

# MAINE STATE LEGISLATURE

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REVISION II.

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REPORT

OF THE

COMMISSIONER

APPOINTED TO

REVISE THE PUBLIC LAWS

OF THE

STATE OF MAINE.

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CIVIL RIGHTS AND REMEDIES.

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TITLE IX.

Augusta:

FULLER & FULLER, PRINTERS TO THE STATE.

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1856.



## TITLE NINTH.

### CIVIL RIGHTS AND REMEDIES.

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CHAP. 81.**Chapter 81.****COMMENCEMENT OF CIVIL ACTIONS; INDORSEMENT AND SERVICE OF WRITS; ATTACHMENT OF PROPERTY; ARRESTS; AND LIMITATION OF CIVIL ACTIONS.****ARTICLE I. *Writs and commencement of actions.***

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110. Non joinder of defendants shall not abate the suit, if the action is barred against the one not sued.

111. Effect of indorsement of partial payments. No promisor affected, except those making the payments.

112. Presumption of payment after twenty years.

113. Application of this chapter to set offs.

114. Provision if defendant is out of the state.

ARTICLE I. *Writs and commencement of actions.*Forms of writs  
remain, &c.

SECT. 1. The forms of writs in civil actions remain as  
2 established; but the supreme judicial court by general rules  
3 may make such alterations therein for all courts, as changes  
4 in the law or other causes require.

R. S., c. 114, § 1.

Personal and  
transitory  
actions, &c.

SECT. 2. When the parties reside in the state personal  
2 and transitory actions shall be brought in the county in  
3 which one of them lives, when the plaintiff is not an inhabi-  
4 tant of the state in the county where a defendant lives ex-  
5 cepting process of foreign attachment, and when not so  
6 brought, on motion or inspection by the court the writ shall  
7 be abated, and the defendant allowed double costs; except  
8 as is provided in the following sections.

R. S., c. 114, § 2.  
1856, c. 228.Exceptions.  
Actions on  
sheriffs' bonds.

SECT. 3. Actions on bonds given by sheriffs and coroners  
2 to the treasurer of the state shall be brought in the county,  
3 in which such sheriff or coroner is commissioned to act.

R. S., c. 114, § 3.

Exceptions, &amp;c.

SECT. 4. All actions of debt founded on judgment ren-  
2 dered by any court of record in this state may be brought

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3 in the county, where the same was rendered, or in the county  
4 in which either of the parties to such judgment or his ex-  
5 ecutor or administrator resides at the time of bringing the  
6 action.

R. S., c. 114, § 4.

SECT. 5. In all actions commenced in any court proper to  
2 try the same jurisdiction shall be sustained, if goods, estate,  
3 effects or credits of any defendant are found within this  
4 state and attached on the original writ; and service shall  
5 be made as provided in the eighteenth section of this chap-  
6 ter.

Jurisdiction  
sustained if  
defendant's  
property is  
attached in the  
state, &c.

R. S., c. 114, § 5.

SECT. 6. Local and transitory actions shall be commenced  
2 and tried as follows: When both parties are counties in any  
3 county adjoining either; when a county is a plaintiff, if the  
4 defendant lives therein, in any adjoining county; if he does  
5 not live therein, in the county in which he does live; when  
6 a county is defendant, if the plaintiff lives therein, in that  
7 county or in any adjoining county; if he does not live  
8 therein, in that county or in that in which he does live;  
9 when a corporation is one party and a county the other, in  
10 any adjoining county; when both parties are towns, parishes  
11 or school districts, in the county in which either is situated;  
12 when one party is a town, parish, or school district, and the  
13 other some corporation or natural person, in the county in  
14 which either of the parties is situated or lives; but all ac-  
15 tions against towns for damages by reason of defects in  
16 highways, shall be brought and tried in the county in which  
17 the town is situated. All other corporations may sue and  
18 be sued in the county in which they have any established  
19 place of business, or in that in which the plaintiff or defend-  
20 ant, being a natural person, lives.

Local and  
transitory  
actions, in  
which counties,  
towns, school  
districts,  
parishes and  
other corpora-  
tions, are parties;  
where brought.

R. S., c. 114,  
§ 6, 7, 8, 9, 10,  
11, 12, 13.  
1849, c. 108.

SECT. 7. When a forfeiture is recoverable in a civil action,  
2 it shall be brought in the county in which the offense was  
3 committed, unless a different provision is made in the stat-  
4 ute imposing it; and if on trial it does not appear, that it  
5 was committed in the county where the action is brought, the  
6 verdict shall be in favor of the defendant.

Actions for  
forfeitures;  
where brought.

R. S., c. 114,  
§ 14.

SECT. 8. Any action against two or more defendants re-  
2 siding in different counties to be tried before a justice of the  
3 peace or municipal or police court may be brought in the  
4 county where either resides, and the writ and execution shall  
5 be directed to and executed by the proper officers in each of  
6 such counties, but if there be but one defendant, such action  
7 shall be commenced in the county where he resides.

Justice actions  
against several  
defendants, &c.

R. S., c. 114,  
§ 15.  
1842, c. 10, § 3.

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ARTICLE II. *Writs, indorsment, and other requisites of.*

What writs  
must be  
indorsed, &c.

SECT. 9. Every writ original, of scire facias, of error, of  
2 audita querela, petition for writ of certiorari, for review, or  
3 for partition, and bill in equity, shall before entry in court be  
4 indorsed by some sufficient inhabitant of the state, when the  
5 plaintiff or petitioner is not an inhabitant thereof; and if  
6 pending such suit the plaintiff or petitioner removes from  
7 the state, such indorser shall be procured on motion of the  
8 defendant or other party to the suit; but if one of two  
9 or more such plaintiffs or petitioners is an inhabitant of the  
10 state, no indorser shall be required except by special order  
11 of the court.

R. S., c. 114,  
§ 16, 17.

Liability of  
indorser, &c.

SECT. 10. In case of avoidance or inability of the plaintiff  
2 or petitioner, the indorser is liable in an action on the case,  
3 brought within one year after the original judgment in the  
4 court, in which it was rendered, to pay all costs recovered  
5 against the plaintiff. A return upon the execution by an  
6 officer of the county, where the indorser lives, that he has  
7 demanded of the indorser payment thereof, and that he has  
8 neglected to pay the same, or to show the officer personal  
9 property sufficient to satisfy the execution, or that he can-  
10 not find the indorser within his precinct, shall be conclusive  
11 evidence of his liability in the suit.

R. S., c. 114,  
§ 18.

New endorser  
required, &c.

SECT. 11. If pending any such suit or petition any such  
2 indorser becomes insufficient or removes from the state, the  
3 court may require a new and sufficient indorser the defend-  
4 ant consenting, that the name of the original indorser shall  
5 be struck out; and such new indorser shall be liable for all  
6 costs from the beginning of the suit, as if he had been the  
7 original indorser; and if such new indorser is not provided,  
8 the action shall be dismissed and the defendant recover his  
9 costs.

R. S., c. 114,  
§ 19, 20.

Writs for civil  
actions; how  
signed, sealed  
and tested.

SECT. 12. All civil actions, except scire facias or other  
2 special writs, shall be commenced by original writs. Writs  
3 issued by a justice of the peace, or judge of a municipal or  
4 police court, shall be sealed and signed by such justice or  
5 judge.

R. S., c. 114,  
§ 21.

Writs original;  
how issued and  
how framed.

SECT. 13. All original writs in the supreme judicial court  
2 may be issued by the clerk in term time or vacation and  
3 framed to attach the goods or estate of the defendant and  
4 for want thereof to take his body; or as an original sum-  
5 mons with or without an order to attach goods or estate. (a)

R. S., c. 114,  
§ 22, 23.

SECT. 14. In actions against corporations, and in other cases where goods or estate are attached and the defendant is not liable to arrest, the writ and summons may be combined in one.

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Writs against corporations, &c.  
R. S., c. 114,  
§ 25.

ARTICLE III. *The service of writs, attachment of property, and disposal thereof.*

SECT. 15. When goods or estate are attached on either of said writs, a separate summons in form by law prescribed shall be delivered to the defendant or left at his dwelling house or place of last and usual abode fourteen days before the sitting of the court, to which it is returnable, which shall be a sufficient service.

Summons; separate to be left when attachment is made.

R. S., c. 114,  
§ 24.

SECT. 16. Where the process is by original summons, wherein the law does not require a separate summons to be left with the defendant, the service shall be sufficient by reading the writ or original summons to the defendant, or by giving him in hand or leaving at his dwelling house or place of last and usual abode a certified copy thereof, fourteen days before it is returnable. (a)

Summons; original how served.

R. S., c. 114,  
§ 26.

SECT. 17. If the defendant was never an inhabitant of this state or has removed therefrom, the summons where goods and estate are attached, or a copy of the original summons, as the case may require, shall be left with his tenant agent or attorney fourteen days before the sitting of the court.

Service if defendant is not an inhabitant, &c.  
R. S., c. 114,  
§ 27.

SECT. 18. When the goods or estate of any person not an inhabitant of the state and having no tenant agent or attorney therein are attached in any civil action, and in all other cases where the court orders notice, any justice of the court to which the writ or process is returnable may in vacation make his order by him signed on the back of the writ or process directing how the defendant shall be notified; or the court after entry may order such notice to the defendant as justice requires; and if such order is complied with and proved to the satisfaction of the court, the defendant shall be held to answer to the suit as in other cases. Such order may be made by such justice in any county in which the court is in session. A justice of the peace or judge of a municipal or police court may in like cases and with the same effect order like notice on any writ or process returnable or in actions pending before them.

Order of notice made by any justice, &c.

R. S., c. 114,  
§ 28,  
1844, c. 86,  
1850, c. 154.

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Service on a  
county.  
R. S., c. 114,  
§ 41.

Service on a  
town or quasi  
corporation.

R. S., c. 114,  
§ 42.

Service on other  
corporations.

R. S., c. 114,  
§ 43.

Service on  
insurance  
companies out  
of the state.

1846, c. 186.

Service time of,  
on corporations.

R. S., c. 114,  
§ 44.

Service on a  
co-defendant out  
of the state.

R. S., c. 114,  
§ 47.

Service defective  
or insufficient,  
&c.

SECT. 19. When a suit is 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.

SECT. 20. In all suits against the inhabitants of any town,  
2 parish, religious society, or school district, the summons shall  
3 be served by leaving a copy thereof with the clerk or one of  
4 the selectmen or assessors of the corporation sued, if there  
5 is any such officer; if not with a member of such corpora-  
6 tion.

SECT. 21. In suits against all other corporations however  
2 created the summons shall be served by leaving a copy  
3 thereof with the president, clerk, cashier, treasurer, general  
4 agent, or director, of the corporation sued; if there be no  
5 such officer or agent found within the county, where such  
6 corporation is established or where its records or papers  
7 are by law required to be kept, such copy may be left with  
8 any member thereof. (a)

SECT. 22. In an action against an insurance company es-  
2 tablished in any other state or country by an inhabitant of  
3 this state on a policy of insurance signed or countersigned  
4 by an agent in this state on property or lives within this  
5 state a summons in usual form or a copy of the writ and  
6 declaration delivered to the agent or attorney of the com-  
7 pany within this state or left at his last and usual place of  
8 abode shall be a sufficient service; or if such service is  
9 made upon the person, being an inhabitant of the state, who  
10 signed or countersigned the policy, on which such action is  
11 founded, it shall also be a sufficient service; but in either  
12 case the court may order further notice to be given to such  
13 company.

SECT. 23. In all the cases mentioned in the four preceding  
2 sections the writ shall be served thirty days before the sit-  
3 ting of the court, to which it is returnable.

SECT. 24. When an action is commenced against two or  
2 more persons on a joint obligation or contract, and any one  
3 or more of them is not an inhabitant of the state and has no  
4 tenant agent or attorney in the state, service made on him  
5 as is provided in the eighteenth section of this chapter shall  
6 be sufficient, unless further notice is ordered by the court.

SECT. 25. When the service of a writ is defective or insuf-  
2 ficient by reason of some mistake of the officer or of the  
3 plaintiff, as to the place where, the time when, or the person

4 with whom, the summons or copy should have been left, the  
5 court may order a new summons to be issued and served in  
6 such manner as they direct; and such service shall be as  
7 effectual as if made and returned on the original writ.

R. S., c. 114,  
§ 48.

10 SECT. 26. When the name of a defendant is not known to  
12 the plaintiff, the writ may issue against him by an assumed  
13 name; and if duly served it shall not be abated for that  
14 cause, but may be amended on such terms as the court shall  
15 order.

Name of  
defendant  
unknown, &c.

R. S., c. 114,  
§ 49.

10 SECT. 27. All goods and chattels may be attached and  
12 held as security to satisfy the judgment for damages and  
13 costs, which the plaintiff may recover, except such as from  
14 their nature and situation have been considered as exempted  
15 from attachment according to the principles of the common  
16 law as adopted and practiced in this state, and such as are  
17 hereinafter mentioned. Such personal property may be at-  
18 tached on writs or taken on executions issued by a justice  
19 of the peace or judge of a police or municipal court in any  
20 county; and they may for that purpose be directed to the  
21 proper officer of such county by such justice or judge. (a)

Attachment;  
personal  
property what,  
&c.

R. S., c. 114,  
§ 29,  
1842, c. 10, § 1.

10 SECT. 28. *When estates for a term of years are attached,*  
12 *the attachment may be preserved as provided in section*  
13 *thirty-five of this chapter. When sold on execution they*  
14 *shall be advertised, sold, and conveyed as provided by*  
15 *sections thirty and thirty-three of chapter seventy-six. (b)*  
16 All real estate liable to be taken in execution according to  
17 the provisions of chapter seventy-six may be attached on  
18 mesne process, and held as security for the purposes men-  
19 tioned in the preceding section. The officer in order to  
20 make such an attachment need not enter on such estate or  
21 be within view of it.

Attachment of  
real estate;  
how made.

R. S., c. 114,  
§ 30.

10 SECT. 29. A right in equity of redeeming lands mortgaged  
12 or taken in execution may be attached on mesne process;  
13 and if before the levy of the execution the lands are re-  
14 deemed, or the incumbrance thereon is removed, the attach-  
15 ment shall hold the premises discharged of the mortgage or  
16 levy as effectually, as if they had not existed and the prem-  
17 ises had been attached.

Attachment of  
equities of  
redemption.  
Effect of, if  
redeemed before  
levy.

R. S., c. 114,  
§ 31.

10 SECT. 30. No attachment of real estate on mesne process  
12 shall create any lien on such estate, unless the officer making

Attachment;  
registry of, &c.

(a) 7, Me. 232. 18, Me. 231. 25, Me. 176. 37, Me. 221. 31, Me. 152.

(b) New provision. Estates for ninety-nine or more years are personal property. The provision is designed to preserve attachment on such estates, and to give better notice of sale and a better conveyance of title than is given for common personal property.



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3 it within five days thereafter files in the office of the regis-  
 4 ter of deeds in the county or district, in which all or any part  
 5 of said lands are situated, an attested copy of so much of the  
 6 return made by him on the writ, as relates to the attachment  
 7 together with the names of the parties, the sums sued for,  
 8 the date of the writ, and the court to which it is returnable.  
 9 If the copy is not so filed within five days, the attachment  
 10 shall take effect from the time it is filed if before the entry  
 11 of the action, although it may be after service on the defend-  
 12 ant. And such proceedings shall be had in such office by the  
 13 register of deeds, as are prescribed in the chapter respect-  
 14 ing the registry of deeds.

R. S., c. 114,  
 § 32, 34.

Attachment not  
 valid, &c.

R. S., c. 114,  
 § 33.

Attachment,  
 duration of, &c.

SECT. 31. 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  
 5 set forth in proper counts, or a specification of such claim is  
 6 annexed to the writ. (a)

SECT. 32. No personal property and no real estate, except  
 2 equities of redeeming real estate mortgaged or taken in exe-  
 3 cution, or equities of redemption which have been sold on  
 4 execution, or an obligee's conditional right to a deed of con-  
 5 veyance of real estate to him, which has been sold on exe-  
 6 cution, and except property attached and replevied, and  
 7 property attached belonging to a person dying after an at-  
 8 tachment of it had been made, or specially provided for in  
 9 any other case, shall be held to be taken in execution by  
 10 virtue of an attachment longer than thirty days next after  
 11 the day, on which final judgment was rendered in the suit.

R. S., c. 114,  
 § 35.

Attachment  
 dissolved by  
 final judgment,  
 &c.

R. S., c. 114,  
 § 36, 94.

Attachment of  
 certain property  
 valid, &c.

SECT. 33. When final judgment is rendered for the defend-  
 2 ant, the attachment is thereby dissolved. The final judgment  
 3 mentioned in this and the preceding section is the judgment  
 4 rendered in the original action and not such as may be ren-  
 5 dered on review or writ of error. (b)

SECT. 34. When hay in a barn, horses or neat cattle are  
 2 attached, and are suffered to remain by the permission of  
 3 the officer in the defendant's possession on security given  
 4 for their safe keeping and delivery to the officer, they shall  
 5 not be subject to a second attachment to the prejudice of  
 6 the first. (c)

R. S., c. 114,  
 § 37.

(a) 18, Mo. 296.

(b) 14, Mo. 420. 19, Mo. 420.

(c) 18, Mo. 272. 19, Mo. 92. 37, Mo. 326.

SECT. 35. When any personal property is attached, which  
 2 by reason of its bulk or other special cause cannot be imme-  
 3 diately removed, the officer may within five days thereafter  
 4 file in the office of the clerk of the town, in which the attach-  
 5 ment is made, an attested copy of so much of his return on  
 6 the writ, as relates to the attachment, together with the  
 7 names of the parties, the sums sued for, the date of the writ,  
 8 and the court to which it is returnable; and such attach-  
 9 ment shall be effectual and valid, as if the property had  
 10 remained in his possession and custody. The clerk shall  
 11 receive the copy and note thereon the time of his receiving  
 12 it, and enter it in a book kept for that purpose, and keep it  
 13 on file for the inspection of those who may be interested  
 14 therein, for which he shall be entitled to ten cents.

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Attachment how  
 preserved when  
 property cannot  
 be removed, &c.

R. S., c. 114,  
 § 39, 40.  
 1849, c. 107.

SECT. 36. The following goods and property shall be  
 2 exempted from attachment and execution.

Attachment,  
 personal  
 property  
 exempted from

3 *First*—The debtor's wearing apparel, beds bedsteads bed-  
 4 ding and household utensils necessary for himself his wife  
 5 and children; but the beds and bedding so exempted shall  
 6 not exceed one bed bedstead and necessary bedding for every  
 7 two persons, nor the other household furniture the value of  
 8 fifty dollars.

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

11 *Third*—All bibles and school books in actual use in the  
 12 family and one copy of the statutes of the state.

13 *Fourth*—All iron stoves used exclusively for warming  
 14 buildings.

15 *Fifth*—One cow, and one heifer under three years old, two  
 16 swine, one of which shall weigh not more than one hundred  
 17 pounds; and when he owns a cow and a heifer more than  
 18 three years old, or two swine, each weighing more than one  
 19 hundred pounds, he may elect the cow or the heifer, or which  
 20 of the swine shall be so exempted; ten sheep and the wool  
 21 from them; thirty hundred of hay for the use of the cow,  
 22 and two tons for the use of the sheep, and a sufficient quan-  
 23 tity for the use of the heifer. (a)

24 *Sixth*—All produce of farms until harvested; and corn and  
 25 grain necessary and sufficient for the sustenance of the debtor  
 26 and his family not exceeding thirty bushels.

27 *Seventh*—All his interest in one pew in any meeting-house,  
 28 where he and his family statedly worship.

- CHAP. 81. 29 *Eighth*—All potatoes raised or purchased for the consump-  
 30 tion of himself and family; one barrel of flour; ten dollars  
 31 worth of lumber wood or bark.
- 32 *Ninth*—All the firewood conveyed to his house for the use  
 33 of himself and family not exceeding twelve cords.
- 34 *Tenth*—One boat not exceeding two tons burthen usually  
 35 employed in fishing business belonging wholly to an inhab-  
 36 itant of this state.
- 37 *Eleventh*—One plough of the value of ten dollars; one  
 38 cart of the value of twenty-five dollars; one harrow of the  
 39 value of five dollars; one yoke with bows ring and staple  
 40 all of the value of three dollars; two chains each of the  
 41 value of three dollars; one ox-sled of the value of ten dol-  
 42 lars; one cooking stove of the value of thirty-five dollars;  
 43 and all anthracite coal not exceeding five tons; and bitumi-  
 44 nous coal not exceeding fifty bushels; and charcoal conveyed  
 45 to his house to be consumed in his family.
- 46 *Twelfth*—One pair of working cattle, or instead thereof  
 47 one or two horses not exceeding in value one hundred dol-  
 48 lars; and a sufficient quantity of hay to keep them through  
 49 the winter season. If he has more than one pair of work-  
 50 ing cattle, or if the two horses exceed in value one hundred  
 51 dollars, he may elect which pair of cattle, or which of the  
 52 horses shall be exempted.

R. S., c. 114,  
 § 38.  
 1847, c. 11, 32.  
 1849, c. 134.

Attachment,  
 real property  
 exempted from.

SECT. 37. A lot of land and the improvements made thereon  
 2 purchased of the state under the provisions of chapter three  
 3 shall be exempted from attachment, in the manner therein  
 4 provided; land appropriated as a burying ground as de-  
 5 scribed in the eighth section of chapter fifteen, also a lot of  
 6 land, and dwelling house and out buildings thereon, or so  
 7 much thereof as does not exceed five hundred dollars in  
 8 value, the property of a house-holder in actual possession  
 9 thereof not the owner of a lot purchased of the state as  
 10 aforesaid shall be exempted from attachment or levy of any  
 11 execution, as is hereinafter provided.

1850, c. 207, § 1.  
 1855, c. 129.

Attachment,  
 proceedings  
 requisite to  
 secure, &c.

SECT. 38. Any such person, wishing to avail himself of the  
 2 foregoing provision, may file in the registry of deeds of the  
 3 county or district, in which the land lies, a certificate signed  
 4 by him declaring such wish and describing the land and  
 5 buildings; and the register for the fees for recording deeds,  
 6 shall record the same in a book by him kept for that purpose;  
 7 and so much of such property, as does not exceed the value  
 8 aforesaid, shall be forever exempt from attachment or levy  
 9 on any execution issued on a judgment recovered for any

CHAP. 81.

10 debt, contracted jointly or severally by such person after the  
 11 date of the recording thereof; and the record in the regis-  
 12 ter's office shall be prima facie evidence, that the certificate  
 13 purporting to be there recorded, was made signed and filed  
 14 as appears upon such record.

1850, c. 207, § 4.

SECT. 39. When property, exempted as aforesaid is claimed  
 2 by a creditor to be of greater value than five hundred dollars,  
 3 it may be seized on execution, and the appraisers shall first  
 4 set off such part of the property as the debtor may select,  
 5 and if he neglects so to do, as the officer may select for him,  
 6 to the value of five hundred dollars, by metes and bounds;  
 7 and shall then appraise and set off to the creditor in manner  
 8 prescribed by law the remainder or so much thereof, as may  
 9 be necessary to satisfy the execution; and the appraisers  
 10 shall be sworn accordingly, and the officer shall make return  
 11 of his doings thereon.

Attachment,  
proceedings  
when the  
unexempted  
part is taken on  
execution.

1850, c. 207, § 5.

SECT. 40. After his death the exempted premises shall  
 2 not be sold for the payment of his debts during the widow-  
 3 hood of his widow or the minority of any of his children,  
 4 but may be occupied by his widow during her widowhood  
 5 and by his children during minority free from any claim by  
 6 any creditor of his estate.

Attachment,  
interest of  
widow and  
minor children  
in exempted  
homestead.

1850, c. 207, § 2.

SECT. 41. No exemptions under the four preceding sec-  
 2 tions shall apply to or defeat the liens of mechanics or other  
 3 persons under the provisions of chapter ninety.

Attachment,  
lien of  
mechanics, &c.  
1850, c. 207, § 3.

SECT. 42. When the share or interest of any person in any  
 2 incorporated company is attached on mesne process, an  
 3 attested copy of the writ with a notice thereon of the attach-  
 4 ment signed by the officer shall be left with the clerk cash-  
 5 ier or treasurer of the company; and such attachment shall  
 6 be a lien on the share or interest and on all accruing divi-  
 7 dends; and if the officer having the writ of attachment  
 8 exhibits it to the officer of the company having custody of  
 9 the account of shares or interest of the stockholders and  
 10 requests a certificate of the number held by the defendant,  
 11 and such officer unreasonably refuses to give it or willfully  
 12 gives him a false certificate thereof, he shall pay double the  
 13 damages occasioned by such refusal or neglect; to be recov-  
 14 ered against him in an action on the case by the creditor.

