in the chapter on real actions, to abolish all writs, but writs of entry, this limitation of twenty years is the form as it stands in the existing statute of limitations. The changes proposed in many of the sections in this chapter, are designed to carry into execution the principles stated in a number of the sections in the chapter on real actions by showing the manner in which those principles are to be applied in practice, and fixes the time when the statute shall commence its operation.

SECT. 2. To the same point in regard to the case when the right first accrued to an ancestor or predecessor.

SECT. 3. This section is so drawn as to remove all doubt when a right of entry or action, shall be considered as having accrued.

SECT. 4. To the same point, but gives an alternative when a person has two rights of entry, and gives him the right to enter before the expiration of an intermediate estate by lapse of time, in case of a forfeiture of such estate.

SECT. 6. This is a new one, taken from the Mass. code; and the additional five years are allowed, on account of the charges which may frequently occur as to the person entitled to maintain the action.

SECT. 12. There seems to be no good reason why the limitation should not apply to the State as well as to individuals; but generally, the State is not bound, unless by express provisions. This part of the section is from the Mass. code.

SECT. 13. This same section is contained in the eighth section of the chapter on real actions. See the note as to that section.

SECT. 14. This section is understood as merely declarative of a settled principle of the common law; but it has been deemed useful to make it generally known by enacting it.

SECTS. 15, 16. These two sections, as well as the preceding one, are taken from the revised code of Mass. And the object of the last two sections is to prevent the acquisition of a right by mere user, against the rights of any owner of property, by giving explicit notice of his determination to contest the intended invasion.

CHAPTER 148.

OF THE RELIEF OF POOR DEBTORS.

ARTICLE I. Of arrests and disclosures on mesne process.

- Sect. 1. No arrest on mesne process on contract, unless where specially provided.
2. Arrests when the debtor is about to leave the State, with certain restrictions.
3. In such case the debtor may be taken before two justices of the quorum, if he request in order to disclose.
4. Notice thereof to be given to the creditor.
5. Mode of examination.
6. Justices may adjourn for not more than three days.
7. Prisoner may be released from arrest or remanded as the case may require.
8. Creditors' lien on the attachable property disclosed and how preserved.
9. Arrests authorized in actions not founded on contract.
10. Of disclosures on mesne process, when the debtor is not arrested.
11. And the effect thereof; and creditors' lien on property disclosed.
12. How such lien may be preserved on real estate.
13. Also on personal estate.
14. Of disclosures on mesne process by consent of parties.
15. In cases not specified, execution to run against the debtor's body.
16. Certain property to be secured to respond to the judgment, on disclosure, though not attachable in its nature.
17. Person arrested may give bond to disclose within a limited time after judgment.

ARTICLE II. Of arrests and imprisonments on execution and of disclosures thereon and after judgment and the effects thereof.

18. No arrests on executions founded on contracts, if the debt be less than ten dollars.
19. Arrests in other cases and the object thereof.
20. Bonds may be given to creditors by debtors arrested or imprisoned,—condition of such bond and effect.

Sect. 21. Debtor under such bond, or imprisoned, may apply to a justice for the privilege of the oath in section 23.

22. Of the citation to the creditor.

23. Of the service thereof.

24. Examination to be had before two justices of the peace and of the quorum.

25 and 6. Mode of examination.

27. When justices shall administer the oath.

28. Form of the poor debtor's oath.

29. Of certain property disclosed, not liable to attachment.

30. To be accepted by the creditor within thirty days or returned.

31. Form of the certificate of the two justices.

32. Effect of such certificate.

33. Creditors' lien on real estate disclosed, secured.

34. Also on personal estate disclosed.

35. Proceedings by the debtor having given bonds under the seventeenth section.

36. Debtor in such case may go at large whilst the lien continues on his property disclosed, for thirty days.

37. Effect of the creditor's election to arrest on execution or otherwise.

38. Bond taken under the 20th section, to be returned to court, or kept for the use of the creditor.

39. Of the entering up of judgment on the bond.

40. Debtor may take the oath, though disqualified as a witness.

41. Creditor entitled to costs, if the debtor fail in his application.

42. Release of the debtor on his oath, no discharge of the debt.

ARTICLE III. General provisions and rules applicable to certain specified cases of arrest and imprisonment.

43. Effect of the mistake of an officer in fixing the amount of any bond.

44. Right to give bail not impaired by this chapter.

45. Suits on bonds authorized by this chapter limited to one year after the forfeiture.

46. False disclosure declared to be perjury.

47. Creditor entitled to a special action in the case.

48. Judgment in such suit and the effect thereof.

49. Creditor's remedy against persons fraudulently assisting the debtor in concealing his property from creditors.

50. Persons restrained for taxes to have the benefit of the provisions of this chapter, as debtors.

51. Verbal alterations in the form of the oath.

52. Also in the form of the certificate.

53. Privileges extended to collectors and officers arrested or imprisoned on account of taxes committed to them.

54. Disabilities of persons committed for wilful trespass.

55. In what manner debtors claiming relief shall notify creditors, if corporations aggregate.

56. Prison keeper may require support for the debtor from the creditor, if debtor claim it as a pauper.

57. How the amount of the expense shall be adjusted.

58. Notice of debtor's intended disclosure to one creditor shall be sufficient notice for all in the same suit.

59. Effect of the creditor's voluntarily releasing the debtor from arrest or imprisonment on execution.

60. When the debtor's body is released the officer to enclose the fact on execution.

61. Debt or scire facias may be brought on the judgment, whether the endorsement be made or not.

62. Judges of municipal or police courts may act as justices of the peace and of the quorum in such cases.

ARTICLE IV. Special provisions relating to debtors to the State.

63. Imprisoned debtors to the State, may apply for relief to the judge of the district court.

- Sect. 64. Judge to notify the county attorney or attorney general.
 65. Power of the judge to release such debtor.
 66. He may release on payment of part only, from the whole claim.
 67. Prison keeper to discharge the debtor accordingly.
 68. Proceedings in vacation to be recorded as of the preceding term.
 69. County commissioners to have like power, as judges of the district court.
 70. Proceedings in case the debtor desire to take the oath specified in the 28th section.
 71. County attorneys' duty to attend.
 72. Of the oath and certificate in such cases.
 73. Such debtor swearing falsely to suffer the punishment of payment.

ARTICLE I.—*Of arrests and disclosures on mesne process.*

SECT. 1. No person shall be arrested on mesne process in any
 2 suit brought on any contract, express or implied or brought on
 3 any judgment founded on such contract except as provided in
 4 the following section; and the writ or other process shall be so
 5 varied as not to require the arrest of the defendant.

1835, 195, § 2.

SECT. 2. Any person, whether a resident within this State or
 2 not may be arrested and held to bail or committed to prison on
 3 mesne process on any contract express or implied, when the
 4 sum demanded amounts to ten dollars, or on a judgment founded
 5 on contract, when the debt, originally recovered and still remain-
 6 ing due, is more than ten dollars exclusive of interest on such
 7 judgment, when he is about to depart and reside beyond the
 8 limits of this State with property or means exceeding the
 9 amount required for his own immediate support; provided that
 10 the creditor, his agent or attorney, shall make oath before a justice
 11 of the peace to be certified by such justice on the said process,
 12 that he is reason to believe and does believe that such debtor is
 13 about to depart and reside and to take with him property or
 14 means as aforesaid, and that the demand in the said process or
 15 the principal part thereof, amounting to at least ten dollars, is
 16 due to him.

1835, 195, § 1, 3. 1836, 245, § 1.

SECT. 3. On any arrest or imprisonment by virtue of the pre-
 3 ceding section, the debtor shall on his request be taken by the
 3 officer or jailor, in whose custody he may be, before two disin-
 4 terested justices of the peace and of the quorum in the county
 5 to be by such debtor selected to disclose the actual state of his
 6 affairs.

1835, 195, § 4.

SECT. 4. The said justices shall thereupon appoint a suitable
 2 time and place for hearing the parties and shall give such notice
 3 thereof as they shall judge necessary to the creditor, his agent
 4 or attorney; but such notice shall not be less than one day for
 5 twenty miles' travel exclusive of Lord's day. 1835, 195, § 4.

SECT. 5. If the debtor shall at the time and place appointed
 2 make to the satisfaction of said justices a full disclosure of the
 3 actual state of his affairs and of all his estate, property, rights
 4 and credits in possession, expectation or reversion, and answer

5 all proper interrogatories in regard to the same, and shall sign
6 and offer to make oath to the truth of his said disclosure and
7 answers before such justices, they shall administer to him such
8 oath and may hear such further and proper evidence as may be
9 offered upon either side. 1835, 195, § 4.

SECT. 6. And the said justices shall have power to adjourn
2 from time to time, if they see cause, and if either of the said
3 justices shall not be present at such adjournment, the other may
4 adjourn to another time; but no such adjournment or adjourn-
5 ments, shall exceed three days in the whole, exclusive of the
6 Lord's day. 1831, 520, § 7. 1828, 414, § 4.

SECT. 7. On such examination, the said justices may discharge
2 such debtor from arrest and imprisonment or remand him into
3 the custody of the jailor or other officer as the case may require;
4 and in case of such discharge, no execution issuing on the judg-
5 ment in such suit or process, shall run against the body of such
6 debtor. 1828, 195, § 4.

SECT. 8. All attachable property disclosed by such examina-
2 tion, or so much thereof as the creditor may designate to satisfy
3 his demand against the debtor shall be held as attached from
4 the time of such disclosure, and until thirty days after final
5 judgment as in other cases of attachment; and the officer shall
6 make return thereof on the writ or process, certifying the fact
7 that the property was so disclosed, and if it be real estate shall
8 certify the same to the register of deeds as provided in section
9 ——— of chapter 11. And if the creditor require it, at any
10 time before final judgment in the suit, the officer shall take into
11 his custody any part of the personal property so disclosed, suffi-
12 cient to secure the demand, and hold the same as in other cases.

SECT. 9. In all actions not founded on contract or on a judg-
2 ment on such contract, the original writ or process shall run
3 against the body of the defendant and he may be thereon
4 arrested and imprisoned or he may give bail as provided in
5 chapter one hundred fourteen. 1836, 245, § 2.

SECT. 10. Whenever any person shall be served with an orig-
2 inal writ or other mesne process, founded on such contract or
3 judgment, in any other manner than by arrest of the body, such
4 person may at any time before final judgment, appear before
5 any court or justice, before whom such writ or process may
6 be pending, or before a disinterested commissioner or com-
7 missioners to be appointed by such court or justice and may
8 submit himself to examination; and such court, justice or com-
9 missioner, shall after giving like notice of the time and place
10 of hearing as is provided in the fourth section then and there
11 proceed and take the disclosure of such person, and the like
12 proceedings shall be had before such court, justice or commis-
13 sioner, as is provided in the fifth and sixth sections, when before
14 two justices of the peace and quorum, and with the like effect.
1835, 195, § 6.