Attachment of  
shares in a  
corporation.R. S., c. 114,  
§ 45.

SECT. 43. The franchise and all rights privileges and im-  
 2 munities of any incorporated company of demanding and  
 3 receiving tolls or other corporate property may be attached  
 4 on mesne process, and the officer making the attachment  
 5 shall leave an attested copy of the writ with a notice thereon  
 6 of the attachment signed by him with the clerk, treasurer,

Attachment of  
franchise, &c.

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R. S., c. 114,  
§ 45.

Attachment on  
same writ in  
different coun-  
ties, &c.

R. S., c. 114,  
§ 50.

Attachment on  
writ of scire  
facias.

R. S., c. 114,  
§ 51.

Attached per-  
sonal property  
sold by consent.

R. S., c. 114,  
§ 52.

Attached living  
animals, &c.

R. S., c. 114,  
§ 53.

Notice and  
proceedings in  
appraisal.

7 or some officer or member, of the corporation, as provided  
8 in section twenty-one.

SECT. 44. Different attachments in one or more counties  
2 may be made successively upon the same writ and by differ-  
3 ent officers before the service of the summons upon the per-  
4 son whose property is attached; but none after such service.  
5 And personal property attached by a corouer may be again  
6 attached by a sheriff, deputy sheriff or constable subject to  
7 the former attachment by giving notice thereof to the coro-  
8 ner and furnishing him with a copy of the precept within a  
9 reasonable time thereafter, and vice versa; and personal  
10 property attached by a constable may be again attached by  
11 a coroner or by a deputy in the same manner.

SECT. 45. All writs of scire facias may contain a direction  
2 to the officer serving them, to attach the property of those  
3 against whom they issue and also to arrest their bodies when  
4 liable to be arrested, in the same manner as may be done in  
5 case of writs of attachment.

SECT. 46. When personal property is attached, if the cred-  
2 itor and debtor consent, the officer may sell it before judg-  
3 ment, observing the directions for selling on execution; and  
4 when the same property is attached by different creditors in  
5 different suits, it may be so sold by the first attaching officer;  
6 or in case of his death, if he was a deputy sheriff by the  
7 sheriff or another deputy, by the written consent of the de-  
8 fendant and all attaching creditors; and the proceeds of the  
9 sale, after deducting the necessary expenses, shall be held  
10 by such first attaching officer or the sheriff, subject to the suc-  
11 cessive attachments as if the sale had been on execution.

SECT. 47. When living animals, or goods liable to perish  
2 or waste, or be greatly reduced in value by keeping, or which  
3 cannot be kept without great expense, are attached, and the  
4 parties do not consent to a sale thereof, as before provided,  
5 the property so attached, at the request of either of the par-  
6 ties interested therein, may be examined and appraised in  
7 the manner following.

SECT. 48. Upon such request made to the officer, he shall  
2 give notice to all parties of the time and place of the  
3 appraisal, with the names of the parties to the action and  
4 of the supposed owner of the property by posting up adver-  
5 tisements thereof in two or more public places in the town  
6 where it was attached; or he may give like personal notice  
7 thereof, to all parties to the suit, in which it is attached, the  
8 notice in each case to be four days at least before the day

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9 of the appraisal; and he shall prepare a schedule of the  
 10 property, and cause three disinterested persons acquainted  
 11 with the nature and value of such goods to be appointed  
 12 and duly sworn as appraisers thereof.

R. S., c. 114,  
 § 54.  
 1846, c. 198.

SECT. 49. The appraisers shall be appointed, one by the  
 2 creditor, one by the debtor, and one by the officer; and, if  
 3 the creditor or debtor neglects to appoint one, the officer  
 4 shall appoint one in his behalf.

Appraisers, how  
 appointed.  
 R. S., c. 114,  
 § 55.

SECT. 50. The appraisers shall examine the property at-  
 2 tached, and if they are of opinion that any part of it is liable  
 3 to perish, or to be wasted, or greatly reduced in value by  
 4 keeping, or kept at a great expense, they shall proceed to  
 5 appraise it according to their best judgment at its value in  
 6 money; and it shall thereupon be sold by the officer and the  
 7 proceeds held and disposed of in the manner before provided  
 8 in the case of a sale by consent of parties, unless it is taken  
 9 by the debtor, as is provided in the following section. (a)

Mode of  
 appraisal, &c.

R. S., c. 114,  
 § 56.

SECT. 51. The property shall be delivered to the debtor,  
 2 after it is thus appraised, if he requires it, on his depositing  
 3 with the attaching officer the appraised value thereof in  
 4 money, or giving bond to him with two sufficient sureties  
 5 with condition to pay him the appraised value of the prop-  
 6 erty, or to satisfy all such judgments, as shall be recovered  
 7 in the suits in which the property is attached if demanded  
 8 before the attachments expire, or within thirty days after  
 9 the time when the creditors respectively might have been  
 10 entitled to demand payment out of the proceeds of the prop-  
 11 erty sold as before provided.

Delivered to  
 debtor if he give  
 bond.

R. S., c. 114,  
 § 57.

SECT. 52. The officer taking such bond shall return it with  
 2 the writ, on which the first attachment is made, as bail bonds  
 3 are returned, with a certificate of his doings in relation  
 4 thereto; and in case of a forfeiture of the bond the credit-  
 5 ors or any one or more of them may bring an action of debt  
 6 thereon in the name of the officer.

Bond returned  
 with writ; suit  
 thereon.

R. S., c. 114,  
 § 58.

SECT. 53. The writ in such action shall be indorsed with  
 2 the names of the creditors, by whom the action is brought;  
 3 and in case judgment is rendered for the defendants, execu-  
 4 tion for the costs shall be issued against all the creditors,  
 5 whose names are so indorsed, or separate executions against  
 6 each creditor for his proper proportion, as the court shall  
 7 consider most equitable and just.

Proceedings in  
 the suit.

R. S., c. 114,  
 § 59.

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Money  
recovered ; how  
applied.

R. S., c. 114,  
§ 60.

Right by priority  
of attachment  
preserved.

R. S., c. 114,  
§ 61.

Suit upon the  
bond and inter-  
est of creditors  
therein.

R. S., c. 114,  
§ 62.

Right by  
priority in case  
of sale preserved.

R. S., c. 114,  
§ 63.

Surplus proceeds  
may be attached  
in officer's  
hands.

SECT. 54. If judgment is rendered for the plaintiff, the  
2 money recovered shall be first applied under the order of  
3 court to pay the reasonable expenses incurred by the cred-  
4 itors in prosecuting the suit, so far as the same are not  
5 reimbursed by the costs recovered of the defendant; and  
6 the residue shall belong to all the attaching creditors accord-  
7 ing to their respective rights.

SECT. 55. No judgment or execution shall be awarded for  
2 the use of any creditor without reserving as much as may  
3 be due upon any prior attachment, whether the creditor in  
4 such prior suit is or is not one of those, by whom the action  
5 is brought on the bond.

SECT. 56. Any creditor entitled to the benefit of the bond,  
2 who has not joined in bringing the action thereon, may on  
3 his motion at any time before final judgment in the action  
4 on the bond be allowed, upon such terms as the court orders,  
5 to become a party to the suit in like manner and with the  
6 same effect, as if he had been one of the original plaintiffs,  
7 and his name shall be indorsed on the writ accordingly, or  
8 he may bring scire facias on the judgment and recover any  
9 sum, that may be due him on the bond. But no creditor,  
10 whose cause of action on such bond accrues more than one  
11 year before the commencement of the action thereon, shall  
12 have judgment or execution in such action; and no creditor  
13 shall sue out any such writ of scire facias on the judgment,  
14 unless within one year after the cause of the action accrues.

SECT. 57. When goods, which are sold or appraised and  
2 delivered to the debtor in the manner before provided, have  
3 been attached by several creditors, any one of them may de-  
4 mand and receive satisfaction of his judgment notwithstand-  
5 ing any prior attachments; if he is otherwise entitled to  
6 demand the money, and a sufficient sum is left, of the pro-  
7 ceeds of the goods, or of their appraised value, to satisfy all  
8 prior attachments.

SECT. 58. When goods are sold or disposed of by consent  
2 of parties, or after an appraisal as aforesaid, the proceeds  
3 thereof, whilst remaining in the hands of the officer, may be  
4 further attached by him, as the property of the original de-  
5 fendant, as if the goods themselves had remained in his  
6 possession; and the proceeds so attached, shall be held and  
7 disposed of in the same manner, as if the attachment had  
8 been made on the goods themselves before the sale thereof;  
9 but nothing in this section shall prevent the officer from pay-

10 ing over to the defendant the surplus of the proceeds of any CHAP. 81.  
 11 sale after retaining enough to satisfy all the attachments R. S., c. 114,  
 12 actually existing thereon at the time of the payment. § 64.

SECT. 59. When any personal property is attached in any Attached prop-  
 2 suit against one or more of the part owners thereof, it shall erty of part  
 3 upon the request of any other part owner be examined and owners, &c.  
 4 appraised in the manner before provided for an appraisalment  
 5 made at the request of any party in the suit; except that the R. S., c. 114,  
 6 part owner, who makes the application, shall appoint one of § 65.  
 7 the appraisers, and the defendant shall not appoint any.

SECT. 60. The property shall be delivered to the part And delivered to  
 2 owner, at whose request it was appraised, upon his giving the owner on  
 3 bond to the attaching officer in a sufficient penalty with two his bond.  
 4 sufficient sureties with condition to restore it in like good  
 5 order, or pay the officer the appraised value of the defend-  
 6 ant's share or interest therein, or to satisfy all judgments  
 7 recovered in suits in which the property is attached, if de- R. S., c. 114,  
 8 manded within the time during, which it would have been § 66.  
 9 held by the respective attachment.

SECT. 61. If such appraised value or any part thereof is His lien thereon  
 2 so paid, the defendant's share of the property shall thereby if he discharges  
 3 become pledged to the party, to whom it was delivered; and the attachment.  
 4 he may sell it if not redeemed, and shall account to the de- R. S., c. 114,  
 5 fendant for the balance if any of the proceeds of the sale. § 67.

SECT. 62. If the attachment is in any way dissolved the Restored to  
 2 party, to whom the defendant's share was delivered, shall defendant, &c.  
 3 restore it to the defendant, or to the officer, who made the R. S., c. 114,  
 4 attachment, to be by him delivered to the defendant. § 68.

SECT. 63. The doings of the officer with the bond shall be Bond and  
 2 returned; and in case of the forfeiture of any such bond by proceedings  
 3 a part owner, the like proceedings may be had thereon, as is thereon; how  
 4 provided in section fifty-two. returned.  
R. S., c. 114,  
§ 69.

SECT. 64. Personal property not exempted from attach- Attachment of  
 2 ment mortgaged, pledged, or subject to any lien created by personal prop-  
 3 law, and of which the debtor has the right of redemption, erty, &c.  
 4 may be attached and held and sold in the same manner, as R. S., c. 114,  
 5 if it was unencumbered, provided the attaching creditor first § 70.  
 6 tenders or pays the mortgagee, pledgee, or holder, the full R. S., c. 117,  
 7 amount unpaid on the demand so secured thereon. § 38.

SECT. 65. Every mortgagee pledgee or holder of personal Mortgagee must  
 2 property on demand in writing made on him by any person render a true  
 3 desiring to attach it, shall render a just and true account of account, &c.  
 4 his debt or demand so secured; and if he unreasonably neg-  
 5 lects so to do for six hours after such demand, the officer



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6 may attach the property as if it was unencumbered, and such  
 7 attachment shall have priority over the mortgage; and any  
 8 overplus after satisfying the execution in the suit shall be  
 9 paid over to the mortgagee, pledgee or holder; or if he shall  
 10 receive more than is justly due him on account of the demand  
 11 so secured, he shall refund the excess with ten per cent. inter-  
 12 est thereon to the time of recovering judgment.

R. S., c. 114,  
 § 71.

Attached prop-  
 erty claimed by  
 third person, &c.

SECT. 66. When property attached on mesne process is  
 2 claimed by any person not a party to the suit, and he omits,  
 3 for the space of ten days after notice given him therefor by  
 4 the attaching creditor to bring his action of replevin, he  
 5 shall not bring it afterwards, and the officer making the at-  
 6 tachment, at the request of the plaintiff and on his respon-  
 7 sibility, the other attaching creditors if any consenting  
 8 thereto, may sell the property at public auction in the man-  
 9 ner provided for the sale of goods on execution; unless the  
 10 defendant claims it in his own right and forbids the sale;  
 11 but the sale shall not impair the rights of the party so  
 12 claiming the property.

R. S., c. 114,  
 § 72.

Attachment of  
 certain rights of  
 redeeming lands,  
 &c.

SECT. 67. The right in equity of redeeming lands mort-  
 2 gaged, and the right of redeeming such right or equity of  
 3 redemption, after it is sold on execution, and the right of  
 4 redeeming lands levied upon or sold on execution, and the  
 5 right title and interest, which any person has by virtue of a  
 6 bond or contract to a deed of conveyance of real estate on  
 7 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.

R. S., c. 114,  
 § 73.

Cross actions  
 and set off, &c.

SECT. 68. When an action is brought in this state by any  
 2 person not an inhabitant thereof, or who cannot be found  
 3 therein to be served with process, he shall be held to  
 4 answer to any action brought against him by the defendant,  
 5 if the demands are of such a nature, that one judgment or  
 6 execution can be set off against the other.

R. S., c. 114,  
 § 74.

Same where  
 several  
 defendants.

SECT. 69. If there are several defendants in the original  
 2 action, each of them may bring such cross action against the  
 3 original plaintiff, and set off his judgment against that recov-  
 4 ered against himself and his co-defendants, as if the latter  
 5 judgment had been against himself alone.

R. S., c. 114,  
 § 75.

Writ; in such  
 cases how  
 served.

SECT. 70. The writ in such cross action may be served on  
 2 the attorney of the plaintiff in the original action; and such  
 3 service shall be as valid and effectual, as if made on the party  
 4 himself in the state; and in the cases mentioned in the two  
 5 preceding sections the court may order such continuances,

R. S., c. 114,  
 § 76.

6 as justice requires, for the defense of either of the actions,  
7 or for setting off the demands as therein provided.

SECT. 71. Goods and chattels attached by an officer, in  
2 case of his death whether remaining in his custody or taken  
3 from him by replevin or otherwise, and all claims for dama-  
4 ges for goods so taken from him, shall remain subject to the  
5 attachment, as if the officer had lived; and shall not be con-  
6 sidered as assets in the hands of his executors or admin-  
7 istrators.

Attached goods ;  
on death of  
officer, how  
disposed of.

R. S., c. 114,  
§ 77.

SECT. 72. All goods taken by replevin from an officer, who  
2 has attached them, shall be considered as remaining in his  
3 custody and control so far as to be liable to further successive  
4 attachments, as if the goods had remained in his possession,  
5 subject to the provisions in the three following sections.

Attached goods  
replevied, &c.

R. S., c. 114,  
§ 78.

SECT. 73. In case of judgment for a return of the goods  
2 so replevied the plaintiff in replevin and his sureties shall  
3 be liable for the whole of the goods or the value thereof,  
4 although the attachment, for which they were eventually held  
5 was made after the taking of the goods by the replevin.

Liability of  
plaintiff in  
replevin.

R. S., c. 114,  
§ 79.

SECT. 74. If an officer after making an attachment of goods  
2 dies or is removed from office, whilst the attachment remains  
3 in force, the same goods whether replevied or remaining in  
4 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 as if the latter attachment was made  
8 by the first mentioned officer.

Attachment,  
further of goods  
replevied, &c.

R. S., c. 114,  
§ 80.

SECT. 75. The officer making the latter attachment shall  
2 not take the goods themselves, but the attachment shall be  
3 made by a return setting forth an attachment in the common  
4 form and stating by whom the goods were previously attach-  
5 ed; and if the goods have not been replevied by leaving a  
6 certified copy of the writ omitting the declaration and of the  
7 return of that attachment with the former officer if living or  
8 dead with his executor or administrator, or if none are ap-  
9 pointed with the person having possession of the goods; or  
10 if the goods have been replevied, and the officer who made  
11 the original attachment is dead, such copy shall be left with  
12 the plaintiff in replevin or his executors or administrators;  
13 and the attachment shall be considered as made, when such  
14 copy is delivered in either of the modes before described.

Attachment;  
notice how  
given of such.

R. S., c. 114,  
§ 81.

SECT. 76. Goods, that have been taken by replevin from  
2 an attaching officer, shall not be further attached as the prop-

Attachment,  
limitation of  
right of.

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R. S., c. 114,  
§ 82.

Attachment of  
personal prop-  
erty, &c.

R. S., c. 114,  
§ 83.

Attachment;  
officer to allow  
appraisement  
of.

R. S., c. 114,  
§ 84.

Attachment;  
officer to restore,  
&c.

R. S., c. 114,  
§ 85.

If he has sold  
the property, to  
be liable for the  
proceeds.

R. S., c. 114,  
§ 86.

If proceeds are  
paid to creditor  
he must refund.

R. S., c. 114,  
§ 87.

erty of the original defendant in any other manner, than that provided in the four preceding sections so long, as they are held by the person who replevied them, or by any one holding under him, unless the original defendant has acquired a new title to the goods.

SECT. 77. When any estate or goods and chattels are attached, and the debtor dies before they are taken in execution, the attachment shall remain in full force, as if the defendant were alive, unless the estate of the deceased is represented insolvent by his executors or administrators, and a commission of insolvency issues within one year next after the defendant's death.

SECT. 78. After the decease of any defendant and before the issuing of a commission of insolvency the executor or administrator on the estate of the deceased may demand of the officer, who made the attachment of such estate or goods and chattels, a certified copy of the return of said attachment, and a description of such property so particular as to enable him to describe the same in the inventory of the estate subject to such attachment so far, as is before mentioned; and the appraisers may also demand of the officer a view of the goods and chattels, so that they may know their value; and if the officer refuses or neglects to comply with either of such demands, he shall forfeit and pay to the executor or administrator a sum not exceeding thirty nor less than ten dollars.

SECT. 79. When a commission of insolvency is issued within one year from the death of the debtor, such attachment is thereby dissolved, and the officer on demand shall restore the goods and chattels attached to the executor or administrator to be administered according to law on payment of his legal fees and charges of keeping the goods.

SECT. 80. If, before any demand is made on the officer as above, he has sold on execution the property so attached by him, he shall not be deemed a trespasser in so doing, but be liable only for the proceeds of the sale after deducting his legal fees and charges for the keeping thereof; and such proceeds may be recovered by the executor or administrator in an action for money had and received.

SECT. 81. If the officer has paid over the proceeds to the judgment creditor before the demand, the executor or administrator may recover such sum from the creditor by a similar action.

## CHAP. 81.

SECT. 82. In any such action the defendant shall not set off any demand, that he has against the executor or administrator or against the estate of the deceased.

Not set off, &c.  
R. S., c. 114,  
§ 88.

SECT. 83. An action of replevin trover or trespass brought by an officer against any person for taking away from his possession any goods or chattels by him attached shall not abate by the death of either of the parties, but may be prosecuted by or against the executors or administrators of the deceased party in the same manner as actions on contracts. If judgment is recovered by the plaintiff, the goods or money shall be held and appropriated as they would and ought to be by the officer, if he had lived and recovered the same himself.

Action by officer  
for taking  
property  
attached, &c.

R. S., c. 114,  
§ 89, 90.

SECT. 84. If judgment is rendered against the executor or administrator, he shall return the goods or pay the damages recovered in full, though the estate of the deceased is insolvent.

Proceedings if  
judgment is for  
defendant.  
R. S., c. 114,  
§ 91.

SECT. 85. In case of the death of a sheriff or any other officer authorized to serve a precept pending an action for or against him by reason of any act done or omitted by him in his said office, if no administration is granted on his estate within three months from his death, the party for whose interest the suit is brought or defended may be admitted to prosecute or defend the suit in his own name by entering his appearance and giving security for costs, as the court directs.

Death of an  
officer pending a  
suit, &c.

1848, c. 59.

SECT. 86. When an attachment of real or personal property is made, and the parties by a rule of court submit the action and all other demands between them to the decision of referees, and judgment is rendered on their report, the attachment shall be thereby dissolved.

Attachments  
dissolved by  
reference of all  
demands.

R. S., c. 114,  
§ 92.

SECT. 87. If by consent of parties the declaration is amended so as to embrace a larger demand, than it originally contained, and judgment be thereon rendered for the plaintiff, the attachment made on the mesne process shall be thereby dissolved, unless it appears by the record, that no claims were allowed to the plaintiff, except those originally stated in the writ.

Attachments  
dissolved also by  
amendment  
increasing the  
claim.

R. S., c. 114,  
§ 93.

SECT. 88. 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, on Christmas day, or on the day of the annual fast or thanksgiving.

Arrests not to be  
made on certain  
days.  
R. S., c. 114,  
§ 101.

SECT. 89. On the day of any military training, inspection, review, or election, no officer, whose duty it is to attend, and

Arrests, officers  
and soldiers  
exempt from, &c.

## CHAP. 81.

R. S., c. 114,  
§ 102.

Electors on  
election days.

R. S., c. 114,  
§ 103.

No civil process  
to be served on  
Sunday.

R. S., c. 114,  
§ 104.

3 no soldier who is enrolled as such liable to do military duty  
4 and duly notified to attend on said days, shall be arrested  
5 on mesne process or on execution or for taxes.

SECT. 90. No elector shall be arrested, except for treason  
2 felony or breach of the peace, on the days of election of  
3 United States, state and town officers.

SECT. 91. No person shall serve or execute any civil pro-  
2 cess from midnight preceding to midnight following Sunday:  
3 but such service shall be void, and the person executing such  
4 process shall be liable in damages to the party aggrieved,  
5 as if he had no process.

*Limitation of personal actions.*

What actions  
must be com-  
menced within  
six years.

SECT. 92. The following actions shall be commenced within  
2 six years next after the cause of action accrues and not after-  
3 wards.

4 *First*—All actions of debt founded upon any contract or  
5 liability 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 one of the United States, or of some municipal or  
8 police court or justice of the peace in this state. (a)

9 *Second*—All actions upon judgments of any court not a  
10 court of record, except municipal and police courts and jus-  
11 tices of the peace in this state.

12 *Third*—All actions for arrears of rent.

13 *Fourth*—All actions of assumpsit or upon the case founded  
14 on any contract or liability, express or implied.

15 *Fifth*—All actions for waste, of trespass on land, and of  
16 trespass, except those for assault and battery and false im-  
17 prisonment.

18 *Sixth*—All actions of replevin, and other actions for taking  
19 detaining or injuring goods or chattels.

R. S., c. 146, § 1.

20 *Seventh*—All other actions on the case, except actions for  
21 slanderous words and for libels.

Actions for  
escape of  
prisoners within  
one year, &c.

SECT. 93. All actions for the escape of prisoners committed  
2 on execution shall be actions on the case and commenced  
3 within one year after the cause of action accrues; but all  
4 actions against a sheriff for the negligence or misconduct of  
5 himself or his deputies shall be commenced within four years  
6 next after the cause of action accrues.

R. S., c. 146,  
§ 2, 4.

## CHAP. 81.

SECT. 94. All actions of assault and battery, false imprisonment, for slanderous words and for libels shall be commenced within two years next after the cause of action accrues.

Actions for assault and battery, &c.  
R. S., c. 146, § 3.

SECT. 95. No scire facias shall be served on bail, unless within one year next after judgment rendered against the principal.

Scire facias against bail, &c.  
R. S., c. 146, § 4.

SECT. 96. All actions against an indorser of a writ must be commenced within one year next after judgment entered in the original action.

\* Actions against indorsers of writs, &c.  
R. S., c. 146, § 5.

SECT. 97. None of the foregoing provisions shall apply to any action upon a promissory note signed in the presence of an attesting witness, or upon any bills notes or other evidences of debt issued by a bank. (a)

Exception of witnessed and bank notes.  
R. S., c. 146, § 7.

SECT. 98. Nor shall any of the provisions in this chapter apply to any case or suit, which by any particular statute is limited to be commenced within a different specified time.

Exception of cases, &c.  
R. S., c. 146, § 8.

SECT. 99. In all actions of debt or assumpsit to recover the balance due upon a mutual and open account current, the cause of action shall be deemed to accrue at the time of the last item proved in such account. (b)

Cases of open and mutual account.  
R. S., c. 146, § 9.

SECT. 100. If any person entitled to bring any of the aforesaid actions, at the time when the cause of action accrues, is a minor, or married woman, insane, imprisoned, or without the limits of the United States, he may bring his action within the times limited on this chapter, after the disability is removed.

Saving of rights of infants and certain others.

R. S., c. 146, § 10.

SECT. 101. All personal actions on any contract not limited by any of the foregoing sections or other law of the state shall be brought within twenty years after the cause of action accrues. (c)

General limitation of 20 years.  
R. S., c. 146, § 11.