SECT. 11. The whole examination, the said court, justice or commissioner, may, except as provided in the sixteenth section of this chapter, adjudge and determine that the execution on the judgment which the plaintiff may be recover in such suit shall run against the property of the defendant only or otherwise as justice may require on the facts so disclosed or proved; and all attachable estate or property so disclosed, shall from the time of such disclosure be held attached as provided in the eighth section and be further subject to the provisions of the two following sections. 1835, 195, § 6.

SECT. 12. If the property so disclosed be real estate, the said court, justice or commissioner, as the case may be shall deliver to the plaintiff a certificate thereof, stating the names of the parties and the amount of the claim in the writ, which the plaintiff shall cause to be filed with the register of deeds for the county or district where the real estate is situated, within five days after the date thereof, and the register shall proceed with the said certificate in the same manner, as he is required to do with the returns of officers making attachments on real estate under the provisions of chapter eleventh and be entitled to the same fees from the plaintiff.

SECT. 13. If personal estate liable to attachment be disclosed on application of the plaintiff stating that he is apprehensive that said property may be removed or concealed, so as to render it impracticable to seize the same on execution, the court in term time, or any justice thereof in vacation, or justice of the peace, before whom the suit is pending, may issue an order seal of the court or justice of the peace and signed by the clerk of the court, or by the justice as the case may be, directing any officer authorized to serve processes in such suit, to take such property into his custody and hold the same as if originally attached, which order such officer is hereby authorized to execute accordingly.

SECT. 14. At any time before or after the return day of any such writ or process, as is described in the tenth section, the parties to the suit may, pursuant to any agreement by them made in writing, appear before any justice of the peace and of the quorum, in the county where the suit may be pending, and the defendant shall make the same disclosures and submit to the same examination and proceedings as is provided in the said tenth section, when had before a commissioner, and the record of the same shall before final judgment be returned to the court or justice before which the suit shall be pending; and the like proceedings shall be had by such court or justice as if the same disclosures had taken place before a commissioner duly appointed for the purpose. 1835, 195, § 6.

SECT. 15. If no disclosure and examination be made or had before final judgment by the defendant, as is herein before provided, or if the result of such disclosure and examination should

4 be adverse to the defendant's right to exemption from arrest,
5 the execution, which may issue against him on final judgment
6 shall run against his body. 1835, 195, § 6.

SECT. 16. If on the disclosure and examination of any debtor
2 made pursuant to the fifth and tenth sections of this chapter,
3 previously to final judgment, it shall appear that such debtor
4 possesses or has in his power, or has, with intent to protect the
5 same from his creditors assigned or secreted or otherwise dis-
6 posed of any bank bills, notes, accounts, bonds or other con-
7 tracts or other property not exempted by any statute from
8 attachment but which cannot become at to be attached from its
9 nature or otherwise, such debtor, if under arrest, shall not be
10 released, neither in any case shall his person be exempted from
11 arrest on any execution to be issued on the judgment to be
12 recovered in suit, unless the debtor shall assign and deliver to
13 such person, as the examining magistrates or court or commis-
14 sioners may appoint, all such property or so much thereof as
15 such magistrates, court or commissioners may adjudge to be
16 sufficient security for the creditor, to be held by such person
17 under the direction of the court or justice before which the suit
18 shall be pending, in trust for the parties in order that the same
19 may be applied and appropriated as hereinafter provided in
20 sections twenty-ninth and thirtieth.

SECT. 17. Whenever any person shall be arrested or impris-
2 oned on mesne process in any civil action, he may be also
3 released from such arrest by giving bond to the plaintiff with a
4 surety or sureties to the acceptance of the plaintiff, or approved
5 by two justices of the peace and of the quorum of the county
6 where such arrest or imprisonment may be, double the sum
7 for which he is arrested or imprisoned, conditioned that he will
8 within fifteen days after the last day of the term of the court, at
9 which the judgment shall be rendered in such suit, or after the
10 day of the rendition of judgment, if before a justice of the
11 peace, notify the judgment creditor, or his agent, or attorney to
12 attend at a certain place in the county and at a time to be fixed
13 within thirty days after such notice and not less than fifteen days
14 for the purpose of disclosure and examination under the provis-
15 ions of the thirty-fifth section of this chapter, and that he will
16 at such time and place, submit himself to examination, make
17 true disclosure of his business, affairs and property on oath, and
18 abide the order of the justices of the peace and of the quorum,
19 thereon, in manner provided in thirty-fifth and in thirty-sixth and
20 thirty-seventh sections; and said bond unless called for or
21 accepted by the creditor shall be returned by the officer taking
22 the same to the court or justice where the suit is pending.

1835, 197, § 7.

ARTICLE II.—*Of arrests and imprisonment on execution, and of disclosures thereon, or the judgment and effect thereon.*

SECT. 18. No person shall be arrested on any execution is-
2 sued on any judgment in any suit founded on any contract,
3 express or implied, where the debt is less than ten dollars exclu-
4 sive of costs in any suit founded on any prior judgment or con-
5 tract, where the amount of the original debt remaining due is
6 less than ten dollars exclusive of interest and costs, and the form
7 of the process shall be varied accordingly. 1835, 195, § 1.

SECT. 19. In all other cases and where except express pro-
2 vision is by law made to the contrary, executions shall run against
3 the body of the judgment debtor and he may be arrested and
4 imprisoned thereon, for the purpose of obtaining a discovery of
5 his property, wherewith to satisfy the same, as hereinafter stated.
1836, 245, § 2.