SECT. 102. When a writ fails of a sufficient service or return by unavoidable accident, or default, or negligence, of any officer, to whom it was delivered or directed, or when the writ is abated, or the action otherwise defeated for any matter of form, or by the death of either party, or if a judgment for the plaintiff is reversed on a writ of error, the plaintiff may commence a new action on the same demand within six months after the abatement or determination of the original suit or reversal of the judgment; and if the

Saving in certain cases of failure of suits.

(a) 7, Me. 25. 19, Me. 72. 21, Me. 176. 31, Me. 158. 26, Me. 330. 30, Me. 118. 38, Me. 179. 38, Me. 350.

(b) 4, Me. 337. 38, Me. 149.

(c) 28, Me. 81. 30, Me. 164.

CHAP. 81. 10 cause of action survives, his executor or administrator in  
 11 case of his death may commence such new action within said  
 12 six months. (a)

R. S., c. 146,  
 § 12.

Provision in the  
 case of the death  
 of either party,  
 &c.

SECT. 103. If any person entitled to bring any action be-  
 2 fore mentioned, or liable to such action, dies before the  
 3 expiration of the time herein limited therefor, or within  
 4 thirty days after the expiration of said time, if the cause of  
 5 action survives, the action may be commenced by or against  
 6 the executor or administrator at any time within two years  
 7 after administration or letters testamentary are granted;  
 8 and not afterwards if barred by the other provisions of this  
 9 chapter.

R. S., c. 45,  
 § 13.

Saving of the  
 rights of alien  
 enemies during  
 a war.

SECT. 104. If any person is disabled to prosecute an action  
 2 in this state by reason of his being an alien subject or citi-  
 3 zen of any country at war with the United States, the time  
 4 such war continues shall not be any part of the period herein  
 5 limited for the commencement of any of said actions.

R. S., c. 146,  
 § 14.

Limitation of  
 suits by individ-  
 uals for pen-  
 alties, &c.

SECT. 105. All actions and suits for any penalty or forfeit-  
 2 ure on any penal statute brought by any person, to whom  
 3 the penalty or forfeiture is given in whole or in part, shall  
 4 be commenced within one year next after the offense was  
 5 committed; and if no individual so prosecutes, the same may  
 6 be recovered by suit indictment or information in the name  
 7 and for the use of the state at any time within two years  
 8 next after the offense was committed and not afterwards.

R. S., c. 146,  
 § 15, 16.

The making of a  
 writ, &c.

SECT. 106. The time when a writ is actually made with an  
 2 intention of service shall be deemed the commencement of  
 3 the suit.

R. S., c. 146, § 17.

Limitation  
 extended in  
 cases of fraud.

SECT. 107. If any person liable to any action mentioned  
 2 in this chapter, fraudulently conceals the cause of such ac-  
 3 tion from the person entitled thereto, or if a fraud is com-  
 4 mitted, which entitles any person to an action, the action  
 5 may be commenced at any time within six years after the  
 6 person entitled thereto discovers, that he has just cause of  
 7 action. (b)

R. S., c. 146,  
 § 18.

Renewal of  
 promise must be  
 in writing, &c.

SECT. 108. In actions of debt or upon the case founded  
 2 upon any contract, no acknowledgement or promise shall be  
 3 allowed to take the case out of the operation of the provis-  
 4 ions of this chapter, unless the acknowledgement or promise  
 5 is an express one in writing signed by the party chargeable  
 6 thereby. No such acknowledgement or promise made by a

(a) 8, Me. 447.

(b) 9, Me. 131. 31, Me. 448.

7 joint contractor shall affect the liability of the other con-  
8 tractors. (a)

CHAP. 81.

R. S., c. 146,  
§ 19, 20.

If the action is  
barred, &c.

SECT. 109. In actions against two or more joint contract-  
2 ors, if it appears on trial or otherwise that the plaintiff is  
3 barred by the provisions of this chapter as to one or more  
4 of the defendants, but entitled to recover against the others  
5 by virtue of a new acknowledgement, promise or otherwise,  
6 judgment shall be rendered for the plaintiff, as to the de-  
7 fendant against whom he has a right to recover, and for the  
8 other defendants against the plaintiff.

R. S., c. 146,  
§ 21.

SECT. 110. In any action on contract, if the defendant  
2 pleads in abatement, that any other person ought to have  
3 been jointly sued, and issue is joined thereon, and it appears  
4 on the trial, that the action was barred by the provisions of  
5 this chapter against such person, the issue shall be found for  
6 the plaintiff.

Non-joinder of  
defendants shall  
not abate, &c.

R. S., c. 146,  
§ 22.

SECT. 111. Nothing herein contained shall alter, take away  
2 or lessen the effect of payment of any principal or interest  
3 made by any person; but no indorsement or memorandum  
4 of such payment written or made on any promissory note,  
5 bill of exchange, or other writing, by or on behalf of the  
6 party to whom such payment is made or purports to be  
7 made, shall be deemed sufficient proof of payment to take  
8 the case out of the operation of the provisions of this chap-  
9 chapter; and no such payment made by a joint contractor or  
10 his executor or administrator shall affect the liability of any  
11 other. (b)

Effect of  
indorsement of  
partial pay-  
ments, &c.

R. S., c. 146,  
§ 23, 24.

SECT. 112. Every judgment and decree of any court of  
2 record of the United States, or any state, or of a justice of  
3 the peace in this state, shall be presumed to be paid and sat-  
4 isfied at the expiration of twenty years after any duty or obli-  
5 gations accrued by virtue of such judgment or decree.

Presumption of  
payment after  
twenty years.

R. S., c. 146,  
§ 25.

SECT. 113. All the provisions of this chapter respecting  
2 limitations shall apply to any debt or contract filed by way  
3 of set-off on the part of the defendant; and the time of such  
4 limitation of such debt or contract shall be computed in the  
5 same manner, as if an action had been commenced therefor  
6 at the time, when the plaintiff's action was commenced,  
7 unless the defendant is deprived of the benefit of the set-  
8 off by the nonsuit or other act of the plaintiff; and when the  
9 party so filing the set-off is thus defeated of a judgment on

Application of  
this chapter to  
set offs.

(a) 23, Me. 453. 24, Me. 534. 29, Me. 47.

(b) 28, Me. 419. 30, Me. 253, 425. 32, Me. 260. 33, Me. 182. 38, Me. 171.



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R. S., c. 146,  
§ 26.

Provision if  
defendant is out  
of the state.

R. S., c. 146,  
§ 28.

10 the merits of such debt or contract, he may commence an  
11 action thereon within the time limited, as provided in the  
12 one hundred and second section of this chapter for bringing  
13 a new action for the reasons therein mentioned.

SECT. 114. When any cause of action mentioned in this  
2 chapter accrues against any person, if he is out of the state,  
3 the action may be commenced within the time herein limited  
4 therefor, after such person comes into the state; and if after  
5 any cause of action has accrued, the person against whom it  
6 has accrued is absent from and resides out of the state, the  
7 time of his absence shall not be taken as any part of the  
8 time limited for the commencement of the action. (a)

## Chapter 82.

### PROCEEDINGS IN CIVIL ACTIONS IN COURT.

- Sect. 1.* Actions entered first day. Further service may be ordered.
2. When default may be recorded, when taken off.
  3. Defendant out of state, proceedings.
  4. Execution stayed one year, unless bond is given; review.
  5. Bond left with clerk; may petition for a review.
  6. Court may permit an action on a claim against an insolvent estate.
  7. May allow appeals and complaints to be entered after first term.
  8. On petition within one year; attachment or bail not revived.
  9. On appeals original papers to be sent up, except writ and pleadings.
  10. Proceedings not abated, arrested, or reversed for want of form.
  11. Writ or process lost, leave granted to file a new one.
  12. Defendants may be struck out or new ones inserted.
  13. Distinction between trespass and case abolished.
  14. Treasurers may sue on contracts in their own names.
  15. Penalties recoverable by action of debt.
  16. Assignee of a grantee may sue on covenants of first grantor.
  17. Several breaches may be assigned and general performance pleaded.
  18. General issue may be pleaded, and brief statements filed.
  19. Demurrers when filed, joined, amendments after decision on them.
  20. Involuntary trespasses, tender made, or money brought into court.
  21. Offer to be defaulted and its effect.
  22. Tender before entry of action. Towns may tender or offer default in actions for injuries.
  23. Property of a deceased debtor on joint contract liable.
  24. Libel actions for, truth a justification; exception.
  25. Counts misjoinder, and wrong joinder not cause for reversal.
  26. Motions in arrest not entertained.
  27. Damages assessed by a jury on certain bonds and contracts.
  28. Interest on judgments allowed.
  29. Judge not disqualified by residence in a town interested when is a waiver.
  30. Death of a party, administrator may appear or be summoned, heirs also in equity.
  31. Husband may appear in action brought by an unmarried woman.
  32. Insane parties, guardians appointed.

*Sect.* 33. Motions to set aside verdicts, proceedings on them.

- 34. Willful trespasses, proceedings respecting them.
- 35. Damages on protest of bills.
- 36. Ten hours of actual labor a day's work ; exceptions.
- 37. Subsequent attaching creditors may petition to defend prior suits.
- 38. Subsequent attaching creditors admitted on leave and bond filed.
- 39. Judgment how entered, if defense fails.
- 40. Judgment how entered, if defense prevails.
- 41. Judgment at first term, may be petition for review ; proceedings.
- 42. Attachments made to defraud creditors void.
- 43. Action by a public officer not abated by his ceasing to be in office.
- 44. Action not maintainable on demands discharged by payment of part.
- 45. Bankrupt may maintain action in his own name, unless abated.

## SET OFF.

- 46. Set off ; defendant files first day of term ; clerk enters date and notice on docket.
- 47. Set off kind of demands.
- 48. Set off must be between all of plaintiffs and all of defendants.
- 49. Set off of demand assigned when made.
- 50. Set off of demand subsequently acquired.
- 51. Set off of demand in suits in name of one for benefit of another.
- 52. Set off of sums equitably due only.
- 53. Set off of demands due from one deceased.
- 54. Set off in actions brought in a representative capacity.
- 55. Set off pleadings and issue how made.
- 56. Set off actions not discontinued, statute of limitations.
- 57. Set off no balance against a plaintiff suing on a demand assigned.
- 58. Set off proceedings before inferior tribunals.

## AUDITORS.

- 59. Auditors appointed in certain cases, parties notified, witnesses attend.
- 60. Auditors all hear, majority report, may be discharged, report recommitted.
- 61. Auditors report evidence, may be disproved.
- 62. Auditors neglect to appear before them in actions of account.

## JURIES.

- 63. Juries how empaneled and sworn.
- 64. Juries, supernumeraries, transfers, excuses.
- 65. Juries, form of their oath.
- 66. Juries, their foreman how chosen.
- 67. Juries, talesmen for, when and how returned.
- 68. Juries, new may be summoned during term time.
- 69. Juries, challenges how tried.
- 70. Juries may find special or general verdicts for cases of law.
- 71. Juries when not agreed, proceedings.
- 72. Juries not disqualified by residence.
- 73. Juries, objections known and not stated before trial.
- 74. Juries, their verdicts not affected by irregularities not injurious.
- 75. Juries, verdict set aside for improper practices with them.

## WITNESSES AND EVIDENCE.

- 76. Witnesses may be summoned by clerks and justices of the peace.
- 77. Witnesses, religious belief affects credibility only.
- 78. Witnesses, parties to suits and others interested may be.
- 79. Witnesses, except where cause of action implies an offense.
- 80. Witnesses, attestations not affected.
- 81. Witnesses, testimony of a party out of the state, how taken.
- 82. Witnesses, testimony of a party may be contradicted.
- 83. Witnesses, provisions not applicable to suits in representative character.
- 84. Witnesses, same rules respecting them in all tribunals.
- 85. Witnesses, duly summoned and neglecting to appear ; attachment.
- 86. Witnesses, refusing to answer, may be fined.
- 87. Witnesses, oaths how administered to them.

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88. Witnesses, scrupulous of oath, affirm.
89. Witnesses incompetency on conviction of crime.
90. Witnesses, fees for travel and attendance first paid or tendered.
91. Records of other courts evidence.
92. Printed copy of statutes evidence.
93. Foreign and unwritten law, how proved.

## COSTS.

94. Party prevailing, recovers costs.
95. Costs when plaintiff appeals from judgment in his favor.
96. Costs in actions of replevin regulated.
97. Costs in actions that should have been brought before a justice.
98. Costs when damages reduced by set off.
99. Costs of evidence not doubled or trebled.
100. Costs discretionary on petitions for review and the like.
101. Costs of first suit paid before second suit for same cause.
102. Costs a person liable for, who sues in name of the state.
103. Costs state liable for in a civil suit.
104. Costs not taxable for travel of attorney for the state.
105. Assignee's name and residence indorsed on writ in name of assignor.
106. Assignee if not known liable for costs.
107. Costs in one action when more, that should have been joined.
108. Costs not allowed in actions on judgments, on which executions might have issued.
109. Costs for travel in actions by corporations how computed.
110. Costs, power of the court over not affected.
111. Costs of a bankrupt limited.

## EXECUTION.

112. Execution when issued and returnable.
113. Execution not issued after one year; exception.
114. Execution may be renewed within three years.
115. Execution, if cannot be renewed scire facias may issue.
116. Execution framed to collect interest on judgments.
117. Execution lost or destroyed new may be issued.

Actions entered  
first day, &c.

R. S., c. 115,  
§ 1, 2.

When default  
may be recorded;  
when taken off.

Idem, § 2.  
c. 151, § 13.

Defendant out of  
state, &c.

SECT. 1. No action can be entered after the first day of  
the session of the supreme judicial court without special  
permission. When it appears, that the defendant has not  
had sufficient notice, the court may order such further notice,  
as it deems proper.

SECT. 2. When a legal service of the writ has been made,  
and the defendant does not appear by himself or attorney  
within the three first days of the term, his default may be  
recorded, and the charge in the declaration taken to be  
true. If the defendant before the jury are dismissed for  
the term enters his appearance and pays to the plaintiff such  
costs, as the court orders, the default shall be taken off. The  
court may permit it to be taken off for sufficient cause. (a)

SECT. 3. When the defendant was an inhabitant of the  
state and absent from it at the time of service, and it does  
not appear, that he has returned or has actual notice of the  
suit, the court may continue the action, not exceeding twice

## CHAP. 82.

5 unless for special cause, or enter judgment on default. If  
 6 the defendant was not an inhabitant of the state or within  
 7 it, and had actual notice of the suit, the court may order a  
 8 continuance, if he does not appear at the first term.

Idem, § 3, 4.

SECT. 4. When judgment is rendered on default of an ab-  
 2 sent defendant in a personal action as provided in the preced-  
 3 ing section, execution cannot be issued thereon within one year  
 4 thereafter, unless the plaintiff first gives bond to the defend-  
 5 ant with one or more sureties in a sum double the amount  
 6 of damages and costs conditioned to repay the amount to  
 7 the defendant, if the judgment is reversed on review, to  
 8 which he is entitled of right, brought within one year or so  
 9 much of the amount recovered as shall be recovered back  
 10 on such review.

Execution stayed one year, unless bond is given, &amp;c.

Idem, § 5, 7.

SECT. 5. The bond shall be deposited with the clerk, who  
 2 shall decide upon the sufficiency of the sureties subject to an  
 3 appeal to a justice of the court, and if the review is not so  
 4 prosecuted, the defendant may within one year after he first  
 5 has notice of the judgment petition the court for a review,  
 6 and the court may grant it on such terms as it deems rea-  
 7 sonable.

Bond left with clerk, if review not prosecuted, &amp;c.

Idem, 6, 8.

SECT. 6. When a person, whose claim on an insolvent  
 2 estate has been wholly or partially disallowed, has by acci-  
 3 dent or mistake omitted to give notice within the time  
 4 allowed of his intention to have it determined at law, the  
 5 court on application within two years after the return of the  
 6 commissioners may, after notice to the executor or adminis-  
 7 trator of the estate, give him leave to institute a suit upon  
 8 it at the next term of the court, but not after four years  
 9 from the time when administration was granted, and no dis-  
 10 tribution can be disturbed by a recovery in such an action.

Court may permit an action on a claim, &amp;c.

Idem, § 9.

SECT. 7. When an appeal is taken from a judgment of a  
 2 justice of the peace or municipal or police court and the  
 3 action by mistake or accident is not duly entered and the  
 4 judgment has not been affirmed, the court may on petition of  
 5 either party allow the action or complaint to be entered at  
 6 another term of the court upon such terms as are deemed  
 7 reasonable, and if entered the court shall proceed thereon  
 8 as if entered at the proper term.

May allow an appealed action, &amp;c.

R. S., c. 123, § 12.

SECT. 8. Such petition must be presented to the court or  
 2 filed in the clerk's office within one year after the term, at  
 3 which the action ought to have been entered; and no at-  
 4 tachment or bail shall be revived or continued by such pro-  
 5 ceedings.

Petition for it within one year, attachment or bail not revived.

Idem, § 13.

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On appeals,  
original papers  
to be sent up,  
except writ and  
pleadings.

R. S., c. 151,  
§ 24.

Proceedings not  
abated, arrested,  
reversed, &c.

R. S., c. 115,  
§ 9, 10.

Writ of process  
lost, new one  
may be filed, &c.

1848, c. 57, § 1.

Defendants may  
be struck out on  
payment of costs,  
&c.

R. S., c. 115,  
§ 11, 12.

Distinction  
between trespass  
and trespass on  
the case, &c.  
Idem, § 13.

Treasurers may  
sue in their own  
names, &c.

Idem, § 14.

Penalties  
recoverable by  
action of debt.  
Idem, § 21.

When an  
assignee of a  
grantee may  
sue, &c.

SECT. 9. In cases carried from a justice of the peace municipal or police court to a higher court, depositions and original papers, except the process by which the suit was commenced the return of service thereon and the pleadings, shall be certified by the proper officer and carried up without leaving copies, unless otherwise ordered by the court having original cognizance.

SECT. 10. No process or proceeding in courts of justice shall be abated, arrested, or reversed, for want of form only, or for circumstantial errors or mistakes, which by law might have been amended, when the person and case may be rightly understood. Such errors and defects may be amended on motion of either party on such terms, as the court orders.

SECT. 11. When in an action pending the loss or destruction of a writ or process after service is proved by affidavit or otherwise, the court may allow a new one to be filed corresponding thereto as nearly as may be to have the same effect as the one lost or destroyed.

SECT. 12. When there are two or more defendants, the writ may be amended by striking out one or more of them on payment of costs to him to that time. A writ founded on contract express or implied may be amended by inserting additional defendants; and the court may order service to be made on them and their property to be attached as in case of original writs; and on return of service duly made they shall be deemed parties to the suit, but not liable to costs before such service.

SECT. 13. The distinction between actions of trespass and trespass on the case is abolished. A declaration in either form is good.

SECT. 14. The treasurers, of state, counties, towns, and corporations, may maintain suits in their own names as treasurers on contracts given to them or their predecessors, and prosecute suits pending in the name of their predecessors.

SECT. 15. Penalties may be recovered by an action of debt, when no other form or mode of recovery is provided by the statute imposing them.

SECT. 16. The assignee of a grantee or his executor or administrator after eviction by an older and better title may maintain an action on a covenant of seizin or freedom from incumbrance contained in absolute deeds of the premises between the parties, and recover such damages, as the first grantee might upon eviction, upon filing at the first term in

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7 court for the use of his grantor a release of the covenants  
8 of his deed and of all causes of action thereon. The prior  
9 grantee shall not in such case have power to release the  
10 covenants of the first grantor to the prejudice of his grantee.

*Idem*, § 16, 17.

SECT. 17. In actions on contract in a penal sum for per-  
2 formance of covenants or agreements, and in actions of cov-  
3 enant, several breaches may be assigned, and in defence  
4 performance generally both in affirmative and negative cov-  
5 enants may be alleged.

Several breaches  
may be assigned,  
&c.

*Idem*, § 15.

SECT. 18. The general issue may be pleaded in all cases  
2 and a brief statement of special matter of defence filed, or  
3 a special plea, or on leave double pleas in bar, may be filed.  
4 The plaintiff must join a general issue, and may file a coun-  
5 ter brief statement. (a)

General issue  
may be pleaded,  
brief statements  
filed.

*Idem*, § 18.

SECT. 19. A general demurrer to the declaration may be  
2 filed; and in any stage of the pleadings either party may  
3 demur, and the demurrer must be joined. If the declaration  
4 be adjudged defective and be amendable, the plaintiff may  
5 amend upon payment of costs from the time when the de-  
6 murrer was filed. If the demurrer be filed at the first term  
7 and be overruled the defendant may plead anew on payment  
8 of costs from the time when it was filed, unless it be adjudged  
9 frivolous and intended for delay, when judgment shall be  
10 entered. At the next term in the county after a decision on  
11 the demurrer has been certified, judgment accordingly shall  
12 be entered and not before, unless the costs be paid and the  
13 amendment or pleadings be made on the second day of the  
14 term.

Demurrers,  
when filed,  
joined, &c.

*Idem*, § 20.  
1856, c. 211, § 1.

SECT. 20. In actions of trespass on lands the defendant  
2 may file a brief statement disclaiming all title to the land  
3 described and alleging, that the trespass was involuntary or  
4 by negligence or mistake, and that before action brought he  
5 tendered sufficient amends therefor, or that he brings money  
6 into court to satisfy the damages with costs to that time, and  
7 and if on trial he establishes the truth of his allegations, he  
8 shall recover costs. (b)

Tender may be  
made or money  
brought into  
court, &c.

*Idem*, § 22, as  
amended.

SECT. 21. In an action founded on judgment or contract,  
2 the defendant may in writing entered of record with its date  
3 offer to be defaulted for a specified sum. If not accepted  
4 *within such time as the court orders*, it shall not be offered  
5 in evidence or have any effect upon the rights of the parties

Offer to be  
defaulted and its  
effect.

(a) 29, Me. 471.

(b) 36, Me. 407.

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*Idem*, § 22.  
1847, c. 31, § 1, 2.

Tender may be made before entry of action. Towns may tender, &c.

*Idem*, § 22.

Property of a deceased debtor on joint contract liable for payment.

*Idem*, § 23.

In actions for a libel the truth of it is a justification ; exception.

*Idem*, § 19.

Joinder of good and bad counts, &c.

*Idem*, § 84.

Motions in arrest, &c.  
*Idem*, § 80.

In bonds and contracts for performance of covenants, &c.

*Idem*, § 78.  
1842, c. 31, § 9.

Interest on judgments allowed.  
*Idem*, § 79.

6 *or the judgment to be rendered* except the costs. If the  
7 plaintiff fails to recover a sum as due at the time of the offer  
8 greater than the sum offered, he recovers for costs such only  
9 as accrued before the offer, and the defendant recovers costs  
10 accrued since that time, and his judgment for costs may be  
11 set off against the plaintiff's judgment for debt and costs. (a)

SECT. 22. A tender with the costs then accrued may be  
2 made after action brought and before its entry to the plain-  
3 tiff or his attorney with the same effect as if made before  
4 action brought. In actions against towns founded on the  
5 sixty-first section of chapter eighteen a town may make a  
6 tender before the commencement or entry of the action or  
7 offer to be defaulted for a specified sum, with the same effect  
8 as in actions on contract.

SECT. 23. The goods and estate of a deceased debtor in  
2 joint contract express or implied or in a judgment on con-  
3 tract are as liable and the creditor has his remedy as in case  
4 of a joint and several contract.

SECT. 24. In a suit for writing and publishing a libel evi-  
2 dence shall be received to establish the truth of the matter  
3 charged as libellous. If the truth of it be established, it  
4 shall be a justification, unless the publication be found to  
5 have originated in corrupt or malicious motives.

SECT. 25. When in a civil action the declaration contains  
2 a good count and bad ones or a wrong joinder of counts  
3 and no written objection is made till after the cause is com-  
4 mitted to the jury, and a general verdict has been recorded  
5 the judgment cannot for such cause be reversed on writ of  
6 error.

SECT. 26. No motion in arrest of judgment in a civil action  
2 can be entertained.

SECT. 27. In actions on bond or contract in a penal sum  
2 for the performance of covenants or agreements or on a  
3 recognizance to prosecute an appeal, when a jury finds the  
4 condition broken, they shall estimate the plaintiff's damages,  
5 and judgment shall be entered for the penal sum and execu-  
6 tion shall issue for such damages and costs. (b)

SECT. 28. Interest is to be allowed on amount found due  
2 for damages and costs in actions on judgments of a court of  
3 record.