SECT. 20. Wherever any debtor arrested or imprisoned on
2 execution issued on any judgment in a civil suit shall give bond
3 to the creditor in execution with sufficient surety or sureties, to
4 be approved in writing by the creditor or by two justices of the
5 peace and of the quorum of the county, where the arrest is made,
6 in double the sum for which he is so arrested or imprisoned,
7 conditioned that he will within six months thereafter cite the
8 creditor before two justices of the peace and of the quorum and
9 submit himself to examination, and take the oath prescribed in
10 the twenty-eighth section of this chapter, or pay the debt,
11 interest, costs and fees, arising in said execution or deliver him-
12 self into the custody of the keeper of the jail into which he is
13 liable to be committed under the said execution, he shall be
14 released from his said arrest or imprisonment.

1835, 195, § 8. 1836, 245, § 4, 5.

SECT. 21. Any debtor on any judgment, who has given bond
2 pursuant to the provisions of the seventeenth and twentieth sec-
3 tions of this chapter, within the times limited by such bonds
4 respectively, and any person being in prison by force of execu-
5 tion, in a civil suit, may make application in writing to any
6 justice of the peace of the county in which he is arrested or
7 imprisoned, claiming to have the privilege and benefit of the
8 oath authorized by the twenty-eighth section hereof, or if the
9 said debtor be imprisoned, the keeper of the jail, shall [if]
10 requested by the debtor, make such application in his behalf.

1835, 195, § 9. 1839, 412, § 1.

SECT. 22. The justice shall thereupon appoint a time and
2 place for the examination of the debtor, and shall give notice
3 thereof to the creditor by a citation under his hand and seal
4 which notification shall be served and returned by any officer,
5 who is qualified to serve any civil process between the same
6 parties. 1835, 195, § 9.

SECT. 23. The notification shall be served on the creditor by
2 reading it to him, or by leaving an attested copy thereof at his
3 last and usual place of abode fifteen days at least before the
4 time appointed for the examination, if the creditor be alive and
5 within the State; otherwise it shall be served on the person who
6 was his attorney in the suit, the executor or administrator of a
7 deceased creditor, or some known authorized agent, and if no
8 such representative can be found in the State, a copy of the
9 notification shall be left in like time with the clerk of the court
10 or justice of the peace, from whom the execution issued.

1835, 195, § 9.

SECT. 24. The examination shall be had before two disinter-
2 ested justices of the peace and of the quorum for the county
3 and the justices shall have like power to adjourn as is provided
4 in section sixth.

1835, 195, § 10.

SECT. 25. The justices shall examine the notification and
2 return, and if they deem the same correct, they shall examine
3 the debtor on his oath, concerning his estate and effects and
4 the disposal thereof, and his ability to pay the debt for which he
5 is committed, and they shall also hear any other legal and per-
6 tinent evidence that may be adduced by the debtor or by the
7 creditor.

1835, 195, § 10. M. R. S.

SECT. 26. The creditor may upon such examination propose
2 to the debtor any interrogatories proper to the inquiry and they
3 shall, if required by the creditor, be proposed and answered in
4 writing, and the answers shall be signed and sworn to by the
5 debtor; and the creditor may have a copy of the interrogatories
6 and answers certified by the justices on paying therefor the same
7 fees, as for a deposition of the same length.

M. R. S.

SECT. 27. If upon such examination, the justices shall be
2 satisfied that the debtor's disclosure is true and shall not dis-
3 cover any thing thereby inconsistent with his taking the oath set
4 forth in the next section, they may proceed to administer the
5 same accordingly.

1835, 195, § 10.

SECT. 28. The oath shall be in the form following, to wit,
2 I ——— do solemnly swear (or affirm as the case may
3 be) that I have not any estate, real or personal, in possession or
4 remainder, except the goods and estate expressly exempted by
5 statute from attachment and execution, and whatever property
6 I have disclosed; and that I have not since the commencement
7 of this suit, or the time when the debt or cause of action or any
8 part thereof on which this suit was brought, was contracted by
9 me directly or indirectly, sold, loaned, leased, or otherwise dis-
10 posed of or conveyed or entrusted to any person or persons
11 whomsoever, all or any part of the estate real or personal,
12 whereof I have been the lawful owner or possessor with any
13 intent or design to secure the same or to receive or expect any
14 profit, advantage or benefit therefrom to myself or others with
15 an intent or design to defraud any of my creditors. So help

16 me God ; (or this I do under the pain and penalties of perjury)
 17 if the debtor affirms. 1835, 195, § 10. 1836, 245, § 7.

SECT. 29. Whenever from the disclosure of any debtor
 2 arrested or imprisoned on any execution, it shall appear that he
 3 possesses or has under his control any bank bills, notes, accounts,
 4 bonds or other contracts or any property not exempted expressly
 5 by statute from attachment, but which cannot be come at to be
 6 attached ; and if the creditor and debtor cannot agree to apply
 7 the same in part or in full discharge of the debt, the debtor
 8 choose one disinterested person, the justices a second, and the
 9 creditor, or in case of his absence, or refusal, the same justices a
 10 third, who shall under oath appraise and set off such property or
 11 enough of the same to satisfy the amount of the debt, costs and
 12 charges. If the creditor will accept the same, it may be there-
 13 upon assigned and delivered by the debtor to the creditor and
 14 applied in satisfaction of his demand in whole or in part as the
 15 case may be. If any particular article of property thus ap-
 16 praised and set off, and necessary and convenient to be applied
 17 in satisfaction of the execution should exceed the amount or
 18 balance due thereon, and not be divisible in its nature, the
 19 creditor shall have a right to take the same on advancing to the
 20 debtor the overplus, on securing the same to the satisfaction of
 21 the justices. 1839, 412, § 2.