(a) 20, Me. 37, 312. 21, Me. 529. 30, Me. 458. 33, Me. 216. The section presents two new provisions. It has been regarded as obscure and liable to different constructions. The design is to obviate a difficulty in practice and to make the meaning plain. The existing law provides no time, when the plaintiff shall elect. The first new provision authorizes the court to fix a time. The other new provision determines clearly the effect of an offer rejected.

(b) 22, Me. 483, 486. 24, Me. 166.

SECT. 29. A judge shall sit in the trial or disposition of  
 2 an action, in which the county or town, where he resides, is  
 3 a party or interested, if the party adverse to such county or  
 4 town enters on the docket a waiver of all objections.

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Judge not  
disqualified by  
residence, &c.  
1853, c. 2.

SECT. 30. When a party in a pending suit dies and his  
 2 death is suggested on the record and the cause of action sur-  
 3 vives, his executor or administrator may become a party, or  
 4 at the request of the other party be summoned to appear and  
 5 become a party. Service of the summons shall be made on  
 6 him fourteen days before the term, to which it is returnable.  
 7 If he neglects to appear, judgment may be entered by non-  
 8 suit or default according to the provisions of chapter eighty-  
 9 seven. If the suit be in equity his executor, administrator,  
 10 or heirs at law may in like manner appear or be summoned  
 11 without a bill of revivor.

Death of a party  
being suggested,  
his executor  
or administrator  
may appear, &c.

R. S., c. 115,  
§ 81.  
1850, c. 155.

SECT. 31. When an unmarried woman being a party to a  
 2 pending suit is married her husband on his request may be  
 3 admitted as a party as if originally joined in the suit.

Husband become  
party to a suit  
by an unmarried  
woman.  
Idem, § 82.

SECT. 32. When a party to a suit becomes insane, it may  
 2 be prosecuted or defended by his guardian, who on applica-  
 3 tion of his friend or of the other party may be appointed  
 4 for that purpose by a justice of the court in term time or in  
 5 vacation. He shall be entitled to a reasonable compensation  
 6 and not be liable for costs.

Guardians ad  
litem may be  
appointed to  
insane parties.

Idem, § 86,  
1849, c. 104,  
§ 1, 2.

SECT. 33. When a motion is made in the supreme judicial  
 2 court to have a verdict set aside as being against law or  
 3 evidence a report of the whole evidence being drawn up  
 4 shall be signed by the presiding judge. When the motion  
 5 is founded on any alleged cause not shown by the evidence  
 6 reported, the testimony respecting the allegations of the  
 7 motion shall be heard and reported by the judge, the case is  
 8 then to be marked law. When the court of law is of opin-  
 9 ion, that the motion was for frivolous causes, or intended  
 10 for delay, it may award double or treble costs.

Motions to set  
aside verdicts,  
proceedings on  
them, costs.

Idem, § 101.  
1852, c. 246, § 8

SECT. 34. In actions of trespass on property the court  
 2 and jury or magistrate shall determine, whether it was com-  
 3 mitted willfully, if so found, a record thereof shall be made  
 4 and a memorandum of it on the margin of the execution.

Willful tres-  
passes, pro-  
ceedings  
respecting them.  
Idem, § 109.

SECT. 35. Damages on protest of bills of exchange pay-  
 2 able by the acceptor, drawer or endorser of one in this state  
 3 of one hundred dollars or more are, if payable at a place  
 4 seventy-five miles distant, one per cent.; if payable in the  
 5 state of New York or in any state northerly of it and not in  
 6 this state, three per cent.; if payable in any Atlantic state

Damages on  
protest of bills.



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Idem, § 110, 111.

Ten hours  
actual labor a  
legal days work;  
exceptions.

1848, c. 83, § 1.

Subsequent  
attaching  
creditor may  
petition, &c.

R. S., c. 115,  
§ 113, 114.

If leave is  
granted he gives  
bond and is  
admitted to  
defend.

Idem, § 115, 116.

Judgment to be  
entered when  
defense fails.

Idem, § 117.

How entered  
when defense  
prevails.

Idem, § 118.

When judgment  
in such prior  
suit at the first  
term, &c.

1856, c. 262,  
§ 1, 2, 3.

A first attach-  
ment made to  
delay or defraud  
creditors is void.

7 or territory southerly of New York and northerly of Florida,  
8 six per cent.; and in any other state or territory, nine per  
9 cent.

SECT. 36. In all contracts for labor ten hours of actual  
2 labor shall be a legal day's work, unless the contract stipu-  
3 lates for a longer time; but this rule does not apply to  
4 monthly labor or to agricultural employments.

SECT. 37. When property has been attached, a plaintiff,  
2 who has caused the same property to be attached in a sub-  
3 sequent suit, may petition the court for leave to defend the  
4 prior suit, and set forth therein the facts as he believes them  
5 to be under oath, and the court may grant or refuse such  
6 leave.

SECT. 38. If leave be granted he shall give bond or enter  
2 into recognizance with sufficient surety in such sum, as the  
3 court orders, to pay the plaintiff in the prior suit all dam-  
4 ages and costs occasioned by such defense, and an entry of  
5 record shall be made, that he is admitted to defend such  
6 suit.

SECT. 39. When petitioner enters into recognizance and  
2 fails in his defense, execution on his recognizance shall be  
3 issued against him for the damages found by the court and  
4 costs, and judgment rendered between the original parties,  
5 as if no such defense had been made.

SECT. 40. When petitioner prevails judgment shall be ren-  
2 dered against the plaintiff and in favor of the petitioner, and  
3 execution issued thereon for his costs; and costs may or  
4 may not be awarded to the original defendant.

SECT. 41. When judgment in such prior suit has been ren-  
2 dered since April 9, 1856 at the first term of the court, the  
3 plaintiff in such subsequent suit within one year thereafter  
4 upon first giving bonds to each party as provided in section  
5 thirty-eight may petition as provided in section thirty-seven  
6 for leave to sue out a writ of review of such action; and  
7 such leave may or may not be granted. If granted, and on  
8 final judgment the sum originally recovered is reduced, judg-  
9 ment shall be entered and execution issued for the difference  
10 not exceeding the amount due from the original defendant to  
11 the petitioner with costs for his sole use, and it shall oper-  
12 ate as a payment of his debt to the amount of damages re-  
13 covered.

SECT. 42. When it appears by the verdict or otherwise,  
2 that such prior attachment was made with intent to delay  
3 or defraud creditors, or that there was collusion between

4 the plaintiff and defendant for that purpose, such attach-  
5 ment shall be void.

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R. S., c. 115,  
§ 9, 119.

SECT. 43. No action commenced in his official capacity by  
2 a public officer is abated by his ceasing to hold the office;  
3 it may be prosecuted by his successors to the same uses;  
4 and the necessary amendments may be made and notices  
5 given.

Action by a  
public officer  
not abated, &c.

Idem, § 120.

SECT. 44. No action shall be maintained on a demand  
2 settled by a creditor or his attorney entrusted to collect it  
3 in full discharge of it by the receipt of money or other val-  
4 uable consideration however small.

No action on  
demands dis-  
charged by a  
partial payment.  
1851, c. 213.

SECT. 45. A person, who has been declared a bankrupt,  
2 may maintain any action respecting his former property in  
3 his own name, unless objection is made by plea in abate-  
4 ment, if before final judgment the assent of his assignee is  
5 filed in the office of the clerk of the court, in which the  
6 action is pending.

A bankrupt may  
sue in his own  
name, unless  
suit is abated.

1855, c. 170.

### *Set off.*

SECT. 46. Demands between plaintiffs and defendants may  
2 be set off against each other as follows:

Defendant must  
file set off on  
first day of  
term, &c.

3 The defendant on the first day of the term, to which the  
4 writ is returnable, must file a brief statement of his demand  
5 in substance as certain as in a declaration, which by leave  
6 of court may be amended. The clerk shall enter on it and  
7 on the docket the date, and on the docket under the action  
8 notice of its filing, before the new entries are called.

R. S., c. 115,  
§ 24, 25, 26, 32.  
1847, c. 20.

SECT. 47. A demand originally payable to the defendant  
2 in his own right founded on a judgment or contract express  
3 or implied for the price of real or personal estate sold, for  
4 money paid or had and received or for services done, for a  
5 liquidated sum or for one ascertainable by calculation, may  
6 be set off.

Kind of demands  
that may be set  
off.

Idem,  
§ 27, 28, 29.

SECT. 48. The demand must be due from all the plaintiffs  
2 to all the defendants jointly. When there is a dormant  
3 partner claims due from the ostensible one may be set off  
4 as if there was no dormant partner.

Must be due  
from all plain-  
tiffs to all  
defendants, &c.  
Idem, § 33, 34.

SECT. 49. When a plaintiff has received notice, that a  
2 demand against him has been assigned to the defendant and  
3 has agreed to pay it to him or to receive it as payment tow-  
4 ards his demand before his suit was commenced, it may be  
5 set off.

Demand  
assigned, which  
plaintiff before  
action brought,  
agreed to pay.  
Idem, § 30.

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After notice to  
defendant of an  
assignment, &c.  
Idem, § 35.

In suits by one  
for another, &c.  
Idem, § 36.

Sum equitably  
due, set off.

Idem, § 31.

Demands due  
from a deceased  
person, how  
to be set off.

Idem, §  
37, 38, 39.

In actions  
against persons  
in a representa-  
tive character,  
&c.

Idem, § 40, 41.

Pleadings and  
issue, how  
made.

Idem, § 42, 43.

Actions cannot  
be discontinued  
without consent,  
&c.

Idem, § 44, 48.

No judgment for  
a balance  
against a  
plaintiff, &c.

Idem, § 45, 46.

Similar proceed-  
ings before  
inferior  
tribunals.

Idem, § 47.

SECT. 50. When a defendant had notice of the assignment  
2 of a demand he can not have any demand accrued or acquired  
4 since that notice set off.

SECT. 51. When an action is brought by one person for  
2 the use of another, a demand against the latter may be set off.

SECT. 52. When the demand to be set off is a bond or con-  
2 tract with a penalty, the sum equitably due only can be  
3 set off.

SECT. 53. Demands against a person belonging to defend-  
2 ant at the time of the death of such person may be set off  
3 against claims prosecuted by his executor or administrator,  
4 and if a balance be found due to defendant, judgment shall  
5 be in like form and with like effect, as if he had commenced  
6 a suit therefor; but if the estate be insolvent, it must be  
7 presented to the commissioners or added to the list of claims,  
8 as other judgments are.

SECT. 54. In actions against executors, administrators,  
2 trustees, or others, in a representative character, they may  
3 set off such demands as those, whom they represent, might  
4 have done in actions against them, but no demands due to or  
5 from them in their own right can be set off in such actions.

SECT. 55. The trial may proceed in cases of set off on  
2 issue joined without a plea of set off; and if an issue is not  
3 otherwise formed, the defendant may, except in actions of  
4 assumpsit, plead that he does not owe the sum demanded;  
5 and the plaintiff will be entitled to every defence, that he  
6 might have by any form of pleading to an action against  
7 him on the same demand.

SECT. 56. When a demand is filed in set off, the action can  
2 not be discontinued without consent of the defendant. The  
3 statute of limitations is applicable to demands filed in set off  
4 as if actions were commenced on them at the date of plain-  
5 tiff's action.

SECT. 57. When no balance is found due to either party,  
2 no costs are recoverable. The party recovering a balance  
3 recovers costs. No judgment for debt can be entered against  
2 a plaintiff, when the demand sued was assigned to him before  
5 the suit was commenced, or for a balance due from another  
6 person.

SECT. 58. Similar proceedings in set off may take place  
2 before municipal and police courts and justices of the peace,  
3 the demand in set off being filed on the return day of the  
4 writ; but judgment cannot be rendered for a defendant for  
5 than twenty dollars exclusive of costs.

*Auditors.*CHAP. 82.

SECT. 59. When an investigation of accounts or an examination of vouchers is required, the court [by consent of parties] may appoint one or more auditors to hear the parties and their testimony, state the accounts, and make a report to the court. They shall notify the parties of the time and place of hearing and have power to adjourn. Witnesses may be summoned and compelled to attend and may be sworn by an auditor. (*a*)

Auditors may be appointed in certain cases, Parties notified; witnesses attend.

*Idem*,  
§ 49, 50, 52.

SECT. 60. When there is more than one auditor, all must hear, but a majority may report stating whether all did hear. Their report may be recommitted. They may be discharged and others appointed. They shall be allowed a reasonable compensation fixed by the court and paid by the plaintiff and taxed in the costs, if he prevails.

All hear, a majority may report; they may be discharged; report recommitted.

*Idem*,  
§ 51, 53, 55.

SECT. 61. Their report may be used as evidence by either party, and it may be disproved by other evidence.

Report, evidence, &c.  
*Idem*, § 54.

SECT. 62. When in an action of account judgment has been entered, that the defendant do account, and he shall unreasonably neglect to appear, or appearing to render an account before auditors appointed to take it, they shall certify the fact, and the court may enter a default and judgment thereon or cause the damages to be assessed by a jury.

If defendant in an action of account neglects, &c.

*Idem*, § 57.

*Juries.*

SECT. 63. When venires for jurors are returned to court, the clerk shall prepare at the commencement of each term of the court separate alphabetical lists of the names of the several persons returned as traverse jurors; and the court in empanneling the traverse jurors shall cause the names of the first two persons who attend to be called, who shall be first sworn, and then the others in succession, as they are named on the list, and in such divisions as the court directs, or all at the same time; and the first twelve shall compose the first jury; and the next twelve on the same list shall be empannelled and sworn in like manner, and shall compose the second jury.

Jurors, how empannelled and sworn.

*Idem*, § 58.

SECT. 64. Supernumerary jurors may be excused from time to time till wanted, and they may be placed on either

Supernumeraries, transfers, excuses.

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(*a*) The words enclosed in brackets exhibit the law as it is, but it is believed to be expedient to omit them. A party against whom there is a long account may for the purpose of delay insist, that every item shall be examined by a jury, and can thus obtain a continuance or occupy the court for a long time uselessly. Parties rights will be secure, if the court is allowed to send such cases to an auditor without consent.

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Idem, § 59.

Form of jurors,  
oath.

Idem, § 60.

Foreman, how  
chosen.

Idem, § 61.

Talesmen,  
when and how  
returned.

Idem, § 62, 63.

New jurors may  
be summoned  
during term.

Idem, § 64.

Challenge of  
juror, how tried.

3 jury, as occasion requires; and jurors may be transferred  
4 from one jury to the other, when the convenience of business  
5 requires it; and for good reason any juror may be excused.

SECT. 65. The following shall be the form of the oath, ad-  
2 ministered to traverse jurors in civil causes: "You and  
3 each of you swear, that in all causes betwixt party and  
4 party, that shall be committed to you, you will give a true  
5 verdict therein according to the law and the evidence given  
6 you. So help you God;" and when a juror is conscien-  
7 tiously scrupulous of taking an oath, the word "affirm," shall  
8 be used instead of "swear," and the words "this you do  
9 under the pains and penalties of perjury" instead of the  
10 words "so help you God."

SECT. 66. Each jury shall retire after having been thus  
2 empaneled and sworn and choose their foreman by ballot,  
3 or make the choice upon retiring with the first cause with  
4 which they shall be charged; and whenever a foreman is ab-  
5 sent or excused from service, a new foreman shall be chosen  
6 as aforesaid.

SECT. 67. When by reason of challenge or other cause, a  
2 sufficient number of jurors duly drawn and summoned can-  
3 not be obtained for the trial of any cause, the court shall  
4 cause jurors to be returned from the by-standers, or from the  
5 county at large, to complete the panel; *provided*, that there  
6 shall be on the jury not less than seven jurors drawn and  
7 returned as before provided. Such jurors shall be returned  
8 by the sheriff or his deputy, or a coroner, or such other dis-  
9 interested person as the court may appoint.

SECT. 68. The court may in term time issue venires for as  
2 many jurors as are wanted; to be drawn notified and re-  
3 turned forthwith, or on a day appointed; and when in any  
4 county the business requires a protracted session, the court  
5 may during the term excuse all or any of the jurors origi-  
6 nally returned and issue venires for new jurors to supply  
7 their places; who shall be drawn and notified to attend at  
8 such time as the court directs.

SECT. 69. The court on motion of either party in a suit  
2 may examine on oath any person called as a juror therein,  
3 whether he is related to either party, or has given or formed  
4 any opinion, or is sensible of any bias prejudice or particular  
5 interest in the cause; and if it appears from his answers, or  
6 from any competent evidence introduced by the party object-  
7 ing to the juror, that he does not stand indifferent in the

8 cause, another juror shall be called and placed in his stead  
9 for the trial of the cause.

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Idem, § 65.

SECT. 70. The traverse jury may in all cases find a special  
2 or general verdict subject to the opinion of the court on a  
3 case agreed by the parties and reserved, or on the facts as  
4 reported by the judge presiding at the trial.

May find special  
verdicts for  
cases of law.  
Idem, § 66.

SECT. 71. 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 re-state any partic-  
4 ular testimony, and send them out again for further consid-  
5 eration; but they shall not be sent out a third time in con-  
6 sequence of their disagreement, unless on account of some  
7 difficulties not stated when they first came into court.

When not  
agreed,  
proceedings.

Idem, § 67.

SECT. 72. 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 benefited by the recovery.

Not disqualified  
by residence.

Idem, § 68.

SECT. 73. 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  
3 not afterwards be allowed to make the same objection; unless  
4 by leave of court for special reasons.

Objections  
known and not  
stated before  
trial.  
Idem, § 69.

SECT. 74. No irregularity in the venires or drawing sum-  
2 moning returning or empanneling jurors shall be sufficient  
3 to set aside a verdict; unless the party making the objection  
4 was injured by the irregularity; or unless the objection was  
5 made before the return of the verdict.

Verdict not  
affected by  
irregularities,  
if not injurious.

Idem, § 70.

SECT. 75. If either party in a cause in which a verdict is  
2 returned shall during the same term of the court before or  
3 after the trial give to any of the jurors, who try the cause,  
4 anything by way of treat or gratuity, or purposely introduce  
5 among the papers in the case which are delivered to the  
6 jury when they retire with the cause, any papers which have  
7 any connection with it but were not offered in evidence, the  
8 court on motion of the adverse party may set aside the ver-  
9 dict and order a new trial.

Verdict set aside  
for improper  
practices with  
jurors.

Idem, § 76.

### *Witnesses and evidence.*

SECT. 76. The clerks of the several courts and any justice  
2 of the peace may issue summonses for witnesses to attend  
3 before courts to give evidence concerning any matters there  
4 depending.

Witnesses may  
be summoned,  
&c.

Idem, § 71.

SECT. 77. No person shall be deemed an incompetent wit-  
2 ness on account of his religious belief, but shall be subject to

Religious belief  
affects credibil-  
ity only.

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Idem, § 72,  
1847, c. 34.

Parties and  
others interested  
may be  
witnesses.

1856, c. 266.

Exception where  
cause of action  
implies an  
offense.

Idem.

Attestation of  
wills, &c., not  
affected.

Testimony of a  
party out of  
the state, how  
taken.

Testimony of a  
party may be  
contradicted.

Not applicable  
to executors,  
administrators  
or heirs.

3 the test of credibility; and any person who does not believe  
4 in the existence of a Supreme Being shall be permitted to  
5 testify under solemn affirmation and shall be subject to all  
6 the pains and penalties of perjury.

SECT. 78. No person shall be excused or excluded from  
2 being a witness in any civil suit or proceeding at law or in  
3 equity by reason of his interest in the event of the same as  
4 party or otherwise, except as is hereinafter provided, but  
5 such interest may be shown for the purpose of affecting his  
6 credibility.

SECT. 79. Parties shall not be witnesses in suits where  
2 the cause of action implies an offense against the criminal  
3 law on the part of the defendant, unless the defendant shall  
4 offer himself as a witness, in which case the plaintiff may  
5 also be a witness, and in case the defendant in such suit  
6 shall offer himself as a witness, he shall be held to waive  
7 his privilege of not testifying where his testimony might  
8 render him liable to prosecution for a criminal offense.

SECT. 80. Nothing herein shall in any manner affect the law  
2 relating to the attestation of the execution of last wills and  
3 testaments, or of any other instrument which by law is  
4 required to be attested.

SECT. 81. When any party to a suit resides without the  
2 state, or is absent from the state during the pendency of  
3 the suit, and the opposite party desires his testimony, a com-  
4 mission under the rules of court may issue to take his dep-  
5 osition; and it shall be the duty of such non-resident or ab-  
6 sent party upon such notice to him or his attorney of record  
7 in the suit of the time and place appointed for the taking  
8 his deposition, as the court shall order, to appear and give  
9 his deposition. If such party shall refuse or unreasonably  
10 delay giving his testimony as above provided, he may be non-  
11 suited or defaulted by order of the court, unless his attor-  
12 ney will admit the affidavit of the party desiring his testi-  
13 mony, of what the absent party would say if present, to be  
14 used as testimony in the case.

SECT. 82. When one of several plaintiffs or defendants is  
2 used as a witness by the opposite party, testimony may be  
3 introduced to contradict or discredit him by his co-plaintiffs  
4 or co-defendants in the same manner as if he were not a  
5 party to the suit.

SECT. 83. The provisions of the five preceding sections  
2 shall not be applied to any cases, where, at the time of taking  
3 testimony, or the time of trial, the party prosecuting or the

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4 party defending, or any one of them, shall be an executor  
5 or an administrator, or made a party as an heir of a deceased  
6 party.

SECT. 84. The rules of evidence in special proceedings of  
2 a civil nature such as before referees, auditors, county com-  
3 missioners, courts of probate, shall be the same as herein  
4 provided for civil actions.

Same rules  
before all  
tribunals.  
Idem.

SECT. 85. When a person duly summoned and obliged to  
2 attend before any judicial tribunal fails to do so without a  
3 reasonable excuse, he shall be liable to the party aggrieved  
4 for all damages sustained thereby. The judge of such tri-  
5 bunal may issue a *capias* to apprehend and bring him before  
6 him; and he may be fined not exceeding twenty dollars and  
7 ordered to pay the costs of the attachment, and may be com-  
8 mitted until the same and the costs of commitment are paid.

Witnesses duly  
summoned,  
neglecting to  
attend, may be  
attached and  
fined.

R. S., c. 133, § 51.  
1847, c. 9, § 1.

SECT. 86. When a witness in court refuses to answer such  
2 questions, as the court allows to be put, he may be fined  
3 not exceeding twenty dollars and committed until the fine  
4 and costs of commitment are paid.

Refusing in  
court to answer,  
may be fined.  
Idem, § 51.  
1847, c. 9, § 2.

SECT. 87. A person to whom an oath is administered shall  
2 hold up his hand, unless he believes that an oath adminis-  
3 tered in that form is not binding and then it may be admin-  
4 istered in a form believed by him to be binding. One not  
5 believing the christian religion may be sworn according to  
6 the ceremonies of his religion.

Oaths, how  
administered.

R. S., c. 115,  
§ 73.  
R. S., c. 133,  
§ 52, 53.

SECT. 88. Persons conscientiously scrupulous of taking an  
2 oath may make affirmation as follows: "I do affirm under  
3 the pains and penalties of perjury," which shall be deemed  
4 of the same force and effect as an oath.

Witnesses  
scrupulous of  
swearing, may  
affirm.  
Idem, § 74.  
Idem, c. 133,  
§ 38.

SECT. 89. Persons convicted of an infamous crime and  
2 sentenced in this state are not competent witnesses unless  
3 restored by a pardon; and a conviction out of the state of  
4 such a crime may be given in evidence to affect his credi-  
5 bility.

Not competent  
when convicted  
in this state of  
an infamous  
crime.  
R. S., c. 133,  
§ 54, 44.

SECT. 90. No person is obliged to attend in any court as a  
2 witness in a civil suit, or at any place to have his deposition  
3 taken, unless his legal fees for travel to and from the place  
4 and for one day's attendance are first paid or tendered; and  
5 his fees for each subsequent day's attendance must be paid  
6 at the close of the preceding day, when he requests it.

His fees for  
travel and one  
days attendance  
must first be  
paid.

Idem, § 50.

SECT. 91. The records and proceedings of any court of  
2 the United States or of any one of the states authenticated  
3 by the attestation of the clerk or officer having charge  
4 thereof and seal of such court shall be admitted in evidence.

Records of other  
courts admitted  
as evidence.

Idem, § 45.



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Printed copy of  
statutes admitted  
as evidence.

Idem, § 46, 47.

Foreign laws  
and unwritten  
laws of the  
states, how  
proved.

Idem, § 48, 49.

SECT. 92. Printed copies purporting to be published under  
2 authority of government of statutes acts and resolves of the  
3 United States or of this or any other state or territory of  
4 the United States, may be admitted as evidence; those of  
5 this state as sufficient, those of other states as prima facie.

SECT. 93. Foreign laws may be proved by parol evidence,  
2 but when such law appears to be existing in a written stat-  
3 ute or code, it may be rejected unless accompanied by a copy  
4 thereof. The unwritten law of any other state or territory  
5 of the United States may be proved by parol evidence and  
6 by books of reports of cases adjudged in their courts.

*Costs.*

Party prevailing  
recovers costs.  
R. S., c. 115, § 56.

When plaintiff  
appeals from a  
judgment in his  
favor, &c.

Idem, § 85.

In certain  
actions of  
replevin, &c.

Idem, § 77.

In actions which  
should have  
been com-  
menced, &c.

R. S., c. 151,  
§ 13.  
1842, c. 31, § 20.

Damages  
reduced by set-  
off below \$20,  
full costs  
allowed.

R. S., c. 115,  
§ 99.

SECT. 94. In all actions the party prevailing shall recover  
2 costs, unless otherwise specially provided.

SECT. 95. When a plaintiff appeals from a judgment of a  
2 municipal or police court or justice of the peace in his favor  
3 and does not recover in the appellate court a greater sum as  
4 damages, he shall recover a quarter of the sum last recov-  
5 ered for costs.

SECT. 96. In actions of replevin when the jury find, that  
2 each party owned a part of the property, they shall find and  
3 state in their verdict the value of the part owned by the  
4 plaintiff when replevied without regard to the value as esti-  
5 mated in the replevin bond, and if such value does not ex-  
6 ceed twenty dollars the plaintiff shall recover for costs only  
7 one quarter part of such value.

SECT. 97. In actions commenced in the supreme judicial  
2 court, except those by or against towns for the support of  
3 paupers, if it appears on the rendition of judgment, that the  
4 action should have been commenced before a municipal or  
5 police court or a justice of the peace, the plaintiff shall not  
6 recover for costs more than one quarter part of his debt or  
7 damages. On reports of referees full costs may be allowed,  
8 unless the report otherwise provides. (a)

SECT. 98. When an account is plead in set-off and plaintiff  
2 recovers not exceeding twenty dollars, he is entitled to full  
3 costs, if the jury certify in their verdict that the damages  
4 were reduced as low as that sum by reason of the amount  
5 allowed in set-off. (b)

(a) 28, Mo. 204.

(b) 31, Mo. 120.

SECT. 99. When a party recovers double or treble costs  
2 the fees of witnesses, depositions, copies and other evidence  
3 are not to be doubled or trebled.

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Costs of  
evidence, &c.  
Idem, § 87.

SECT. 100. On application of a private person for a writ  
2 of review, certiorari, mandamus, or quo warranto, or like  
3 process, the court may or not allow costs to a person ap-  
4 pearing on notice as respondent.

Costs may or  
not be allowed,  
&c.  
Idem, § 88.

SECT. 101. When costs have been allowed against a plain-  
2 tiff on nonsuit or discontinuance and a second suit is brought  
3 for the same cause before the costs of the former suit are  
4 paid, further proceedings shall be stayed, till such costs are  
5 paid, and the suit may be dismissed, unless they are paid at  
6 such time as the court appoints.

Costs of first  
suit to be paid,  
&c.  
Idem, § 89.

SECT. 102. When a suit is brought in the name of the  
2 state for the benefit of a private person, his name and place  
3 of residence shall be indorsed on the writ, and if the de-  
4 fendant prevails, judgment for his costs shall be rendered  
5 against such person and execution issued, as if he were  
6 plaintiff.

A person suing  
in the name of  
the state is  
liable for costs.

Idem, § 90.

SECT. 103. When a defendant prevails against the state  
2 in a civil suit judgment for his costs shall be rendered  
3 against it, and the treasurer of the county shall pay the  
4 amount on a certified copy of the judgment, and the amount  
5 shall be allowed to him in his account with the state.

State liable for  
costs in a civil  
suit.

Idem, § 91.

SECT. 104. When the state recovers costs in a civil suit no  
2 fees shall be taxed for the travel of any attorney.

No fees taxed  
for attorney, &c.  
Idem, § 92.

SECT. 105. The name and place of residence if known of  
2 an assignee shall at any time during the pendency of the suit  
3 be indorsed on the back of a writ or process commenced in  
4 the name of his assignor by request of the defendant, or  
5 further proceedings thereon shall be stayed; and if the de-  
6 fendant prevails, judgment for his costs shall be rendered  
7 against the plaintiff and such assignee, as if both had been  
8 originally joined in the action.

In suit in name  
of assignor for  
assignee, &c.

1846, c. 223, § 1.

SECT. 106. If the name of such assignee is not known to  
2 the defendant, until after he has recovered judgment against  
3 the plaintiff for costs, he may maintain an action on the case  
4 against such assignee for his costs within six years from the  
5 time of judgment; and such judgment for costs may be set  
6 off between such assignee and the defendant, as if the as-  
7 signee had been plaintiff in the suit.

If such assignee  
is not known,  
defendant may  
in action on the  
case recover, &c.

Idem, § 2, 3.

SECT. 107. When a plaintiff brings divers actions at the  
2 same term of a court against the same party, which might  
3 have been joined in one, or brings more than one suit on a

Divers actions  
against the same  
party at same  
term, &c.

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c. 115, § 93.

Costs not  
allowed in  
actions on  
judgments, &c.

Idem, § 96.

Travel in actions  
by a corporation,  
how computed.

Idem, § 97.

Power of the  
court, &c.

Idem, § 98.

Costs of a  
bankrupt  
limited.

1848, c. 60.

4 joint and several contract, he shall recover costs in one of  
5 such actions only, unless the court certifies, that there was  
6 good cause for commencing them.

SECT. 108. A plaintiff shall not be allowed costs in an ac-  
2 tion on a judgment of any tribunal, on which an execution  
3 might have issued, when such suit was commenced, excepting  
4 upon trustee process.

SECT. 109. In actions of a corporation its travel is to be  
2 computed from the place where situated, if local, otherwise  
3 from the place where its business is usually transacted not  
4 exceeding forty miles, unless its agent actually travels a  
5 greater distance to attend court.

SECT. 110. The power of the court to require payment of  
2 costs or to refuse them as condition of an amendment or  
3 continuance is not affected by the provisions of this chap-  
4 ter.

SECT. 111. When a defendant pleads a discharge in bank-  
2 ruptcy obtained after commencement of the suit, he can re-  
3 cover no costs before the time, when the certificate was  
4 produced in court.

*Executions.*

SECT. 112. Executions may be issued on a judgment of  
2 the supreme judicial court after twenty-four hours from its  
3 rendition returnable within three months.

SECT. 113. No first execution can be issued after one year  
2 from the time of judgment, except in cases provided for by  
3 the fourth section of this chapter; in which the first execu-  
4 tion may be issued not less than one nor more than two  
5 years from the time of judgment.

SECT. 114. An alias or pluries execution may be issued  
2 within three years after the day of the return of the pre-  
3 ceding execution and not afterward.

SECT. 115. When execution is not issued within the times  
2 prescribed by the two preceding sections, a writ of scire  
3 facias against the debtor may be issued to show cause, why  
4 execution on the judgment should not be issued, and if no  
5 sufficient cause be shewn, execution may be issued thereon,

SECT. 116. On executions issued on judgments or acknowl-  
2 edgments of debt interest shall be collected from the time  
3 of judgment or payment and the form of execution be varied  
4 accordingly.

Execution,  
when issued and  
returnable.  
Idem, § 102.Execution not  
issued after one  
year; exception.Idem, § 104, as  
amended.May be  
renewed, &c.  
Idem, § 105.When it cannot  
be renewed, &c.

Idem, § 106.

Interest on  
judgments  
collected.

Idem, § 107.

SECT. 117. A justice of the court in which the judgment  
 2 was rendered upon proof by affidavit or otherwise of the  
 3 loss or destruction of an execution unsatisfied in whole or  
 4 in part may order a new execution to be issued for so much  
 5 as remains unsatisfied.

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New execution  
 may be issued  
 on proof of loss  
 of one  
 unsatisfied.  
 1848, c. 57, § 2.

### Chapter 83.

#### JUSTICES OF THE PEACE, THEIR JURISDICTION AND PROCEEDINGS IN CIVIL ACTIONS.

*Sect.* 1. Jurisdictions in civil actions; not to exceed twenty dollars.

2. Title to real estate pleaded, case to be removed to supreme judicial court.  
 Recognizance in such case; if not given, to be tried.

3. Copy, &c., to be produced at appellate court; proceedings, if not entered, &c.

4. Writs, form and service of.

5. Judgments on default, nonsuit or trial.

6. Costs for defendant.

7. Appeal, when and how claimed; effect of.

8. Appeal, recognizance for, when and how given.

9. Appeal papers to be produced at appellate court; failure to enter, &c.,  
 effect of.

10. Subpœnas for witnesses, in what case to issue.

11. Adjournment of his court.

12. If unable to attend, another justice may enter a case, and if he remains  
 unwell, try it.

13. Executions returnable in three months.

14. Executions may be directed into other counties.

15. Writs of scire facias, when he may issue.

16. Writs, &c., when directed into other counties.

17. Records, how to be kept; on his death may be transcribed into the book of  
 another justice.

18. Execution issued on the transcribed record.

19. Removing from the state, must deposite his records with the clerk.

20. Administrators of deceased justice also.

21. Penalty on administrator for neglect.

22. Duty of the clerk in such cases.

23. Proceedings if his records are not completed. When an execution may be  
 used in place of a copy of the record.

24. Justice whose commission has expired may certify copies and issue new exe-  
 cutions.

25. Justice not to be of counsel in any case before himself; not to try any case  
 commenced by himself.

26. Justice may hold courts at his dwelling house or office.

Justice plea before to be the general issue.

Justice costs, in action continued at plaintiff's request, limited.

SECT. 1. Every justice of the peace may hold a court in  
 2 his county, and have original jurisdiction of all civil actions,  
 3 including prosecutions for penalties in which his town is  
 4 interested, when the debt or damages demanded do not ex-  
 5 ceed twenty dollars, excepting those in which the title to  
 6 real estate according to the pleadings or brief statement  
 7 filed in the case by either party is in question; and except-

Jurisdiction in  
 civil actions, &c.

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R. S., c. 116,  
§ 1, 2.

Title to real  
estate, pleaded,  
&c.

R. S., c. 116,  
§ 3, 4.

Copy, &c., to be  
produced at  
appellate court,  
&c.

R. S., c. 116, § 5.

Writs, form and  
service of.

R. S., c. 116,  
§ 6, 18.

Judgments on  
default, nonsuit  
or trial.

R. S., c. 116, § 7.

Costs for  
defendant.

R. S., c. 116, § 8.

Appeal, when  
and how  
claimed; effect  
of.

R. S., c. 116, § 9.

Appeal, recog-  
nizance for,  
when and how  
given.

8 ing that in those towns in which a municipal or police court  
9 is established, his jurisdiction shall be restricted to those  
10 cases provided therefor in the act establishing said courts.

SECT. 2. When it appears by the pleadings or brief state-  
2 ment in the case, that the title to real estate is in question,  
3 it shall be removed on the request of either party to the  
4 supreme judicial court; and such party shall recognize to the  
5 other party in a reasonable sum with sufficient sureties to  
6 enter the case at the next term of said court; and if he does  
7 not so recognize, the justice shall hear and decide the case,  
8 as if the request for removal had not been made.

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

SECT. 4. The writ in civil actions commenced before a  
2 justice of the peace shall be a summons, a capias and attach-  
3 ment or scire facias, of the form prescribed by law signed by  
4 the justice, and duly served not less than seven nor more  
5 than sixty days before the return day thereof.

SECT. 5. If any person duly served with process does not  
2 appear and answer thereto, his default shall be recorded, and  
3 the charge in the declaration shall be taken to be true; and  
4 on such default, and also when the action is on trial main-  
5 tained, the justice shall enter judgment for such sum not  
6 exceeding twenty dollars, as he finds due to the plaintiff  
7 with costs, and issue execution.

SECT. 6. If the plaintiff fails to enter and prosecute his  
2 action, or if on trial he does not maintain his action, the  
3 defendant shall recover judgment for his costs to be taxed  
4 by the justice; and execution shall issue therefor.

SECT. 7. Any party aggrieved by the judgment of the just-  
2 ice may appeal to the next supreme judicial court in the same  
3 county, and may enter such appeal at any time within twenty-  
4 four hours, Sunday not included, after the judgment; in which  
5 case no execution shall issue, and the case shall be entered  
6 and determined in the supreme judicial court.

SECT. 8. Before such appeal is allowed, the appellant shall  
2 recognize with sufficient surety or sureties to the adverse  
3 party, if required by him, in a reasonable sum with condi-

4 tion to prosecute his appeal with effect, and pay all costs  
5 arising after the appeal.

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R. S., c. 116, § 10.

SECT. 9. The appellant shall at the supreme judicial court  
2 produce a copy of the record, and of all the papers filed in  
3 the cause; except depositions or other written evidence or  
4 documents, the originals of which shall be produced at the  
5 supreme judicial court: and if the appellant fails to produce  
6 such papers and enter and prosecute his action, the court on  
7 complaint of the adverse party may affirm the former judg-  
8 ment with costs.

Appeal, papers  
to be produced  
at appellate  
court, &c.

R. S., c. 116,  
§ 11.

SECT. 10. Every justice may issue subpoenas for witnesses  
2 in civil actions pending before him or any other court or per-  
3 sons authorized to examine witnesses.

Subpoenas for  
witnesses, &c.  
R. S., c. 116,  
§ 12.

SECT. 11. He may adjourn his court by proclamation from  
2 time to time as justice requires.

Adjournment of  
his court.  
R. S., c. 116, § 13.

SECT. 12. 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  
4 other justice in the county, who can legally try a cause be-  
5 tween the parties in the pending suit may continue such  
6 cause once not exceeding thirty days, and note such contin-  
7 uance on the writ; and in case the disability of the justice  
8 to whom the writ was returnable is not removed at the  
9 expiration of the time of adjournment, such action may be  
10 entered before and tried by any justice of the peace of said  
11 county, at the time and place to which it was so adjourned,  
12 who may render judgment and issue execution accordingly.

If unable to  
attend another  
justice may enter  
a case, &c.

R. S., c. 116,  
§ 14.

SECT. 13. Executions issued by a justice of the peace shall  
2 be made returnable in three months from the day they were  
3 issued.

Executions  
returnable in  
three months.  
R. S., c. 116,  
§ 103.

SECT. 14. When any debtor, against whom judgment is  
2 rendered before any justice of the peace or municipal or  
3 police court, removes or is out of the county in which such  
4 judgment is rendered, such justice or court may issue execu-  
5 tion against him directed to the proper officers in any county  
6 where he is supposed to be; and such execution shall have  
7 the same force as if issued by a justice or court of the  
8 county, where such officers are empowered to act.

Executions may  
be directed into  
other counties.

1842, c. 10, § 2.

SECT. 15. Every justice of the peace may issue writs of  
2 scire facias against executors or administrators upon a sug-  
3 gestion of waste after judgment against them, against bail  
4 in civil actions, and indorsers of writs; and enter judgment  
5 and issue execution, as any court might do in like cases.

Writs of scire  
facias, when he  
may issue.

R. S., c. 116,  
§ 16.

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Writs, &c.,  
when directed  
into other  
counties.

R. S., c. 116,  
§ 17.  
1842, c. 10, § 1.

Records, how to  
be kept, &c.

R. S., c. 116,  
§ 19, 20, 21.

Execution issued  
on the tran-  
scribed record.

R. S., c. 116,  
§ 22.

Removing from  
the state, &c.

R. S., c. 116,  
§ 23.

Administrators  
of deceased  
justice also.

R. S., c. 116,  
§ 24.

Penalty on  
administrator  
for neglect.

SECT. 16. In cases of scire facias against bail, indorsers of  
2 writs, executors or administrators, in all trustee processes,  
3 or original writs against two or more defendants, before a  
4 justice of the peace, or a judge of the municipal or police  
5 court, where the defendant or trustee resides out of the  
6 county where the proceedings are had, the justice or judge  
7 may direct the writ or execution to any proper officer of the  
8 county where the defendant or trustee resides, who shall  
9 charge fees of travel from the place of his residence to the  
10 place of service only, and postage paid by him.

SECT. 17. Every justice of the peace shall keep a fair  
2 record of his proceedings; and if he dies after having given  
3 judgment in a cause and before it is satisfied, any other jus-  
4 tice of the same county may on complaint of the creditor  
5 issue a summons to the person, in whose possession the rec-  
6 ord of such judgment is, directing him to produce and de-  
7 liver it to him; and if such person contemptuously refuses  
8 to produce it, or to be examined respecting it on oath, the  
9 justice may commit him to prison, as punishment for the con-  
10 tempt, to be detained, until he submits to such examination  
11 and produces the record; and when the record is so deliv-  
12 ered to him, he shall transcribe it upon his own book of  
13 records, and return the original to the person who produced  
14 it; and a copy thereof attested by the transcribing justice  
15 or otherwise proved shall be legal evidence in all cases,  
16 where an authenticated copy of the original might be re-  
17 ceived.

SECT. 18. On such transcribed record, the justice may  
2 issue execution as if the judgment was rendered by himself,  
3 changing the form as the case requires; but no such first exe-  
4 cution shall issue after the expiration of one year from the  
5 time the judgment was rendered, unless on scire facias.

SECT. 19. Every justice, who removes from the state, shall  
2 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 office.

SECT. 20. The executor or administrator of any deceased  
2 justice shall deposit all the records and papers of such de-  
3 ceased justice relating to his office, which come into his pos-  
4 session in the clerk's office in the county for which the jus-  
5 tice was commissioned.

SECT. 21. Any person neglecting to comply with the duty  
2 required of him in either of the two preceding sections shall

3 forfeit and pay one hundred dollars to be recovered on **CHAP. 83.**  
 4 indictment.

R. S., c. 116,  
 § 25.

SECT. 22. The clerk shall receive and safely keep all such  
 2 records and papers, and may grant certified copies of them,  
 3 which shall be as good evidence, as if certified by the justice.

Duty of the clerk  
 in such cases.  
 R. S., c. 116,  
 § 26.

SECT. 23. If any justice dies or removes from the state,  
 2 without recording and signing any judgment by him rendered  
 3 in an action before him, and his docket, original writ, and  
 4 papers appertaining thereto, and execution if any issued, are  
 5 so deposited in the office of the clerk, he shall on payment  
 6 of usual fees make out and certify copies of all the papers  
 7 in such cause, and all facts appearing in such docket; and such  
 8 copies shall be legal evidence. But if such records have not  
 9 been deposited with the clerk, the plaintiff in any action may  
 10 use in place of such certified copy an execution issued on  
 11 any such judgment by the justice with an affidavit thereon  
 12 made by the plaintiff or his attorney, that it is not satisfied,  
 13 or satisfied in part only, as the case may be.

Proceedings if  
 his records are  
 not completed,  
 &c.

R. S., c. 116,  
 § 27.  
 1852, c. 276.

SECT. 24. Any justice, whose commission expires and is  
 2 not renewed, may, during two years thereafter, issue and  
 3 renew executions on any judgment by him rendered while in  
 4 commission, which shall be obeyed by the officer, as if the  
 5 commission of the justice had not expired; and certify copies  
 6 of judgment rendered by him.

Justice whose  
 commission has  
 expired, &c.

R. S., c. 116,  
 § 28.

SECT. 25. No justice shall be of counsel for either party,  
 2 or give advice to either party in a suit before him, or be  
 3 subsequently employed as counsel or attorney in any case  
 4 tried before himself; nor hear nor determine any civil ac-  
 5 tion commenced by himself; and every action so commenced,  
 6 shall abate.

Justice not to  
 be of counsel in  
 any case before  
 himself, &c.

R. S., c. 103, § 9.  
 R. S., c. 116,  
 § 15.

SECT. 26. Any justice may try cases at his dwelling-house  
 2 or office or other suitable place, and the writ shall be made  
 3 returnable accordingly; except where the title to real estate  
 4 is in question, the defendant shall plead the general issue  
 5 and need not file any brief statement; and when an action,  
 6 in which the defendant does not appear, is continued at the  
 7 request of the plaintiff, only one travel and attendance shall  
 8 be taxed for him, unless the defendant agrees in writing, to  
 9 such continuance.

Justice may hold  
 courts at his  
 dwelling house  
 or office, &c.

R. S., c. 116,  
 § 29, 30.  
 1842, c. 35.



CHAP. 84.**Chapter 84.****LEVY OF EXECUTIONS ON PERSONAL PROPERTY.**

- Sect.* 1. Execution; what goods may be sold on.  
 2. Execution; coin and bank notes, how levied on.  
 3. Execution; goods, in what time sold on.  
 4. Execution; how advertised.  
 5. Execution; adjournment of sale, time.  
 6. Execution; adjournment of sale, place.  
 7. Indemnity; officer may require.  
 8. Re-sale, if purchaser refuses to take; officer to account for proceeds, and for damages paid by such purchaser.  
 9. Return of sale on execution, how made. Penalty for fraud in sale or return.  
 10. Proceeds of sale, how disposed of.  
 11. Rents of buildings, how sale is to be made of.  
 12. Shares in incorporated companies, how sold.  
 13. Notice of seizure of, how given, if not attached.  
 14. If attached, mode of procedure.  
 15. Officers of the corporations to certify the number of shares, &c.  
 16. Shares sold to be transferred; new certificates to purchaser.  
 17. Notice of sale, how given.  
 18. Franchise of corporation, how sold; notice of sale of, how given.  
 19. Mode of sale.  
 20. Possession, what and how given to purchaser.  
 21. Rights and duties of the purchaser.  
 22. Rights of redemption by the corporation.  
 23. Proceeds of sales applied in order of attachment.  
 24. Notice of second attachment to be given to the first attaching officer.  
 25. Warrant against turnpike corporation for damages.  
 26. Sale of the franchise thereon may be adjourned.  
 27. In what county sale may be had.  
 28. In case of a prior attachment, how the lien by seizure on execution may be preserved.  
 29. Proceedings when such attachment is removed.  
 30. Executions to be set off against each other.  
 31. Cases in which it may be done.  
 32. Proceeds of, how applied.  
 33. Sale without tender.  
 34. Executions and warrants of distress against towns, how issued and enforced.  
 35. How levied on real estate.  
 36. Notice and incidents of the sale.  
 37. Remedy of owner of property sold.  
 38. Payment before levy, provision for and effect of.  
 39. Protection from subsequent claims.  
 40. Proportion to be paid, how ascertained.  
 41. Rights and remedies of the purchaser of a right to a conveyance of land.

Execution; what  
goods may be  
sold on.

R. S., c. 117, § 2.

Execution;  
coin and bank  
notes, how  
levied on.

R. S., c. 117, § 3.

SECT. 1. All chattels real and personal liable at common law to attachment and not exempted therefrom by statute are liable to be taken and sold on execution, as prescribed in this chapter.

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

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

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Execution;  
goods, in what  
time sold on.

R. S., c. 117, § 4.

SECT. 4. The officer shall post up public notice of the  
 2 time and place of sale at least forty-eight hours before the  
 3 time of sale in two or more public places in the town or  
 4 place of sale.

Execution;  
how advertised.

R. S., c. 117, § 5.

SECT. 5. If at the time appointed for the sale the officer  
 2 is prevented by sickness or other casualty from attending  
 3 at the place appointed, or is present and deems it for the  
 4 advantage of all concerned to postpone the sale, he may  
 5 postpone it not exceeding six days next after the day ap-  
 6 pointed; and so from time to time for like good cause giv-  
 7 ing notice of every adjournment in like manner as required  
 8 in the preceding section.

Execution;  
adjournment of  
sale, time.

R. S., c. 117, § 6.

SECT. 6. For good reason and for the purpose of obtain-  
 2 ing a better price for the goods to be sold he may, if he  
 3 should deem it for the benefit of the debtor, adjourn the  
 4 auction to another place in the same town.

Execution;  
adjournment of  
sale, place.

R. S., c. 117, § 7.

SECT. 7. Where there is reasonable doubt as to the own-  
 2 ership of goods, or their liability to be taken in execution,  
 3 the officer may require sufficient security to indemnify himself.

Indemnity;  
officer may  
require.

R. S., c. 117, § 8.

SECT. 8. If the highest bidder at such a sale refuses to  
 2 take and pay for an article, the officer shall sell the same  
 3 again at auction at any time within ten days giving due  
 4 notice of the second sale; and he shall account for what he  
 5 receives on the second sale, and for any damages he recov-  
 6 ers of the first bidder for a loss on the re-sale, as for so  
 7 much received on the execution.

Re-sale, if  
purchaser  
refuses to take,  
&c.

R. S., c. 117, § 9.

SECT. 9. He shall in his return on the execution particu-  
 2 larly describe each article or lot of the goods sold, and the  
 3 price at which it was sold; and if he is guilty of any fraud  
 4 in the sale or return, he shall be liable to the debtor in an  
 5 action on the case to pay him five times the sum, of which he  
 6 is defrauded.