SECT. 30. If the creditor be absent, or shall not then conclude
 2 to accept the same as aforesaid, the debtor shall deposit with
 3 the justices an assignment in writing to the creditor of all the
 4 property thus appraised and set off and the justices shall make a
 5 record of such proceedings and cause the property so disclosed
 6 to be safely kept and secured for the term of thirty days there-
 7 afterwards to be delivered to the creditor with the assignment
 8 aforesaid, on his demanding the same within that time. If not
 9 so demanded they shall be returned to the debtor.

1839, 412, § 2.

SECT. 31. After the administering of the oath aforesaid to the
 2 debtor and the property disclosed as provided in the two preced-
 3 ing sections, shall have been duly secured the justices aforesaid
 4 shall make out and deliver to the debtor a certificate under their
 5 hands and seals in the form following, to wit : 1835, 195, § 10.

STATE OF MAINE.

7 ss.—To the sheriff of the county of ——— or his deputy
 8 and to the keeper of the jail at ——— (or to any coroner or
 9 constable as the case may require.)
 10 (L. s.) We the subscribers, two disinterested justices of the
 11 (L. s.) peace and of the quorum, in [and] for said county of ———
 12 hereby certify that ——— a poor debtor arrested on a certain
 13 execution issued by (here insert the name and style of the court
 14 or of the justice of the peace and the amount of the judgment
 15 and date of the judgment and execution) and committed to the
 16 jail at ——— aforesaid, (or enlarged on giving bonds to the

17 creditor as the case may be) hath caused — the creditor, to be
 18 notified according to law of his the said debtor's desire of taking
 19 the benefit of the — chapter of the revised statutes of this
 20 State "entitled of the relief of poor debtors," that in our opin-
 21 ion, he was clearly entitled to have the oath prescribed in the
 22 twenty-eighth section of said chapter administered by us, and
 23 that we have after due caution to him, administered said oath to
 24 him. Witness our hands and seals this — day of —
 25 in the year 18 — } Justices of the peace
 26 } and of the quorum.

SECT. 32. The said debtor on delivering the said certifi-
 2 to the prison keeper or filing it in his office, shall, if imprisoned
 3 be set at liberty, so far as relates to the said execution, and his
 4 body shall forever thereafter be free from arrest on the same, and
 5 on every subsequent execution to be issued on the same judg-
 6 ment or on any other judgment founded thereon; except as
 7 provided in sections thirty-fourth and forty-seventh of this
 8 chapter. 1835, 195, § 10.

SECT. 33. Whenever any debtor in execution, shall disclose
 2 before two justices of the peace of the quorum, as provided in
 3 this chapter, any real estate liable to be levied upon by virtue of
 4 such execution, the said justices shall give the creditor a certifi-
 5 cate thereof, stating therein the monies of the parties and the
 6 amount of the execution, and the creditor shall have a lien on said
 7 real estate for thirty days thereafter, provided he shall file the said
 8 certificate with the register of deeds of the county or district
 9 where the real estate lies, within five days from the date of such
 10 disclosure and [the] register shall make entry thereof and pro-
 11 ceed in like manner as is before mentioned in section twelfth.

1831, 20, § 5.

SECT. 34. If the debtor shall as aforesaid, disclose any per-
 2 sonal estate, liable to be levied upon by said execution the cred-
 3 itor shall also have a lien thereon or so much thereof, as the jus-
 4 tices in their record, shall [judge] to be necessary for the term of
 5 thirty days; and if the debtor shall transfer, conceal or otherwise
 6 dispose of the personal property so disclosed or designated
 7 within the time aforesaid or suffer the same to be done, or if he
 8 shall refuse to surrender the same on the demand of any proper
 9 officer, having an execution on the same judgment, the debtor
 10 shall receive no benefit from the certificate described in the
 11 thirty-first section; and the creditor may recover against the
 12 debtor or any person fraudulently aiding or abetting in the said
 13 transfer, concealment or disposal, double the amount due on the
 14 said execution, to be recovered in an action on the case; and
 15 any execution on a judgment in such action shall run against the
 16 body of such debtor and other persons so aiding or abetting
 17 provided however that the payment of such judgment, shall be
 18 also a satisfaction of the original debt. 1831, 520, § 5.

SECT. 35. Any debtor, who may have given bond on mesne
 2 process to his creditor, pursuant to the provisions of the seven-

3 tenth section of this chapter, may after judgment apply to a
4 justice of the peace of the county in which he was arrested,
5 and the said justice shall issue a notification to the creditor or
6 his agent or attorney, and an examination and disclosure may
7 be had within the times specified in the condition of said bond,
8 before two justices of the peace and of the quorum, and the like
9 proceedings shall be had and the like consequences shall result
10 therefrom, as herein before provided for the case of a debtor
11 disclosing after arrest or imprisonment on execution, excepted
12 as mentioned in the following section.

1835, 195, § 7. 1836, 245, § 8.

SECT. 36. If on such examination it appear that the judgment
2 debtor, at the time of such examination, has any real or per-
3 sonal estate liable to attachment or levy under execution, or
4 that he has other property such as is described in the twenty-
5 ninth section of this chapter, the said debtor shall by the justi-
6 ces be permitted to go at large upon the bond given at the time
7 of his arrest during the thirty days in which the creditor's lien
8 shall exist on the property disclosed; and during that term, the
9 creditor may arrest the debtor on execution or enforce his lien
10 on the property disclosed at his election.

1835, 195, § 7. 1836, 245, § 8.