Return of sale  
on execution,  
how made, &c.R. S., c. 117,  
§ 10.

SECT. 10. The money arising from the sale of any prop-  
 2 erty on execution shall be applied to pay the charges and  
 3 satisfy the execution; and the residue, if any shall be returned

Proceeds of  
sale, how  
disposed of.

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R. S., c. 117,  
§ 11.

Rents of build-  
ings, how sale  
is to be made of.

R. S., c. 117,  
§ 12.

Shares in  
incorporated  
companies, how  
sold.

R. S., c. 117,  
§ 13, 29.

Notice of seizure  
of, how given, if  
not attached.

R. S., c. 117,  
§ 14, 15.  
1841, c. 1, § 20.

If attached,  
mode of  
procedure.

R. S., c. 117,  
§ 16.

Officers of the  
corporations to  
certify the  
number of  
shares, &c.

R. S., c. 117,  
§ 17.

Shares sold to be  
transferred, &c.

4 to the debtor on demand, or otherwise legally applied in the  
5 manner provided in section twenty-three.

SECT. 11. When a lessor of any lands leased for the pur-  
2 pose of having any building erected thereon commences an  
3 action against the lessee, and attaches the buildings within  
4 six months after the rent becomes due, and recovers such  
5 rent, he may on execution cause the rents and profits of such  
6 buildings to be sold for a term of time sufficient to pay the  
7 debt and costs; or cause such building to be sold like any  
8 other personal estate; and in the latter case saving to the  
9 debtor the right to redeem the same within one year by pay-  
10 ment to the purchaser of the full amount paid by him and  
11 interest thereon.

SECT. 12. Any share or interest of any stockholder or pro-  
2 prietor in any incorporated company may be taken on execu-  
3 tion and sold in the following manner; and in no other man-  
4 ner notwithstanding anything in the charter of such com-  
5 pany to the contrary.

SECT. 13. If the property was not attached on mesne pro-  
2 cess in the same suit, the officer shall leave a copy of the  
3 execution with the treasurer, cashier, clerk, or other record-  
4 ing officer of the company, and the property shall be con-  
5 sidered as seized on execution, when the copy is so left. If  
6 it was so attached and remains attached, the officer shall  
7 proceed in seizing and selling it on execution in the same  
8 manner as in the seventeenth section.

SECT. 14. The officer of the company having the care of  
2 the records or account of shares or interest of the stock-  
3 holders shall upon the exhibition to him of the execution  
4 give such officer holding it a certificate of the number of  
5 shares held by the judgment debtor, or of the amount of his  
6 interest under the penalty prescribed for refusal to give  
7 such certificate to an officer exhibiting a writ of attachment  
8 as provided in chapter eighty-one section forty-two.

SECT. 15. Within fourteen days after the day of sale the  
2 officer shall leave an attested copy of the execution and of  
3 the return thereon with the officer of the company, whose  
4 duty it may be to record transfers of shares; and the pur-  
5 chaser shall thereupon be entitled to a certificate or certifi-  
6 cates of shares bought by him on paying the fees therefor  
7 and for recording the transfers.

SECT. 16. If the shares or interest of the judgment debtor  
2 were attached in the suit in which the execution issued, the

3 purchaser shall be entitled to all dividends, which accrued  
4 after the attachment. CHAP. 84.

R. S., c. 117,  
§ 18.

Notice of sale,  
how given.

SECT. 17. In making sale of such shares or interest of any  
2 stockholder or proprietor the officer holding the execution  
3 shall give notice in writing of the time and place of sale to  
4 the debtor by leaving the same at his last and usual place  
5 of abode, if within the county where the officer dwells; and  
6 public notice of such time and place of sale by posting up  
7 notice thereof in one or more public places in the town, where  
8 the sale is to be made, and in two adjoining towns, if there  
9 are so many, thirty days at least before the day of sale; and  
10 shall publish an advertisement of the same import and nam-  
11 ing the judgment debtor three weeks successively before the  
12 day of sale in some public newspaper printed in the same  
13 county, if any, if not in the state paper; and if the debtor  
14 never lived in the county, the posting of the notification and  
15 publishing the advertisement as aforesaid shall be sufficient.

R. S., c. 117,  
§ 19.

Franchise of  
corporation,  
how sold, &c.

SECT. 18. When judgment is recovered against any turn-  
2 pike bridge canal or other incorporated company with power  
3 to receive toll, the franchise of such corporation may be sold  
4 on execution at public auction, the officer giving notice of the  
5 time and place of sale by posting a notification in any town,  
6 in which the treasurer clerk or any officer of the company,  
7 if there are any officers, if not where any stockholder re-  
8 sides, thirty days at least before the day of sale, and by  
9 causing an advertisement naming the creditor therein to be  
10 inserted three weeks successively in some public newspaper  
11 printed in any county where either of said officers, or if with-  
12 out officers any stockholder resides, four days before the day  
13 of sale; and if there be no newspaper printed in any such  
14 county, then in the state paper.

R. S., c. 117,  
§ 20.

SECT. 19. In the sale of such franchise whoever will pay  
2 and satisfy such execution and all fees and incidental expen-  
3 ses in consideration of being entitled to receive to his own  
4 use all such toll, as the corporation is entitled to demand  
5 and receive, for the shortest period of time, shall be deemed  
6 the highest bidder and the purchaser for such period of  
7 time. Mode of sale.

R. S., c. 117,  
§ 21.

SECT. 20. Immediately after such sale the officer shall de-  
2 liver to the purchaser possession of the toll houses and  
3 gates, in whatever county they may be situated, and he shall  
4 state his doings therein in his return.

Possession, what  
and how given  
to purchaser.  
R. S., c. 117,  
§ 22.

SECT. 21. The purchaser of such franchise, and those  
2 claiming under him may receive to their own use the tolls

Rights and  
duties of the  
purchaser

CHAP. 84.

R. S., c. 117,  
§ 23.

Rights of  
redemption by  
the corporation.

R. S., c. 117,  
§ 24.

Proceeds of sales  
applied in order  
of attachment.

R. S., c. 117,  
§ 25.

Notice of second  
attachment to  
be given to the  
first attaching  
officer.

R. S., c. 117,  
§ 26.

Warrant against  
turnpike  
corporation for  
damages.

R. S., c. 117,  
§ 30.

3 accruing within the time limited in the purchase, and shall  
4 have all the powers necessary for the convenient use of the  
5 property, which were before vested in the corporation, and  
6 be bound to discharge the same duties, and be liable to the  
7 same penalties and forfeitures during the term of the said  
8 purchase, as before were required of the corporation, and  
9 may recover of said corporation any moneys paid or ex-  
10 penses incurred in consequence of his said liability and  
11 without any fault or negligence on his part.

SECT. 22. The corporation may at any time within three  
2 months after the day of sale redeem said franchise by pay-  
3 ing to the purchaser the sum he paid in satisfaction of the  
4 execution with twelve per cent. interest thereon in addition  
5 to the toll he has received.

SECT. 23. If goods or other property sold on execution  
2 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 the residue to the debtor any other writ of  
5 attachment or execution against him is delivered to the offi-  
6 cer who made the sale, the proceeds of the sale shall be  
7 applied to the discharge of the several judgments in the or-  
8 der, in which the writs of attachments or execution were  
9 served; and the residue, if any, shall be paid over to the  
10 debtor.

SECT. 24. If an attachment or seizure is made on execu-  
2 tion of a share of any incorporated company, or of any  
3 other property which has been attached without taking and  
4 keeping exclusive possession thereof, and if the same prop-  
5 erty is subsequently attached or taken on execution by any  
6 other officer, he shall give notice thereof to the officer, who  
7 makes the sale under the first attachment or seizure; and if  
8 the latter without such notice pays to the debtor the balance  
9 of the proceeds of the sale, he shall not be liable therefor to  
10 the person claiming under such subsequent attachment or  
11 seizure.

SECT. 25. Whenever any damages are assessed in favor  
2 of any person by the county commissioners or by a com-  
3 mittee or a verdict of a jury for any injury sustained by  
4 him by any acts of any of the corporations aforesaid au-  
5 thorized to demand and receive toll, and the damages shall  
6 not be paid in thirty days after order or the acceptance of  
7 such verdict or of the report of the committee, such person  
8 may have a warrant of distress against any such corpora-  
9 tion for the damages assessed and interest and costs.

## CHAP. 84.

SECT. 26. The officer holding such warrant shall have the  
2 same right to adjourn the vendue, as in case of sale of goods  
3 on execution.

Sale of the franchise, &c., may be adjourned.  
R. S., c. 117, § 31.

SECT. 27. All proceedings respecting the attachment and  
2 sale on execution of the franchise of any corporation enti-  
3 tled to demand and receive toll, and sales on warrant of dis-  
4 tress as mentioned in section twenty-five, may be had in any  
5 county, in which the creditor, the president, clerk, treasurer,  
6 or any director of said corporation, if there is any such offi-  
7 cer, if not, where any stockholder resides.

In what county sale may be had.

R. S., c. 117,  
§ 32.

SECT. 28. When any estate real or personal is seized on  
2 execution, and further service of the execution is suspended  
3 by reason of any prior attachment thereof, such estate shall  
4 be bound by seizure until it is set off or sold in whole or in  
5 part under the prior attachment, or until it is dissolved;  
6 provided the officer making such seizure of real estate within  
7 five days thereafter files in the office of the register of deeds  
8 in the county or district, in which the real estate is situated,  
9 a copy of his return of the seizure with the names of the  
10 parties, the court at which judgment was recovered, and the  
11 date and amount of the execution; and the register shall file  
12 and enter the same of record, as in case of attachment of  
13 real estate on writs; and like fees shall be allowed to the  
14 officer and register therefor.

In case of a prior attachment, how the lien by seizure on execution may be preserved.

R. S., c. 117,  
§ 33.  
1842, c. 31, § 11.

SECT. 29. If the estate is set off or sold in part under the  
2 prior attachment, or if it is dissolved, the estate or such part  
3 thereof as remains undisposed of shall continue bound for  
4 thirty days thereafter by such seizure on execution; and the  
5 service of the execution may be completed as if the estate  
6 had been first seized thereon at any time within thirty days  
7 although the return day of the execution has passed.

Proceedings when such attachment is removed.

R. S., c. 117, § 34.

SECT. 30. When an officer has in his hands executions,  
2 wherein the creditor in one is debtor in the other, he  
3 shall cause one execution to satisfy the other so far as it will  
4 extend; if one of such executions is in the hands of such  
5 officer, and the creditor in the other tenders his execution to  
6 him and requests him so to do, he shall set off one against  
7 the other as aforesaid; *provided*, the creditor in one execu-  
8 tion is in the same capacity and trust as the debtor in the  
9 other.

Executions to be set off against each other.

R. S., c. 117, § 1.

SECT. 31. Executions shall not thus be set off against each  
2 other, when the sum due on one of them has been lawfully  
3 and in good faith assigned to another person, before the cred-  
4 itor in the other execution became entitled to the sum due

Cases in which it may be done.

CHAP. 84.

R. S., c. 117,  
§ 35, 36, 37.

Proceeds of,  
how applied.

R. S., c. 117,  
§ 39.

Sale without  
tender.

R. S., c. 117,  
§ 46.  
1842, c. 31, § 12.

Executions and  
warrants of  
distress against  
towns, how  
issued and  
enforced.

R. S., c. 117,  
§ 42.

How levied on  
real estate.

R. S., c. 117,  
§ 43.

Notice and  
incidents of the  
sale.

5 thereon; nor when there are several creditors or debtors in  
6 one execution, and the sum due on the other is due to or  
7 from a part of them only; nor shall it be allowed as to so  
8 much of the first execution as may be due to the attorney in  
9 the suit for his fees and disbursements therein.

SECT. 32. The officer shall apply the proceeds of the sale  
2 of property mortgaged or pledged after deducting his fees  
3 and charges of sale to the payment of the sum paid or ten-  
4 dered to the mortgagee pledgee or holder and the interest  
5 thereon from the time of such payment; and the residue of  
6 such proceeds shall be applied to the satisfaction of the  
7 plaintiff's judgment in manner by law provided.

SECT. 33. Such plaintiff may have the same seized and  
2 sold on the execution, as in other cases, subject to the rights  
3 and interests of such mortgagee pledgee or holder without  
4 paying or tendering payment of the debt due to the mortga-  
5 gee pledgee or holder.

SECT. 34. All executions or warrants of distress against  
2 a town shall be issued against the goods and chattels of the  
3 inhabitants thereof and against the real estate situated  
4 therein, whether owned by such town or not: and the officer  
5 executing such precept shall satisfy it by distress and sale  
6 of the goods and chattels of the inhabitants in the manner  
7 provided by law.

SECT. 35. For want of sufficient goods and chattels to sat-  
2 isfy the same after diligent search, which fact the officer  
3 shall certify in his return, he shall levy upon and sell so much  
4 of the real estate in said town by lots, as the same are  
5 owned occupied or lotted out on the plan thereof, as may be  
6 necessary to satisfy said precepts and expenses of sale.

SECT. 36. He shall advertise in the state paper, and in  
2 one of the newspapers printed in the county, where the  
3 lands lie, if any, three weeks successively, the names of  
4 such proprietors, as are known to him, of the lands which he  
5 proposes to sell with the amount of the execution or war-  
6 rant of distress; and, where the names of the proprietors  
7 are not known, he shall publish the numbers of the lots or  
8 divisions of said land; the last publication to be three months  
9 before the time appointed for the sale. If necessary to com-  
10 plete the sale he may adjourn it from day to day not exceed-  
11 ing three days. He shall give a deed to the purchaser of  
12 said land in fee expressing in said deed the cause of sale.  
13 The proprietor of the land so sold shall have a right to re-  
14 deem it at any time within one year from the time of the sale

15 on paying the sum for which it was sold, and the necessary CHAP. 84.  
 16 charges and interest thereon.

R. S., c. 117,  
 § 44.

SECT. 37. The owner of any real or personal estate so sold,  
 2 and any inhabitant who voluntarily pays his due pro-  
 3 portion or who is compelled to satisfy such warrant in whole  
 4 or in part, shall be entitled to recover against the town in  
 5 an action of assumpsit the full value thereof with interest at  
 6 the rate of twelve per cent. yearly with costs of suit; and  
 7 may prove and recover the real value thereof, whatever was  
 8 the price at which it was sold.

Remedy of  
 owner of  
 property sold.

R. S., c. 117,  
 § 45.  
 R. S., c. 99, § 22.

SECT. 38. When any such warrant of distress or execution  
 2 is issued against a town any inhabitant thereof or proprietor  
 3 of lands therein may, before it is levied or the sale is made,  
 4 pay his part or proportion thereof to be ascertained by an  
 5 assessment thereof made by the assessors of the town, which  
 6 they are required to make at the request of any inhabitant  
 7 or proprietor, or on notice given them by the county commis-  
 8 sioners.

Payment before  
 levy, provision  
 for and effect of.

R. S., c. 117,  
 § 46.

SECT. 39. Every person so paying his proportion to the  
 2 officer holding the warrant or execution for the use of the  
 3 person interested or to such person himself shall be dis-  
 4 charged both as to his person and his property from such  
 5 warrant or execution.

Protection from  
 subsequent  
 claims.

R. S., c. 117,  
 § 47.

SECT. 40. If any such warrant or execution is levied on  
 2 the property of any person, who at the time has not paid his  
 3 proportion, every person having so paid or that shall so pay  
 4 his part as aforesaid shall be discharged from all executions,  
 5 that may be issued on any judgment against the inhabitants  
 6 of such town on account of said levy, and his person and  
 7 estate shall forever be discharged.

Proportion to be  
 paid, how  
 ascertained.

R. S., c. 117,  
 § 48.

SECT. 41. The certificate of the major part of the assessors  
 2 of the town shall be conclusive evidence of any person's pro-  
 3 portion thereof; and being delivered to the officer he shall  
 4 on payment thereof return the warrant or execution satisfied  
 5 for that sum with the name of the person who paid it.

Rights and  
 remedies of the  
 purchaser of a  
 right to a  
 conveyance of  
 land.  
 R. S., c. 117,  
 § 49.



## CHAP. 85.

## Chapter 85.

## BAIL IN CIVIL ACTIONS.

- Sect.* 1. Bail shall be by bond to the sheriff or other officer; bond returned with the writ.
2. What bail he may require.
  3. In what cases the obligors shall be holden.
  4. Surrender of principal before entry; how to be done and effect thereof.
  5. Names of bail to be entered on execution.
  6. Officer to notify bail; his fees to be paid.
  7. Surrender of principal in court.
  8. In case of avoidance, officer's duty, and liability of bail.
  9. Scire facias against bail.
  10. Pleadings and defense by bail.
  11. Surrender of principal on scire facias.
  12. Proceedings when bail is taken in a justice action.
  13. Surrender and commitment of principal in such case.
  14. Officers' fees and duty.
  15. Surrender in such case after judgment.
  16. Surrender before judgment.
  17. Remedy of bail against principal.

Bail shall be by bond to the sheriff or other officer, &c.

R. S., c. 114, § 95, 98.

What bail he may require.

R. S., c. 114, § 96.

In what cases the obligors shall be holden.

R. S., c. 114, § 97.

Surrender of principal before entry, &c.

R. S., c. 114, § 99.

SECT. 1. When bail is taken on mesne process, it shall be by bond to the sheriff, if the process be served by him or his deputy, otherwise to the officer making the arrest, with condition that the defendant shall appear and answer to the suit and that he will abide the final judgment thereon and not avoid. It shall be returned with the writ, and the clerk shall note on the writ that a bail bond is so filed.

SECT. 2. No officer shall be obliged to accept a bail bond unless signed by two sureties at least having sufficient property in the county in which the principal is arrested or held in custody; and if he takes a bail bond with only one surety, he shall be liable to the plaintiff for any deficiency thereof.

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

SECT. 4. Any bail may before the action is entered exonerate himself from all liability by surrendering his principal to the common jail in the county, where the arrest was made, or in the county, where the writ is returnable, and within fifteen days thereafter leaving with the jailer an attested copy of the writ or process, whereby the arrest was made, and of the return indorsed thereon, and of the bail bond, and notifying in writing the plaintiff or his attorney of the time and place of the commitment; and the jailer shall receive him into custody as if the officer who made the arrest had committed him.

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SECT. 5. If judgment is rendered against the principal in the action, in which the bail is taken, the clerk of the court or justice of the peace issuing the execution on the judgment shall on the margin thereof insert the names of the persons, who became bail, their addition and place of abode, if they are inserted in the bail bond; and if the debtor is committed to jail, the clerk or justice shall note in like manner the jail, to which he is committed.

Names of bail to be entered on execution.

R. S., c. 118, § 2.

SECT. 6. The officer holding the execution fifteen days at least before its expiration, whether the debtor has given bail to the arresting officer or the jailer, shall notify the bail personally or by leaving a notice in writing by him signed at his usual place of abode, if in the officer's county, certifying that he cannot find the principal debtor, or property wherewith to satisfy the execution, for which he may demand and receive of the bail the usual fee for the service of a writ, and for travel from the dwelling house of the officer to the dwelling house of the bail, and shall minute in said notice the amount of the fees, which the bail shall pay in twenty days, unless, one day at least before the execution is returnable, the bail shall produce and deliver to the officer the principal debtor.

Officer to notify bail; his fees to be paid.

R. S., c. 118, § 3.

SECT. 7. If the bail does not commit the principal to prison in the manner mentioned in the fourth section, they may at any time before final judgment in the original suit bring the principal into court, where the action is pending and deliver him into the custody thereof and be thereby discharged of their suretiship.

Surrender of principal in court.

R. S., c. 118, § 4.

SECT. 8. In case of the avoidance of the principal and return on the execution by the officer, that he has had the same execution in his hands at least thirty days before the expiration thereof and that the principal is not found, his bail shall be obliged to satisfy the judgment with interest thereon from the time when it was rendered, unless they shall discharge themselves by surrendering the principal before final judgment against them on the writ of scire facias or by other sufficient defense.

In case of avoidance, officer's duty, and liability of bail.

R. S., c. 118, § 5.

SECT. 9. When the principal so avoids, and his goods and chattels or lands cannot be found to satisfy the execution, the original creditor shall have a writ of scire facias in his own name from the same court against the bail in vacation or in term time to be sued out within one year from the time, when judgment was rendered against the principal, and need not declare on the bail bond, but may merely allege that the defendants became bail in the original action.

Scire facias against bail.

R. S., c. 118, § 6, 7, 8.

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Pleadings and  
defense by bail.

R. S., c. 118, § 9.

Surrender of  
principal on  
scire facias.

R. S., c. 118,  
§ 10, 11, 12.

Proceedings  
when bail is  
taken in a  
justice action.

R. S., c. 118,  
§ 13.

Surrender and  
commitment of  
principal in such  
case.

R. S., c. 118,  
§ 14.

Officers' fees  
and duty.

R. S., c. 118,  
§ 15.

Surrender in  
such case after  
judgment.

SECT. 10. The bail may plead jointly or severally, that they never became bail as alleged in the writ, and under that plea may avail themselves of every defense, which would avail them in an action of debt on the bond upon the plea, that it is not their bond; or may shew any special matter of discharge filing a brief statement thereof as by law provided.

SECT. 11. The bail may surrender the principal in court before final judgment on the scire facias, and deliver him to the order of court, and on paying all the costs on the scire facias they shall be discharged, and the principal shall be committed to the county jail there to remain for the space of fifteen days; and if the creditor does not within that time take him in execution, the sheriff shall discharge him on payment of the legal prison fees.

SECT. 12. When bail is taken on mesne process in an action triable before a justice of the peace, and there is a return on the execution issued on the judgment in such suit, that the principal is not found, the justice may issue a scire facias thereon against the bail to be served seven days before the day of trial; and if no sufficient cause is shown to the contrary, he may render judgment for the debt and costs recovered with interest thereon from the time judgment was rendered against the principal, and issue execution accordingly, notwithstanding the debt and costs on the original judgment, exceed the sum of twenty dollars.

SECT. 13. If the bail at any time before final judgment in the original suit on scire facias brings the principal before the justice, and procures the attendance of an officer to receive him, the justice shall make a record of the surrender, and shall order him into the custody of such officer to be committed to jail to be proceeded with as mentioned in the preceding sections; and on payment of costs arising on the scire facias the bail shall be fully discharged.

SECT. 14. Such officer shall attend before such justice for such purpose aforesaid, when so requested; and shall be allowed therefor the same fees as for arresting and committing a defendant on mesne process; and for neglect of official duty in the above case he shall be answerable for all damages to the party injured thereby.

SECT. 15. When the principal is surrendered to such justice after final judgment in the original action, the bail shall deliver to the officer a copy attested by the justice of the entry of the surrender, and the officer shall deliver it to the

5 jailer on committing the prisoner to his custody; and this  
6 shall be a sufficient warrant to the officer for receiving and  
7 conveying him to jail, and to the jailer for holding him in  
8 custody.

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R. S., c. 118,  
§ 16.

SECT. 16. If the principal is surrendered before final  
2 judgment in the original suit, the bail shall deliver to the  
3 officer a copy of the original writ with the return indorsed  
4 thereon attested by the justice, and the officer shall deliver  
5 the same copy to the jailer; and this shall be a sufficient  
6 warrant to the officer and jailer as mentioned in the preced-  
7 ing section.

Surrender before  
judgment.

R. S., c. 118,  
§ 17.

SECT. 17. Bail may have their remedy against their prin-  
2 cipal by an action on the case for all damages sustained by  
3 them by reason of their suretiship.

Remedy of bail  
against  
principal.  
R. S., c. 118,  
§ 18.

## Chapter 86.

### TRUSTEE PROCESS.

Sect. 1. In what actions trustee process may be used.

2. Form of the writ.

3. Mode of service.

4. Effect of service on the trustee.

5. In what county the action shall be commenced.

6. Insertion of additional names of trustees.

7. Notice to principal, if absent from the state. Trustee may appear for him.

8. What corporations may be summoned as trustees.

9. Trustee, about to leave the state, may disclose before a justice.

10. Course of proceeding in such case.

11. Any trustee may so disclose, by consent.

12. An inhabitant of another state may be adjudged a trustee.

13. Costs, if the trustee be discharged, the first term. If adjudged trustee, he  
may retain his costs.

14. Disclosure to be sworn to.

15. Lien for costs on specific articles in his hands.

16. Proceedings against the principal, if the trustees be all discharged.

17. Additional compensation, if trustee dwell in another county.

18. Liability of trustee for not appearing at the first term.

19. Joint liability for costs if several fail to appear.

20. Exception in favor of trustees residing out of the county, or absent from the  
state, at the time of service.

21. If the action fails, costs for defendant and trustee.

22. No costs to trustee on discontinuance, unless he appear.

23. Trustee living out of the county may appear by attorney.

24, 25. Proceeding in such case.