SECT. 37. If the creditor shall make his election to arrest the
2 debtor on the execution within the thirty days, and the proper
3 officer having the execution shall return, that the debtor is not
4 found, the bond given on mesne process shall be forfeited, and on
5 judgment thereon, execution shall be awarded to the creditor for
6 the amount of his judgment in the original suit and interest
7 thereon. If the creditors do not arrest the debtor within that
8 time, the person of the debtor shall be forever discharged from
9 any execution issued on or founded upon such judgment, unless
10 he shall avoid arrest on the execution as aforesaid.

1835, 195, § 7. 1836, 245, § 8.

SECT. 38. Every officer serving an execution and taking a
2 bond, as provided in the twentieth section hereof shall return
3 the bond therewith for the benefit of the creditor who shall be
4 entitled to receive the same on filing a copy thereof with the
5 clerk of the court or justice to whom such execution or bond is
6 returned. The creditor shall also be entitled to receive from
7 the prison keeper any such bond in his hands on the like terms.

1836, 245, § 5.

SECT. 39. If the debtor fail to fulfil the condition of any such
2 bond, the same shall be forfeited and judgment in any suit on
3 such bond shall be rendered for the amount of the execution
4 and costs and fees of service with interest thereon at the rate of
5 six per cent. by the year until the breach of the bond and after
6 such breach, at the rate of twenty-five per cent.

1835, 195, § 8.

SECT. 40. No debtor shall be precluded from taking any oath
2 prescribed in this chapter for his relief on account of his having

3 been convicted of any crime or being otherwise disqualified to
4 testify as a witness in judicial proceedings; and nothing herein
5 contained, except as provided in the thirty-fourth and forty-
6 seventh sections, shall prevent any debtor, who shall fail to
7 obtain his discharge from obtaining a certificate at a future
8 examination for the same debt. 1835, 195, § 10.

SECT. 41. If any debtor shall fail in his application for a dis-
2 charge from arrest or imprisonment, the creditor shall recover
3 his costs to be taxed as in actions before justices of the peace;
4 and the justices shall award the same, and issue execution
5 accordingly. 1835, 195, § 10.

SECT. 42. No release of any debtor or prisoner under the pro-
2 visions of this chapter, shall affect or impair the right of the
3 creditor to his debt or demand; but the same shall remain in full
4 force against the property or estate of the debtor in the same
5 manner, as if such release had not been given.

1835, 195, § 12.

**ARTICLE III.—General provisions and rules applicable
to certain specified cases of arrest and imprisonment.**

SECT. 43. Whenever any officer holding a debtor under arrest
2 or imprisonment shall be required to take from him any bond
3 described in this chapter, and from mistake, accident or misap-
4 prehension, shall in fixing the penalty of such bond, exceed or
5 fall short of the sum required by law, such bond shall notwith-
6 standing be valid, and the officer shall not be responsible to either
7 party to a greater extent than the damage actually sustained
8 thereby.

SECT. 44. Nothing contained in this chapter, shall impair the
2 right of any person to bail on mesne process. 1835, 195, § 7.

SECT. 45. No suit for the breach of any bond authorized to
2 be given by this chapter shall be sustained unless commenced
3 within one year after the forfeiture. 1835, 195, § 8.

SECT. 46. Every debtor authorized or required to disclose on
2 oath or affirmation by the provisions of this chapter, who shall
3 wilfully disclose falsely, or withhold or suppress the truth, shall
4 be deemed guilty of the crime of perjury, and punishable there-
5 for as provided in chapter. 1835, 195, § 11.

SECT. 47. For the offence described in the preceding section
2 the creditor may commence against such debtor, whether other-
3 wise criminally prosecuted or not a special action on the case,
4 particularly alleging the false oath and the fraudulent conceal-
5 ment of such debtor's estate or property, and on oath before
6 some justice of the peace, may declare his belief of the truth of
7 the allegations in the writ and declaration and the justice
8 administering the oath shall certify the same on the writ, and
9 thereupon the debtor shall be held to bail, or in default thereof
10 committed to jail to abide the judgment in the suit.

1835, 195, § 11.

SECT. 48. If the creditor prevail in such suit, judgment shall
2 be rendered against such debtor for double the amount of the
3 debt and charges on the former judgment, and the debtor may
4 be arrested and committed to prison on any execution issued on
5 the judgment last recovered without any privilege of release or
6 discharge, except by payment or the consent of the creditor.

1835, 195, § 11.

SECT. 49. Any person, who shall knowingly aid or assist any
2 debtor or prisoner in any fraudulent concealment or transfer of
3 his property to secure the same from creditors and to prevent
4 the seizure of the same by attachment or levy on execution, shall
5 be answerable in a special action on the case to any creditor,
6 who may sue for the same in double the amount of the property
7 so fraudulently concealed or transferred, not however exceeding
8 double the amount of such creditors just debt or demand.

1835, 195, § 13.

SECT. 50. Any person arrested or imprisoned by virtue of any
2 warrant for the collection of any public tax shall be entitled to
3 the privileges of this act and subject to the obligations of the
4 same in all respects, as if arrested or committed on execution
5 for debt and for all the purposes of notice and other proceedings
6 relating to the discharge for arrest or imprisonment of the person
7 taxed, the assessors of the town, plantation or parish, by whom
8 such warrant was issued, shall be regarded as the creditors.

1835, 195, § 14. 1836, 245, § 5.