26. Disclosure, how sworn to.

27. Trustee not appearing, to be defaulted.

28. Trustee may submit a statement of facts to the court.

29. Plaintiff may prove other facts, not stated nor denied in the disclosure.

30. Such proof may be submitted to the court or a jury.

31. Testimony to be in writing.

- CHAP. 86.** *Sect. 32.* Proceedings, if trustee disclose an assignment of the principal's claim. Assignee may be summoned. If he appears, his title to be tried. If he does not appear, his claim to be void.
33. Principal defendant may be a witness.
  34. Form of judgment against principal and trustee.
  35. Trustee may appear by consent, at a subsequent term, as of the first.
  36. Executor or administrator liable as trustee for a debt or legacy, and stockholder of a corporation.
  37. If a person dies, after being adjudged trustee, the goods and effects are held in the hands of the administrator.
  38. If trustee dies before judgment, his administrator may be cited.
  39. If the administrator do not appear, judgment may be rendered.
  40. If he does not pay, *scire facias* to issue.
  41. Proceedings if trustee dies within thirty days after judgment is rendered.
  42. Manner of issuing execution if administrator is adjudged trustee.
  43. Remedy on his bond if he neglects to pay.
  44. Specific articles in trustee's hands to be delivered to the officer.
  45. Remedy, if trustee refuses.
  46. Mode of settling the value, as between the principal and trustee.
  47. If part only is taken, balance to be delivered to the principal.
  48. Officer to restore surplus proceeds of sale.
  49. Trustee process, after commitment of the debtor. Effect thereof.
  - 50, 51, 52, 53. Proceedings, if trustee discloses property mortgaged to him.
  54. Trustee not prevented from selling the property mortgaged.
  55. Cases in which a person shall not be adjudged trustee.
  56. Effect, if defendant in a suit is summoned as trustee of the plaintiff.
  57. Costs in such cases.
  - 58, 59, 60. Proceedings, if defendant in an action pending is summoned as trustee of the plaintiff.
  61. Money or goods may be attached by trustee process before they are payable.
  62. Proceedings, if trustee does not pay costs, when liable.
  63. Goods fraudulently conveyed, may be held by trustee process.
  64. Trustee may retain in his hands pay for any demand justly due him; but not for unliquidated damages.
  65. Form of judgment against a trustee.
  66. Discharge of trustee no bar to the claim of principal.
  67. *Scire facias* against trustee.
  - 68, 69, 70. Judgment on *scire facias*.
  71. Liability for costs, if discharged on *scire facias*, not having been before examined.
  72. If examined in the original suit, he may be examined again on *scire facias*.
  73. Goods and effects liable to another attachment, if not demanded in thirty days. Exception.
  74. If there is no second attachment, principal may recover them.
  75. Demand, how made, if trustee is out of the state; how if he has no dwelling place in the state.
  76. Effect of judgment against trustee.
  77. Penalty, if trustee discloses falsely.
  78. Trustee exempt from costs on *scire facias* in certain cases.
  79. In case of exception, the whole case may be re-examined and remanded.
  80. Form and service of trustee process for justice courts.
  81. In what county to be brought.
  82. Default, if trustee does not appear.
  83. Costs, if discharged.
  84. May retain costs, if adjudged trustee.
  85. Costs, on discontinuance.
  86. Subsequent proceedings. Discharge of trustee, if judgment is less than five dollars. Exception.
  87. How execution shall issue, if defendant or trustee removes from the county.
  88. Proceedings, if trustee is discharged, living in a county different from plaintiff and defendant.

## CHAP. 86.

SECT. 1. All personal actions except those of detinue,  
 2 replevin, actions on the case for malicious prosecution, slan-  
 3 der by writing or speaking, and those for assault and battery,  
 4 may be commenced by trustee process in the supreme judi-  
 5 cial court; or when the amount demanded in damages is not  
 6 less than five dollars nor more than twenty dollars before a  
 7 municipal or police court or a justice of the peace.

In what actions  
trustee process  
may be used.

R. S., c. 119, § 1.

SECT. 2. The writ shall be in the form established by law  
 2 authorizing an attachment of goods and estate of the prin-  
 3 cipal defendant in his own hands and in the hands of the  
 4 trustees.

Form of the  
writ.

R. S., c. 119, § 2.

SECT. 3. The officer serving the writ shall attach the goods  
 2 and estate of the principal, and read the writ to him or leave  
 3 a copy of it at his last and usual place of abode; which shall  
 4 be a sufficient service on the principal, whether any trustee  
 5 is holden or not.

Mode of service.

R. S., c. 119, § 3.

SECT. 4. A like service on the trustee shall bind all goods  
 2 effects or credits of the principal defendant entrusted and  
 3 deposited in his possession to respond the final judgment in  
 4 the action in like manner as when attached by the ordinary  
 5 process.

Effect of service  
on the trustee.

R. S., c. 119, § 4.

SECT. 5. If all the trustees live in the same county, the  
 2 action shall there be brought, and if they reside in different  
 3 counties, the action shall be commenced in any county in  
 4 which one of them resides; and in a trustee process against  
 5 a corporation aggregate its residence shall be deemed to be  
 6 the county in which it has its established or usual place of  
 7 business, held its last annual meeting, or usually holds its  
 8 meetings.

In what county  
the action shall  
be commenced.

R. S., c. 119, § 5.

SECT. 6. The plaintiff may insert the names of as many  
 2 persons as trustees, as he may deem necessary at any time  
 3 before the process is served on the principal but not after;  
 4 and he may cause a further service to be made on any of the  
 5 trustees, if found expedient, if the service is afterwards made  
 6 or renewed on the principal; but no costs for services shall  
 7 be taxed for the plaintiff in such case, except for that last  
 8 made.

Insertion of  
additional names  
of trustees.

R. S., c. 119, § 6.

SECT. 7. When the principal is out of the state at the time  
 2 of the service and has no agent therein, notice shall be given  
 3 as provided in the eighteenth section of chapter eighty-one;  
 4 or proceedings may be had as provided in section three of  
 5 chapter eighty-two, unless in the mean time he shall come  
 6 into the state before the sitting of the court; and when he  
 7 does not appear in his own person or by attorney, any one

Notice to  
principal, if  
absent from the  
state, &c.

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R. S., c. 119, § 7.

What corporations may be summoned as trustees.

R. S., c. 119, § 8.

Trustee, about to leave the state, may disclose before a justice.

R. S., c. 119, § 9.

Course of proceeding in such case.

R. S., c. 119, § 10.

Any trustee may so disclose, by consent.  
R. S., c. 119, § 11.

An inhabitant of another state may be adjudged trustee.

R. S., c. 119, § 12.

Costs, if the trustee be discharged, the first term, &c.

R. S., c. 119, § 16, 17.

Disclosure to be sworn to.

R. S., c. 119, § 19.

Lien for costs on specific articles in his hands.

8 or more of the trustees having goods effects or credits in  
9 their hands and having been adjudged trustees may appear  
10 in his behalf, and in his name plead and defend the cause.

SECT. 8. All corporations, except counties, towns, school  
2 districts, and parishes, may be summoned as trustees and  
3 writs served on them, as other writs on such corporations;  
4 and they may answer by attorney or agent and make dis-  
5 closures, which shall be signed and sworn to by such attor-  
6 ney or agent; and the same proceedings shall thereupon be  
7 had throughout, except necessary changes in form, as in other  
8 cases of foreign attachment.

SECT. 9. When any person summoned as trustee is about  
2 to depart from the state, or go on a voyage and not return  
3 before the term of the court where he is summoned to ap-  
4 pear, he may apply to a justice of the peace and quorum of  
5 the county, where he resides, for a notice to the plaintiff in  
6 the suit to appear before said justice at a place and time  
7 appointed for taking his disclosure.

SECT. 10. On service made and returned according to the  
2 order of the justice, the examination and disclosure shall be  
3 taken and sworn to before the justice and being certified  
4 and returned to court, the same proceedings may be had  
5 thereon as if it had been in court.

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

SECT. 12. Any person on whom a trustee process is served  
2 shall be liable to be adjudged trustee by the court, though he  
3 was not then and never had been an inhabitant of this state;  
4 and the writ may be made returnable in the county, in which  
5 either the plaintiff or principal defendant resides.

SECT. 13. If any supposed trustee comes into court at the  
2 first term and submits himself to examination on oath after  
3 having in writing declared, that at the time of the service of  
4 the trustee process upon him he had not any goods effects  
5 or credits of the principal in his possession, he shall be enti-  
6 tled to his costs as in civil actions where issue is joined for  
7 trial; and if adjudged a trustee may deduct his costs from  
8 the amount in his hands.

SECT. 14. The disclosure when completed and subscribed  
2 by the trustee, shall be sworn to by him in open court or  
3 before some justice of the peace.

SECT. 15. Where any person is adjudged trustee for specific  
2 articles in his hands, he shall have a lien thereon for his costs;

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3 and the officer, who disposes thereof on execution, shall pay  
4 the trustee the amount due him for costs, and deduct the same  
5 from the amount of sale and account to the creditor for the  
6 balance; the amount of such fees shall be indorsed on the  
7 execution by the clerk, and shall be evidence of the lien.

R. S., c. 119,  
§ 18.

SECT. 16. If all the persons summoned as trustees are dis-  
2 charged, or the suit against them is discontinued, the plaintiff  
3 shall not proceed against the principal defendant, unless  
4 there has been sufficient personal service of the original writ  
5 upon him; but he may assume the defense of the suit.

Proceedings  
against the  
principal, &c.

R. S., c. 119,  
§ 20.

SECT. 17. When the trustee, at the time the writ was  
2 served on him, dwells in any county, other than that in  
3 which the writ is returnable, the court shall in case of his  
4 discharge allow him in addition to his legal fee a reasonable  
5 compensation for his time and expenses in appearing and  
6 defending himself.

Additional  
compensation,  
if trustee dwells  
in another  
county.

R. S., c. 119,  
§ 21.

SECT. 18. If any person resident in the county in which  
2 the writ is returnable is summoned and neglects to appear  
3 and submit to examination at the return term having no  
4 reasonable excuse, he shall be liable for all costs afterwards  
5 arising on the suit to be recovered and paid out of his own  
6 goods or estate, if judgment is rendered for the plaintiff;  
7 unless recovered out of the goods or effects in his hands be-  
8 longing to the principal.

Liability of  
trustee for not  
appearing at the  
first term.

R. S., c. 119,  
§ 22.

SECT. 19. When several trustees resident in the county,  
2 where the action is pending, being summoned neglect to ap-  
3 pear, the judgment for costs shall be rendered against them  
4 jointly.

Joint liability for  
costs if several  
fail to appear.

R. S., c. 119, § 23.

SECT. 20. Persons summoned as trustees resident out of  
2 the county, where the suit is pending, shall not be liable for  
3 any costs arising on the original process; and if the person  
4 summoned as trustee is out of the state, at the time the writ  
5 is served on him, and appears at the first term of the court  
6 after his return, he shall be allowed for his costs and charges  
7 as if he had appeared at the term, when the action was en-  
8 tered.

Exception in  
favor of trustees  
residing out of  
the county, &c.

R. S., c. 119,  
§ 24.

SECT. 21. When the plaintiff does not support his action,  
2 the court shall award costs against him in favor of the prin-  
3 cipal, and in favor of the persons summoned as trustees sev-  
4 erally, who have appeared and submitted to examination on  
5 oath; and several executions shall issue accordingly.

If the action  
fails, costs for  
defendant and  
trustee.

R. S., c. 119,  
§ 25.

SECT. 22. When a person summoned as trustee does not  
2 come into court and declare he had no property or cred-  
3 its of the principal in his hands, when the writ was served,

No costs to  
trustee on dis-  
continuance,  
unless he appear.



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R. S., c. 119,  
§ 26.

Trustee living  
out of the  
county may  
appear by  
attorney.

R. S., c. 119,  
§ 27.

Proceedings in  
such case.  
R. S., c. 119, § 28.

If plaintiff thinks  
proper to  
examine such  
supposed trustee,  
&c.

R. S., c. 119,  
§ 29.

Disclosure, how  
sworn to.

R. S., c. 119,  
§ 30.

Trustee not  
appearing, to be  
defaulted.  
R. S., c. 119,  
§ 31.

Trustee may  
submit a state-  
ment of facts to  
the court.

R. S., c. 119,  
§ 32.

Plaintiff may  
prove other  
facts, &c.

R. S., c. 119,  
§ 33.  
1842, c. 31, § 15.

Such proof may  
be submitted to  
the court or  
a jury.

R. S., c. 119,  
§ 34.

Testimony to be  
in writing.  
R. S., c. 119,  
§ 40.

4 and submit himself to examination on oath, the court shall  
5 not award costs in his favor, though the suit is discontinued.

SECT. 23. A person summoned as trustee and then living  
2 in a county other than that, where the writ is returnable,  
3 shall not be required to appear in person in the original  
4 suit or in a suit on scire facias; but he may appear by attor-  
5 ney and declare, whether he had any goods or effects of the  
6 principal in his hands, when the writ was served; and there-  
7 upon offer to submit himself to examination on oath.

SECT. 24. If the plaintiff proceeds no further, the declar-  
2 ation shall be considered as true.

SECT. 25. If the plaintiff thinks proper to examine such  
2 supposed trustee on oath, the answers may be taken in the  
3 county, in which the trustee dwells, before a judge of the  
4 supreme judicial court or any justice of the peace of the  
5 county.

SECT. 26. In all cases, when a trustee has submitted him-  
2 self to examination on oath in court, the answers to such  
3 examination may be sworn to before a judge of the court,  
4 or a justice of the peace; and being filed in court shall have  
5 the same effect as if sworn to in open court.

SECT. 27. When any person duly summoned as trustee  
2 neglects to appear and answer to the suit, he shall be de-  
3 faulted and adjudged trustee as alleged.

SECT. 28. If any person summoned admits, that he has in  
2 his hands, goods, effects, or credits, of the principal, or wishes  
3 to refer that question to the court upon the facts, he may  
4 instead of the declaration before mentioned make a declara-  
5 tion of such facts, as he may deem material, and submit him-  
6 self thereupon to a further examination on oath; and such  
7 declaration and further examination, if any, shall be sworn  
8 to as before provided.

SECT. 29. The answers and statements sworn to by any  
2 person summoned as a trustee shall be considered as true in  
3 deciding how far he is chargeable, until the contrary is  
4 proved; but the plaintiff or trustee may allege and prove  
5 any other facts not stated or denied by the supposed trustee,  
6 which may be material in deciding that question.

SECT. 30. 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  
4 court directs.

SECT. 31. All testimony relating to the additional allega-  
2 tions of any party in such trials shall be given by depositions  
3 taken and filed in the usual manner.

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SECT. 32. When it appears by the answers of any person  
 2 summoned as a trustee, that any effects goods or credits in  
 3 his hands are claimed by a third person in virtue of an as-  
 4 signment from the principal debtor or in some other way,  
 5 the court may permit such claimant, if he sees cause, to  
 6 appear. If he does not appear voluntarily, notice may be  
 7 issued and served on him, as the court directs; and if he  
 8 appears, he may be admitted as a party to the suit so far as  
 9 respects his title to the goods effects or credits in question;  
 10 and allege and prove any facts not stated or denied in the  
 11 disclosure by the supposed trustee, and such allegations shall  
 12 be tried and determined, as in section thirty; but if after  
 13 due notice he does not appear in person or by attorney, the  
 14 assignment shall have no effect to defeat the plaintiff's at-  
 15 tachment.

Proceedings, if  
 trustee disclose  
 an assignment  
 of the principal's  
 claim, &c.

R. S., c. 119,  
 § 35, 36, 37, 38.

SECT. 33. Upon the trial between the attaching creditor  
 2 and the person claiming as before mentioned the principal  
 3 defendant may be examined as a witness for either party, if  
 4 there is no other objection to his competency except his  
 5 being a party to the original suit.

Principal  
 defendant may  
 be a witness.

R. S., c. 119,  
 § 39.

SECT. 34. When the plaintiff recovers judgment against  
 2 the principal, and any person is summoned as trustee, who  
 3 has not appeared and discharged himself, and against whom  
 4 the suit has not been discontinued, the court shall award  
 5 judgment and execution against the goods effects and credits  
 6 in his hands as well as against the principal in the usual  
 7 form.

Form of judg-  
 ment against  
 principal and  
 trustee.

R. S., c. 119,  
 § 41.

SECT. 35. If there is any agreement entered on the docket  
 2 between the plaintiff and supposed trustee, that he may  
 3 appear at a subsequent term of the court instead of the  
 4 first term saving to him the advantages, he would have on  
 5 appearing and answering at the first term, the same shall  
 6 be allowed him by the court.

Trustee may  
 appear by  
 consent, &c.

R. S., c. 119,  
 § 42.

SECT. 36. Any debt or legacy due from an executor or  
 2 administrator and any goods effects and credits in his hands  
 3 as such may be attached by trustee process. The amount,  
 4 which any stockholder of a corporation may be found liable  
 5 to pay to a judgment creditor of such corporation may be  
 6 attached by any creditor of such judgment creditor by ser-  
 7 vice in the usual manner of trustee process upon such stock-  
 8 holder at any time after the commencement of the action  
 9 against him, and before the rendition of judgment therein.

Executor or  
 administrator  
 liable as trustee,  
 &c.

R. S., c. 119, § 43.  
 1856, c. 259.

SECT. 37. If any person summoned as a trustee in his own  
 2 right dies, before the judgment recovered by the plaintiff is

If a person dies,  
 after being  
 trustee, &c.

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R. S., c. 119,  
§ 44.

If trustee dies  
before judgment,  
his administrator  
may be cited.

R. S., c. 119,  
§ 45.

If administrator  
do not appear,  
judgment may  
be rendered.

R. S., c. 118,  
§ 46.

If he does not  
pay, scire facias  
to issue.

R. S., c. 119,  
§ 47.

Proceedings if  
trustee dies  
within 30 days  
after judgment  
is rendered.

R. S., c. 119,  
§ 48.

Manner of  
issuing execu-  
tion if adminis-  
trator is  
adjudged trustee.

3 satisfied, the goods effects and credits in his hands at the  
4 time of attachment shall remain bound thereby; and his  
5 executors or administrators shall be liable therefor as if the  
6 writ had been originally served on them.

SECT. 38. If the person so summoned dies before judgment  
2 in the original suit, his executor or administrator may appear  
3 voluntarily or may be cited to appear as is provided in the  
4 case of the death of a defendant in a common action; and  
5 the further proceedings shall then be conducted as if the  
6 executor or administrator had been originally summoned as  
7 a trustee; except that the examination of the deceased, if  
8 any had been taken and filed, shall have the same effect as  
9 if he were living.

SECT. 39. If in such case the executor or administrator  
2 does not appear, the plaintiff instead of suggesting the death  
3 of the testator or intestate may take judgment against him  
4 by default or otherwise, as if he were living, and the execu-  
5 tor or administrator shall pay on the execution the amount,  
6 which he would have been liable to pay to the principal  
7 defendant; and he shall be thereby discharged from all de-  
8 mands on the part of the principal defendant in the suit for  
9 the amount so paid, as if the executor or administrator had  
10 been himself adjudged trustee.

SECT. 40. If the executor or administrator in the case last  
2 mentioned does not voluntarily pay the amount in his hands,  
3 the plaintiff may proceed by writ of scire facias, as if the  
4 judgment in the first suit had been against the executor or  
5 administrator himself as trustee; but if such executor or  
6 administrator is discharged, he may recover costs or not at  
7 the discretion of the court.

SECT. 41. If any person, against whom execution issues as  
2 trustee, is not living at the expiration of thirty days after  
3 final judgment in the trustee suit, the demand to be made  
4 by force of the execution for continuing the attachment as  
5 provided in the seventy-third section may be made on the  
6 executor or administrator of the deceased person at any  
7 time within thirty days after his appointment; and shall  
8 have the same effect as if made within thirty days after the  
9 judgment.

SECT. 42. When an executor or administrator is adjudged  
2 trustee on account of goods effects or credits in his hands or  
3 possession merely as executor or administrator, whether in  
4 a suit originally commenced against him as a trustee or  
5 against the deceased, and whether in the original suit or on

6 a writ of scire facias, the execution shall not be served on  
 7 his own goods or estate or on his person; but he shall be  
 8 liable for the amount in his hands in like manner and to the  
 9 same extent only, as he would have been to the principal de-  
 10 fendant, if there had been no trustee process.

R. S., c. 119,  
 § 49.

SECT. 43. If after final judgment against an executor or  
 2 administrator for any certain sum due from him as trustee,  
 3 he neglects to pay it, the original plaintiff in the foreign at-  
 4 tachment shall have the same remedy for recovering the  
 5 amount, either upon a suggestion of waste or by a suit on  
 6 the administration bond, as the principal defendant in the  
 7 foreign attachment would have had upon a judgment recov-  
 8 ered by himself for the same demand against the executor  
 9 or administrator.

Remedy on his  
 bond if he  
 neglects to pay.

R. S., c. 119,  
 § 50.

SECT. 44. When any person summoned as a trustee is  
 2 bound to deliver to the principal defendant any specific  
 3 articles, he shall deliver them or so much thereof as may be  
 4 necessary to the officer holding the execution; and they  
 5 shall be sold by the officer, and the proceeds applied and  
 6 accounted for as if they had been taken on execution in com-  
 7 mon form.

Specific articles  
 in trustee's  
 hands to be de-  
 livered to the  
 officer.

R. S., c. 119,  
 § 51.

SECT. 45. If the trustee neglects or refuses to deliver  
 2 them or sufficient to satisfy the execution, the judgment  
 3 creditor may have his remedy on a scire facias, as provided  
 4 in sections from sixty-seven to seventy-two inclusive of this  
 5 chapter; and the debtor his remedy for an overplus belong-  
 6 ing to him as at common law.

Remedy, if  
 trustee refuses.

R. S., c. 119,  
 § 52.

SECT. 46. When by the terms of the contract between the  
 2 trustee and the principal debtor any mode of ascertaining  
 3 the value of the property to be delivered to the officer is  
 4 pointed out, the officer shall on the application of the trustee  
 5 notify the principal debtor previously to the delivery, that  
 6 the value may be thus ascertained, as far as it may affect the  
 7 performance of the contract; and in other cases the value  
 8 of the property as between the principal and the trustee  
 9 shall be estimated and ascertained by the appraisal of three  
 10 disinterested men chosen, one by the trustee, one by the offi-  
 11 cer, and one by the principal if he see cause; and if he neg-  
 12 lects or refuses by the officer; and they shall all be duly  
 13 sworn to appraise the same, and the officer justice and  
 14 appraisers shall certify their respective doings on the exe-  
 15 cution.

Mode of  
 settling the  
 value, as  
 between the  
 principal and  
 trustee.

R. S., c. 119,  
 § 53.

SECT. 47. When a part of such goods and articles is taken  
 2 in execution as aforesaid, the trustee may deliver the resi-

If part only is  
 taken, &c.

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R. S., c. 119,  
§ 54.

Officer to restore  
surplus proceeds  
of sale.

R. S., c. 119,  
§ 55.

Trustee process,  
after commit-  
ment of the  
debtor. Effect  
thereof.

R. S., c. 119,  
§ 56, 57.

Proceedings, if  
trustee discloses  
property  
mortgaged to  
him.

R. S., c. 119,  
§ 58.

On return of  
scire facias,  
amount of excess  
determined by  
the court or  
jury.

R. S., c. 119,  
§ 59.

3 due to the principal or tender it to him within thirty days  
4 after satisfaction of the execution in the same manner, as he  
5 might have delivered the whole.

SECT. 48. Any surplus money remaining in the hands of  
2 the officer after satisfying the execution and fees shall be  
3 paid to the principal, if within his precinct; and if not, to  
4 the trustee.

SECT. 49. When a judgment creditor has caused the  
2 debtor to be committed in execution, and afterwards dis-  
3 covers goods effects or credits of the debtor not attachable  
4 by the ordinary process of law, he may have the benefit of  
5 the trustee process provided in this chapter like any other  
6 creditor, if within seven days after the service of the pro-  
7 cess he discharges the body of the debtor from prison by a  
8 written direction to the jailer stating the occasion and rea-  
9 son of the discharge; but such discharge shall not annul or  
10 affect the judgment.

SECT. 50. When any person summoned as a trustee in his  
2 disclosure states, that he had at the time the process was  
3 served on him in his possession property not exempted by  
4 law from attachment mortgaged pledged or delivered to him  
5 by the principal defendant to secure the payment of a sum  
6 of money due to such supposed trustee, and that the princi-  
7 pal defendant has a substituting right to redeem the same by  
8 payment of such money, the court or justice, before which the  
9 action is pending, shall order, that on payment or tender of  
10 such money by the plaintiff to said alleged trustee within  
11 such time, as the court orders, and while the right of redemp-  
12 tion exists, the person so summoned shall deliver over the  
13 property to the officer serving the process to be held and  
14 disposed of in like manner as if it had been attached on  
15 mesne process; and in default thereof that he shall be  
16 charged as the trustee of the principal debtor; which order  
17 shall be entered on the records of the court or justice.