SECT. 51. In case of the taking of the oath set forth in the
2 twenty-eighth section of this chapter, the same may be varied
3 by substituting for the words "commencement of the suit" or
4 the time when the debt or cause of action or any part thereof
5 on which this suit was brought was contracted by me "the fol-
6 lowing assessment of the tax for which I have been arrested" and
7 for the words "any of my creditors," the following "any town
8 plantation or parish."

1835, 195, § 14. 1836, 245, § 5.

SECT. 52. In such case the certificate of discharge shall be
2 varied by substituting the words "a warrant for taxes" for
3 exemption and "assessors" for "creditors."

1835, 195, § 14. 1836, 245, § 5.

SECT. 53. Whenever any constable, collector, or deputy
2 sheriff, shall be arrested or committed to jail for default on
3 account of any taxes committed to him to collect, such consta-
4 ble, collector or deputy sheriff, shall be subject to the provisions
5 of this chapter and have the privileges thereof; and in all pro-
6 ceedings under the same the assessors of the town, plantation or
7 parish assessing such taxes shall be deemed the creditors and
8 corresponding verbal alterations shall be made in the oath and
9 certificate mentioned in twenty-eighth and thirty-first sections.

1836, 245, § 6.

SECT. 54. Whenever in pursuance of the provisions of one
2 hundred ninth section of chapter one hundred fifteen in the trial
3 of any action of trespass upon property, any court or jury, or

4 justice of the peace, shall have determined that such trespass
5 was committed wilfully, and the court or justice, shall have
6 made a record of the fact, and the same shall have been noted
7 on the margin of any execution on such judgment; and if the
8 judgment debtor be thereupon arrested, he shall be committed
9 to prison and shall not be entitled to give any of the bonds pro-
10 vided in this chapter for the liberation of his person; and in
11 case such person shall apply to take the oath described in the
12 twenty-eighth section, no notice shall be issued to the creditor
13 until at least thirty days after the commitment of the debtor.

1833, 51, § 1.

SECT. 55. Whenever in any proceeding under this chapter
2 for the relief of any debtor, the creditor shall be a corporation
3 aggregate, the notification to be issued thereon may be served
4 upon any individual, upon whom service of any original writ or
5 summons may be made pursuant to sections forty-two and forty-
6 three of chapter one hundred fourteen, or upon the attorney of
7 the corporation in the suit; provided that it shall not be neces-
8 sary to extend the time of notice beyond the terms mentioned
9 herein.

SECT. 56. Whenever any person shall be committed to prison
2 on mesne process or on execution, the keeper of the prison if he
3 see cause, may require of the creditor his agent or attorney
4 security for the payment of the expense of supporting such
5 debtor in case he shall claim relief as a pauper; and unless
6 within eight days after such request, security be furnished, satis-
7 factory to the keeper, or money paid in advance from time to
8 time, so far as necessary for the support of such debtor, the
9 keeper may release him from his confinement.

1835, 195, § 15.

SECT. 57. In case of any dispute about the price of any arti-
2 cles furnished a prisoner confined for debt, the county commis-
3 sioners may determine the same, not however in any case
4 exceeding the amount per week specified in the thirty-fourth
5 section of chapter thirty-two.

1835, 195, § 15.

SECT. 58. Whenever notice shall be given by any jailor
2 under the fifty-fifth section of this chapter to the creditors, or
3 by any debtor to his creditors of any intended disclosures under
4 the provisions of this chapter in order to be released or pro-
5 tected from arrest or imprisonment, and there be more than one
6 creditor in the same suit, such notice given to any one of such
7 creditors being within the State, shall be deemed sufficient for
8 all.

SECT. 59. Any creditor who may have caused his debtor to
2 be arrested or imprisoned on execution may discharge him from
3 such arrest or imprisonment, by giving to the officer making the
4 arrest, or by leaving with the keeper of the prison a written per-
5 mission for such debtor to go at large, and such discharge shall
6 not operate to release the goods and estate of the debtor from
7 the debt and costs due, but the body of such debtor shall be

8 forever exempted from arrest or imprisonment on such execu-
 9 tion or at any future process or suit founded upon the same
 10 judgment. 1822, 209, § 27. 1828, 410, § 3.

SECT. 60. If the body of any person arrested or imprisoned
 2 on execution shall be released in any of the modes authorized
 3 by this chapter, the officer having such debtor in custody, shall
 4 at any time on the request of the creditor after such release,
 5 endorse upon the said execution a certificate of the fact of such
 6 release and the cause thereof; and if the day of the return of
 7 such execution have not arrived, the same may notwithstanding
 8 such release be levied on the goods and estate of the debtor;
 9 and if the return day be passed, the same may also be renewed
 10 like other executions with the exception of the authority.

1828, 410, § 3.

SECT. 61. Whether such endorsement be made in the exemp-
 2 tion or not, the judgment on which the same was issued may be
 3 revived or continued in force with the said exception, by an
 4 action of debt, or on scire facias to be brought as in other cases
 5 of judgment.

SECT. 62. The judge of any municipal or police court within
 2 his county, shall have the same powers and be subject to the
 3 like duties and obligation under this chapter as any justice of
 4 the peace and quorum in the same county.

1836, 245, § 10.

ARTICLE IV.—*Special provisions relating to debtors to the State.*

SECT. 63. Any person committed to jail in any county in this
 2 State on any execution, warrant of distress or any other final
 3 civil process for a debt, penalty or costs due to the State may
 4 make application in writing to the judge of the district court,
 5 having jurisdiction in said county for relief, whether the said
 6 court shall be in session or not; and it shall be the duty of the
 7 said judge on such application to appoint a convenient time and
 8 place to inquire into the circumstances of the petitioner.

1830, 458, § 1.

SECT. 64. Previous to proceeding in the hearing of such
 2 petition, the said judge shall give notice in such mode as he may
 3 think proper of the pendency of such application to the county
 4 attorney for the county in which the commitment shall have
 5 been made, or to the attorney general, and it shall be the duty
 6 of such attorney to attend the hearing in behalf of the State
 7 and he shall receive from the State a reasonable compensation
 8 therefor.

1830, 458, § 1.

SECT. 65. The said judge shall consider all such proper evi-
 2 dence as may be offered on either side and if he think proper
 3 may require the oath of the petitioner to all or any of the facts
 4 by him stated; and if he shall be satisfied that the prisoner is
 5 unable to pay any part of the amount due on the process on
 6 which he is committed, he may order his discharge from impris-

7 onment, having first administered to him, if he think proper, an
8 oath substantially in the form of the oath prescribed by the
9 twenty-eighth section of this chapter. 1830, 458, § 1, 2.

SECT. 66. If on such examination it shall appear to such
2 judge that such prisoner is able to pay only [a part] of the
3 amount due on such process, the said judge shall order his
4 release from imprisonment; and, if he think it more for the
5 interest of the State, may order the whole debt to be discharged,
6 upon his paying or securing such sum of money or assigning to
7 the State such securities on property at such time and in such
8 manner and to be deposited with such public officer as the judge
9 shall direct. 1830, 458, § 2.

SECT. 67. The prison keeper having charge of such debtor
2 shall be thereupon authorized to release him from confinement
3 or to give him a full discharge from the demand, on such terms
4 as the judge shall have prescribed. 1830, 458, § 2.

SECT. 68. If such proceedings be had at any time, when the
2 district court shall not be in session for such county, the judge
3 shall cause his adjudication and discharge to be entered of record
4 as of the last preceding term of the court in the said county.
1830, 458, § 3.

SECT. 69. The courts of county commissioners in their res-
2 pective counties at a regular session or a majority thereof in
3 vacation may exercise the same powers and their proceedings
4 shall have the like effect, on application made to them, as is
5 provided in the six preceding sections in reference to the judge
6 of any district court.

SECT. 70. Any person committed on execution, as mentioned
2 in the sixty-third section, who may be desirous of taking the oath
3 as prescribed in the twenty-eighth section, may make application
4 to the jailor having him in custody, and such jailor shall apply
5 in writing to a justice of the peace in his behalf, and the said
6 justice shall thereupon issue a notification, as prescribed in the
7 twenty-second section, directed to the county attorney for which
8 the commitment is made and the said notification shall be served,
9 returned and proceedings thereupon had in the same manner and
10 with the like effect, as in cases where notice is served on indi-
11 vidual creditors or their attorneys. 1830, 458, § 4.

SECT. 71. It shall be the duty of the said county attorney on
2 such notice to attend by himself, or some competent substitute
3 at the time and place specified in the said notification, as attorney
4 for the State, for which service he shall receive a reasonable
5 compensation. 1830, 458, § 4.

SECT. 72. Upon such examination, the justices of the peace
2 and of the quorum, before whom the debtor shall thus appear,
3 may if they see cause, administer to him an oath, substantially
4 like that prescribed in the twenty-eighth section, with proper
5 verbal alterations to conform to the case, and may grant a similar
6 certificate of discharge, which shall have a like effect, as in the
7 cases before mentioned. 1830, 458, § 4

NOTES.

The object of this chapter has long been a matter of frequent and varied legislation in this State. The commissioners have approached it with much diffidence and have ventured to propose but very few, if any, new principles, lest they should add more to the troubles, which have been inflicted upon this complex, difficult and important topic. If the law is in some of its principles defective, we have felt on this peculiar concern, that it was the business of the legislature to introduce such remedies as shall vindicate the character of the people for the preservation of good faith in their contracts, as well as protect the weak, from the oppression of the strong. Considering the acts passed in 1835, and subsequently, as the best evidence of what is the sentiment of the community on the personal rights of the debtor, we have therefore aimed at such an arrangement of existing provisions, as that they shall be better understood, and at such amendments of particular parts as should render the whole consistent and operative.

SECT. 4. The notice here proposed is the same as is required to an adverse party when a deposition is to be taken, and seems as short as is practicable, and some notice ought to be given to the creditor.

SECT. 8. This section proposes methods to secure to the creditor the benefit of such available property, as the debtor may disclose, by means analagous to the existing mode of attachment, vi. also sections, 12, 13, 33 and 34 of this chapter.

SECT. 16. A precaution of the kind here proposed is necessary to secure the benefit of the equitable provisions of the act of 1839, ch. 412, § 2, to the creditor.

SECT. 19. Imprisonment of the debtor, as a punishment or mode of extorting payment of a debt from an honest debtor unable to pay, has ceased to be a principle in our laws. Confinement is only permitted as a process to secure to the creditor a disclosure of the resources of a debtor, so far as a creditor has a right to know them.

SECTS. 29 and 30. These sections are founded on the basis of the second section of the act of 1839, ch. 412 and contain an attempt to carry into effect the intention of that law. The precautions here introduced are not intended to prolong the confinement of the debtor, but merely to give time to the creditor to make examination before the property is returned to the debtor in order to determine his election, the debtor's person having been liberated.

SECT. 43. This equitable provision is inserted to revive a principle contained in the act for the relief of poor debtors, passed in 1822, and seems consistent with the general spirit of legislation in this State, by sustaining public officers in the honest exercise of their duties.

SECTS. 59 and 69. The provisions in these sections are new.