SECT. 51. On the return of the scire facias against such  
2 alleged trustee if it appears, that the plaintiff has on his part  
3 complied with the order of the court or justice, and that such  
4 alleged trustee has refused or neglected to comply therewith,  
5 the court or justice shall enter up judgment against him for  
6 the amount so due and returned unsatisfied on the execution,  
7 if there should appear to be in his hands such an amount of  
8 the property mortgaged over and above the sum received by  
9 him; but if not then for the amount of said property so ex-  
10 ceeding the above sum if any; which amount of excess shall on

11 the trial of the scire facias be determined by the court or CHAP. 86.  
 12 jury.

SECT. 52. If by the disclosure it appears, that the property  
 2 in the hands of the supposed trustee was mortgaged pledged  
 3 or subject to a lien to indemnify him against any liability or  
 4 to secure the performance of any contract or condition, and  
 5 that the principal defendant has a subsisting right of redeem-  
 6 ing it, the court may order that upon the discharge of such  
 7 liability or performance of such contract or condition by the  
 8 plaintiff within such time, as the court or justice may order,  
 9 and while the right of redeeming exists, such alleged trustee  
 10 shall deliver over the property to the officer to be by him  
 11 held and disposed of, as if it had been attached.

On disclosure,  
trustee shall  
deliver over  
property to the  
officer, &c.

R. S., c. 119,  
§ 60.

SECT. 53. The officer having sold on execution any per-  
 2 sonal property delivered to him in virtue of this chapter  
 3 after deducting the fees and charges of sale shall pay the  
 4 plaintiff the sum by him paid or tendered to the trustee or  
 5 applied in the performance of the contract or condition or dis-  
 6 charge or extinguishment of the liability before mentioned  
 7 and the interest from the time of such payment tender or  
 8 application to the time of sale; and so much of the residue,  
 9 as is required therefor, he shall apply in satisfaction of the  
 10 plaintiff's judgment, and he shall pay the balance, if any, to  
 11 the debtor first paying the trustee his costs accruing before  
 12 the service of the scire facias, as provided in the thirteenth  
 13 section of this chapter.

Officer having  
sold on execu-  
tion any per-  
sonal property,  
shall pay  
plaintiff, &c.

R. S., c. 119,  
§ 61.

SECT. 54. Nothing contained in this chapter shall prevent  
 2 the trustee from selling the goods in his hands for the pay-  
 3 ment of the sum, for which they were mortgaged pledged or  
 4 otherwise liable, at any time before the amount due to him  
 5 is paid or tendered as before mentioned, if the sale would  
 6 be authorized by the terms of the contract between him and  
 7 the principal defendant.

Trustee not  
prevented from  
selling the  
property  
mortgaged.

R. S., c. 119,  
§ 62.

SECT. 55. No person shall be adjudged a trustee,  
 2 *First*—By reason of any negotiable bill draft note or other  
 3 security drawn accepted made or indorsed by him, except in  
 4 the cases provided in the sixty-third section of this chapter.  
 5 *Second*—By reason of any money or other thing received  
 6 or collected by him as an officer by force of any legal pro-  
 7 cess in favor of the principal defendant in the trustee pro-  
 8 cess, although the same has been demanded of him previously  
 9 by the defendant.

Cases in which a  
person shall not  
be adjudged  
trustee.

10 *Third*—By reason of any money in his hands as a public

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11 officer, and for which he is accountable to the principal de-  
12 fendant;

13 *Fourth*—By reason of any money or other thing due  
14 from him to the principal defendant, unless it is at the time  
15 of the service of the writ upon him due absolutely and not  
16 on any contingency;

17 *Fifth*—By reason of any debt due from him on a judgment,  
18 so long as he is liable to an execution thereon;

19 *Sixth*—By reason of any amount due from him to the prin-  
20 cipal defendant as wages for his personal labor or that of  
21 his wife or minor children for a time not exceeding one  
22 month next preceding the service of the process;

23 *Seventh*—Where service was made on him by leaving a  
24 copy, and before actual notice of such service or reasonable  
25 ground of belief, that it has been made, he has paid the debt  
26 due to the principal defendant or given his negotiable se-  
27 curity therefor.

R. S., c. 119,  
§ 63,  
1854, c. 85.

Effect, if  
defendant in a  
suit is sum-  
moned as trustee  
of the plaintiff.

R. S., c. 119,  
§ 13.

Costs in such  
cases.

R. S., c. 119,  
§ 14, 15.

Proceedings, if  
defendant in an  
action pending  
is summoned as  
trustee of the  
plaintiff.

R. S., c. 119,  
§ 64.

If first suit is  
not continued  
and judgment  
rendered, &c.

R. S., c. 119,  
§ 65.

SECT. 56. When an action is brought for the recovery of  
2 a demand, and the defendant is summoned as a trustee of  
3 the plaintiff, the action shall be continued to await the dis-  
4 closure of the trustee, unless the court otherwise orders, and  
5 if the defendant is adjudged trustee, the disclosure and the  
6 proceedings thereon may be given in evidence on the trial of  
7 the action between the trustee and his creditor. (a)

SECT. 57. If the amount disclosed is as large as the sum  
2 recovered in the action, the trustee shall be liable to no  
3 costs after the service of the trustee process upon him; oth-  
4 erwise he shall be liable to legal costs.

SECT. 58. If during the pendency of an action the defend-  
2 ant is summoned as the trustee of the plaintiff, the first suit  
3 may nevertheless proceed so far as to ascertain by a verdict  
4 or otherwise, what sum, if any, is due from the defendant;  
5 but the court may on motion of the plaintiff in the trustee  
6 suit continue it for judgment, until the termination of the  
7 trustee suit or until the attachment therein is dissolved by  
8 the discharge of the trustee or satisfaction of the judgment  
9 otherwise.

SECT. 59. If the first suit is not continued and judgment is  
2 rendered therein, the defendant shall not be adjudged after-  
3 wards a trustee on account of the demand thus recovered  
4 against him, so long as he is liable to an execution thereon.

(a) The provisions of sections fifty-six and fifty-seven do not appear to be free from incon-  
sistency with those of sections fifty-eight fifty-nine and sixty. It may be worthy of consideration,  
whether the last named sections would not be sufficient, if the two former were omitted.

SECT. 60. If before final judgment is rendered in the first suit, the defendant in that suit is adjudged trustee in the other and pays 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 remains due and unpaid.

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If before final judgment is rendered, &amp;c.

R. S., c. 119, § 66.

SECT. 61. Any money or other thing due to the principal defendant, may be attached before it has become payable, if it is due absolutely as before mentioned; but the trustee shall not be compelled to pay or deliver it before the time appointed therefor by the contract.

Money or goods may be attached by trustee process, &amp;c.

R. S., c. 119, § 67.

SECT. 62. If the person summoned as trustee and liable for costs as provided in the eighteenth section of this chapter, shall not voluntarily pay them, when demanded by the officer serving the execution, he 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.

Proceedings, if trustee does not pay costs, when liable.

R. S., c. 119, § 68.

SECT. 63. If any person summoned as trustee has in his possession any goods effects or credits of the principal defendant, which he holds under a conveyance 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.

Goods fraudulently conveyed, may be held by trustee process.

R. S., c. 119, § 69.

SECT. 64. 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 trial or by a set-off of judgments or executions between himself and the principal defendant, except unliquidated damages for wrongs and injuries; and he shall be liable for the balance only, after their mutual demands are adjusted.

Trustee may retain in his hands pay for any demand justly due him, &amp;c.

R. S., c. 119, § 70, 71.

SECT. 65. When any person is adjudged trustee, it shall not be necessary to specify in the judgment the sum for which he is chargeable; but if on a writ of scire facias against him, it appears that he is chargeable as trustee, the sum for which he is chargeable shall be expressed in the judgment.

Form of judgment against a trustee.

R. S., c. 119, § 72.

SECT. 66. If any person summoned as a trustee is discharged, the judgment shall be no bar to an action brought by the principal defendant against him for the same demand.

Discharge of trustee no bar to the claim of principal.  
R. S., c. 119, § 73.



## CHAP. 86.

Scire facias  
against trustee.

R. S., c. 119,  
§ 74.

Judgment on  
scire facias.

R. S., c. 119,  
§ 75.

All defendants in  
a writ of scire  
facias, &c.

R. S., c. 119,  
§ 76.

If any trustee  
defaulted on the  
scire facias was  
examined, &c.

R. S., c. 119,  
§ 77.

Liability for  
costs, if  
discharged on  
the scire facias,  
&c.

R. S., c. 119,  
§ 78.

If examined in  
the original suit,  
he may be  
examined again  
on scire facias.

R. S., c. 119,  
§ 79.

SECT. 67. When any person adjudged a trustee in the original action does not on demand of the officer holding the execution pay over and deliver to him the goods effects and credits in his hands, and the execution is returned unsatisfied, the plaintiff may sue out a writ of scire facias against such trustee from the same court, or before the justice that rendered the judgment, to show cause why judgment and execution should not be awarded against him and his own goods and estate for the sum remaining due on the judgment against the principal defendant.

SECT. 68. When such trustee, after such writ has been duly served on him, neglects to appear and answer thereto, he shall be defaulted; and if he has not been duly examined in the original suit, judgment shall be rendered against him for the whole sum remaining due on such judgment against the principal defendant.

SECT. 69. When all the defendants in a writ of scire facias are defaulted not having been examined in the original suit, the court may enter up joint or several judgments, as the case requires, and issue execution in common form.

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

SECT. 71. If the trustee appears and answers to the scire facias and was not examined in the original suit, he may be examined as he might have been on the original suit; and if on such examination he appears not chargeable, the court shall render judgment against him for costs only, if resident in the county where the original process was returnable; but if not resident in such county, he shall not be liable to costs, nor shall he recover any costs.

SECT. 72. If he had been examined in the original suit, the court may permit or require him to be examined anew in the suit of scire facias, and, in such case he may prove any matter proper for his defense, and the court may enter such judgment, as law and justice require upon the whole matter appearing on such examination and trial.

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SECT. 73. When any person is adjudged a trustee, if the  
 2 goods effects and credits in his hands, are not demanded of  
 3 him by virtue of the execution within thirty days next after  
 4 final judgment, the attachment of them by the original pro-  
 5 cess shall be dissolved; and they shall be liable to another  
 6 attachment as though the prior attachment had not been  
 7 made; but in those cases where the debt due from the trustee  
 8 to the principal defendant is payable at a future day, or  
 9 specific property is in the hands of the trustee, which he is  
 10 bound to deliver at a future day, the attachment shall con-  
 11 tinue until the expiration of thirty days after such debt is  
 12 payable in money, or the property aforesaid is demanded of  
 13 the trustee.

Goods and  
 effects liable to  
 another  
 attachment, &c.

R. S., c. 119,  
 § 80.

SECT. 74. If there is no second attachment, the principal  
 2 defendant in the suit may recover the goods effects and cred-  
 3 its, if not demanded as aforesaid within thirty days as if  
 4 they had not been attached.

If there is no  
 second attach-  
 ment, principal  
 may recover  
 them.  
 R. S., c. 119,  
 § 81.

SECT. 75. When the officer holding the execution cannot  
 2 find the trustee in the state, a copy of the execution may be  
 3 left at his dwelling-house or last and usual place of abode  
 4 with notice to the trustee indorsed thereon and signed by  
 5 the officer signifying, that he is required to pay and deliver  
 6 towards satisfying such execution the goods effects and cred-  
 7 its, for which he is liable; when such trustee has no such  
 8 dwelling-house or place of abode in this state, such copy and  
 9 notice may be left at his dwelling-house or place of abode  
 10 without the state or be delivered to him personally by the  
 11 officer or any other person by his direction; and such notice  
 12 in either case shall be deemed a sufficient demand for all the  
 13 purposes mentioned in the two preceding sections.

Demand, how  
 made, if trustee  
 is out of the  
 state, &c.

R. S., c. 119,  
 § 82.  
 1845, c. 136.

SECT. 76. The judgment against any person as trustee  
 2 shall discharge him from all demands by the principal de-  
 3 fendant or his executors or administrators for all goods effects  
 4 and credits paid delivered or accounted for by the trustee  
 5 thereon; and if he is afterward sued for the same by the  
 6 defendant or his executors or administrators such judgments  
 7 and disposition of the goods effects and credits as above  
 8 stated being proved shall be a bar to the action for the  
 9 amount so paid or delivered by him.

Effect of  
 judgment  
 against trustee.

R. S., c. 119,  
 § 83, 84.

SECT. 77. If any person summoned as a trustee upon his  
 2 examination willfully and knowingly answers falsely, he shall  
 3 on due conviction be adjudged guilty of perjury; and shall  
 4 pay to the plaintiff in the suit so much of the judgment recov-  
 5 ered against the principal defendant, as remains unsatisfied

Penalty if  
 trustee discloses  
 falsely.

R. S., c. 119,  
 § 85.

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Trustee exempt  
from costs on  
scire facias in  
certain cases.

R. S., c. 119,  
§ 86.

In case of  
exception, the  
whole case may  
be re-examined  
and remanded.

1849, c. 117.

Form and ser-  
vice of trustee  
process for  
justice courts.

R. S., c. 119,  
§ 87.

In what county  
to be brought.

R. S., c. 119,  
§ 88.

Default, if  
trustee does not  
appear.  
R. S., c. 119,  
§ 89.

Costs, if  
discharged.  
R. S., c. 119,  
§ 90.

May retain  
costs, &c.  
R. S., c. 119, § 91.

Costs, on  
discontinuance.  
R. S., c. 117,  
§ 92.

Subsequent  
proceedings.  
Discharge of  
trustee, &c.

6 with interest and costs to be recovered in an action on the  
7 case.

SECT. 78. If any person summoned as trustee is prevented  
2 from appearing in the original suit by absence from the state,  
3 or any other reason deemed sufficient by the court, and a  
4 default is entered against him, he shall not be liable for any  
5 costs on the scire facias; but on his disclosure the court  
6 may allow him his reasonable costs and charges to be re-  
7 tained or recovered as if he had appeared in the original  
8 suit.

SECT. 79. In all cases under the trustee process in the  
2 supreme judicial court where exceptions are taken to the rul-  
3 ing and decision of a single judge as to the liability of the  
4 trustee to be charged, the whole case may be re-examined  
5 and determined by the law court and remanded for further  
6 disclosures or other proceedings, as in the opinion of the  
7 court justice requires.

SECT. 80. When a trustee process is issued by a municipal  
2 or police court or a justice of the peace, the writ shall be in  
3 the form now in use, and may contain a direction to attach  
4 property of the principal in his own hands, as well as in the  
5 hands of the person named as trustee, and be served as a  
6 trustee process issued by a judicial court seven days before  
7 the return day.

SECT. 81. The action may be brought in the county, where  
2 either of the supposed trustees resides; and if brought in  
3 any other county the action shall be dismissed and the  
4 trustees recover their costs.

SECT. 82. When the person summoned does not appear  
2 and answer to the suit, he shall be defaulted and adjudged  
3 trustee, and be liable to costs on scire facias.

SECT. 83. If he appears at the return day and submits him-  
2 self to examination on oath and is discharged, he shall be  
3 allowed his legal costs.

SECT. 84. If on such disclosure he is adjudged trustee, he  
2 may retain the amount of his costs.

SECT. 85. When the plaintiff discontinues his suit against  
2 the principal or trustee, the trustee shall be allowed his  
3 costs.

SECT. 86. All subsequent proceedings in such causes shall  
2 be had, as is prescribed in this chapter in trustee processes  
3 in the supreme judicial court varying forms as circumstances  
4 require; but when, in such trustee process before a munici-  
5 pal or police court or a justice of the peace the debt recov-

ered against the principal shall be a less sum than five dollars, the trustee shall be discharged, unless the judgment be so reduced by means of a set-off filed in the case.

CHAP. 87.

R. S., c. 119,  
§ 93, 94.

SECT. 87. If after a judgment is rendered in a trustee process before a municipal or police court or justice of the peace, the principal defendant or trustee removes out of the county in which it was rendered, such court or justice may issue execution against such debtor or trustee directed to the proper officer of any other county, where he is supposed to reside.

How execution  
shall issue, &c.

R. S., c. 119,  
§ 95.

SECT. 88. When an action is brought against a trustee in a county, where the trustee resides, but where neither the plaintiff nor defendant reside, and such trustee is discharged or the action discontinued as to him, the action shall still proceed, unless it appears by plea in abatement, that such trustee was collusively included in the writ for the purpose of giving the court in such county jurisdiction; *provided* there was a legal service on the principal defendant.

Proceedings, if  
trustee is  
discharged, &c.

R. S., c. 119,  
§ 96.

## Chapter 87.

### ACTIONS BY OR AGAINST EXECUTORS OR ADMINISTRATORS.

- Sect. 1.* Executors and administrators, writs and executions against them how issued.
2. Executors and administrators, executions for costs against them how issued.
  3. Executions against deceased returned unsatisfied, proceedings.
  4. Administrators de bonis non may prosecute and defend suits.
  5. Executor or administrator ceasing to be such after judgment, proceedings.
  6. Writs of error by or against administrators de bonis non.
  7. When an only party to an action dies, proceedings.
  8. Actions surviving enumerated, may be prosecuted or defended.
  9. Actual damages only recoverable in actions of tort, goods in replevin.
  10. When all plaintiffs or all defendants die, proceedings.
  11. No suit within one year after appointment; exceptions.
  12. No suit after four years from notice of appointment; exceptions.
  13. When action does not accrue within four years, claim to be filed.
  14. Estate liable for such claims, how suits sustained on them.
  15. When such claims not filed only remedy is against heirs and devisees.
  16. Limitation of actions against administrators de bonis non.
  17. Limitation of actions against administrators when no notice by first administrator.
  18. Limitation of actions not applicable to actions for legacies; liability for unfaithful administration on administration bond.

SECT. 1. Writs and executions against executors and administrators for costs, for which they are not personally liable, and for debts due from the deceased, run against his goods and estate in their hands.

Writs and  
executions, how  
issued, &c.  
R. S., c. 120,  
§ 1, 4, 14.

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Executions,  
when issued  
against their  
own goods and  
estate for costs.

Idem, § 2, 3, 4,  
5, 14.

Execution  
against the estate  
of deceased,  
returned  
unsatisfied,  
proceedings.

Idem, § 6.

Administrator  
de bonis non,  
may prosecute  
and defend, &c.

Idem, § 7.  
1852, c. 280, 275.

When an execu-  
tor or adminis-  
trator ceases to  
be such, &c.

Idem, § 8.

Writ of error,  
&c.

Idem, § 9.

When an only  
party to an  
action dies,  
proceedings.

Idem, § 10, 11,  
12, 13.  
1854, c. 98, § 1.

SECT. 2. Executions for costs shall run against the goods  
2 and estate and for want thereof against the bodies of ex-  
3 cutors and administrators in actions commenced by or  
4 against them; and in actions commenced by or against the  
5 deceased, in which they have appeared, for costs accrued after  
6 they assumed the prosecution or defense to be allowed to  
7 them in their administration account, unless the judge of pro-  
8 bate decides, that the suit was prosecuted or defended with-  
9 out reasonable cause.

SECT. 3. When a proper officer makes his return on an  
2 execution issued under the first section, that he can not find  
3 personal property of the deceased or other means to satisfy  
4 it, a writ of scire facias suggesting waste may be issued  
5 against the executor or administrator, and if he does not  
6 shew cause to the contrary, execution shall issue against  
7 him for the amount of the judgment and interest not exceed-  
8 ing the amount of waste if proved.

SECT. 4. When an executor or administrator ceases to be  
2 such, an action pending in his favor or against him may be  
3 prosecuted by or against an administrator de bonis non;  
4 and if he does not appear after due notice judgment may be  
5 rendered, as if the suit had been commenced by or against  
6 him for debt and for costs as provided in this chapter.

SECT. 5. When an executor or administrator ceases to be  
2 such after judgment against him, a writ of scire facias may  
3 be issued against the administrator de bonis non, and after  
4 due notice an execution may issue as provided in the pre-  
5 ceding section, the costs, for which the executor or first  
6 administrator was personally liable, may be enforced against  
7 his executor or administrator. (a)

SECT. 6. A writ of error may be maintained by or against  
2 an administrator de bonis non, when it would be by or against  
3 an executor or first administrator.

SECT. 7. When the only plaintiff or defendant dies while  
2 an action that survives is pending or after its commence-  
3 ment and before its entry, his executor or administrator  
4 may prosecute or defend as follows: the action, or an ap-  
5 peal if made, may be entered, the death of the party sug-  
6 gested on the record, and the executor or administrator may  
7 appear voluntarily; if he does not appear at the second term  
8 after such death or after his appointment, he may be cited to

9 appear, and after due notice thereof judgment may be entered  
10 against him by nonsuit or default.

SECT. 8. In addition to those surviving by the common law  
2 the following actions survive: replevin, trover, assault and  
3 battery, trespass, trespass on the case, and petitions for and  
4 actions of review; and these actions may be commenced by  
5 or against an executor or administrator or when the de-  
6 ceased was a party to them may be prosecuted or defended  
7 by them. (a)

Actions which  
service enumer-  
ated, may be  
prosecuted or  
defended.

Idem, § 15, 16,  
as amended.

SECT. 9. When an action of trespass or trespass on the  
2 case is commenced or prosecuted against an executor or  
3 administrator the plaintiff can recover only the value of the  
4 goods taken or damage actually sustained; and when judg-  
5 ment is rendered against an executor or administrator in an  
6 action of replevin for a return of goods, those returned shall  
7 not be considered assets and such return shall discharge him.

In trespass,  
actual damage  
or value only,  
recoverable, &c.

Idem, § 17, 18.

SECT. 10. When one of several plaintiffs or defendants in  
2 an action surviving dies, his death may be suggested on the  
3 record and the action may be further prosecuted or defended  
4 by the survivors; and when all the plaintiffs or defendants  
5 die the action may be prosecuted or defended by the execu-  
6 tor or administrator of the last surviving plaintiff or de-  
7 fendant.

When plaintiffs  
or defendants  
die, in actions  
by or against  
two or more,  
proceedings.

Idem, § 19, 20.

SECT. 11. No suit can be commenced against an executor  
2 or administrator within one year after his appointment, ex-  
3 cept on a demand not affected by an insolvency of the estate  
4 or on a demand by an appeal from a decision of commission-  
5 ers of insolvency.

No suit within  
one year after  
appointment;  
exceptions,

Idem, § 21, 22.

SECT. 12. And none after four years from the time of giv-  
2 ing notice of his appointment (b) except as follows. When  
3 assets come to his hands after that time, he shall be account-  
4 able therefor in the probate court, and an action may be com-  
5 menced within four years after the receipt thereof and within  
6 one year after the creditor has notice of the receipt of them.

And none after  
four years from  
time of giving  
notice of it;  
exceptions.

Idem, § 23, 24.

SECT. 13. And when an action on a covenant or contract  
2 does not accrue within said four years, the claimant may file  
3 such demand in the probate office within that time, and the  
4 judge of probate shall direct, that sufficient assets, if such  
5 there be, shall be retained by the executor or administrator,  
6 unless the heirs or devisees of the estate give bond with one  
7 or more sureties approved by the judge of probate to the  
8 executor or administrator to respond the same.

When action  
does not accrue  
within four  
years, claim  
filed; proceed-  
ings.

Idem, § 25.

(a) 3, Mo. 174. 17, Mo. 409. (b) 32, Mo. 72. 29, Mo. 458.

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Estate remains  
liable to such  
claims; how  
suits maintained  
on them.

Idem, § 26, 27, 28.

If such claim is  
not filed, only  
remedy is  
against heirs or  
devisees.

Idem, § 30.

Time within  
which actions  
can be brought  
against adminis-  
trators de bonis  
non.

Idem, § 32, 33.

Limitation of  
actions against  
an administrator  
de bonis non, &c.

Idem, § 34, 35.

Actions for  
legacies not  
affected, &c.

Idem, § 29, 31.

SECT. 14. When a bond is so given, no assets shall be retained, but the estate shall be liable in the hands of heirs or devisees or those claiming under them to answer such demand; and an action may be brought on such bond, or when no bond is given against the executor or administrator, and if anything is found due the claimant shall have judgment therefor and for his costs.

SECT. 15. When such claim has not been filed in the probate office within said four years, the claimant may have remedy against the heirs or devisees of the estate within one year after the same becomes due, and not against the executor or administrator.

SECT. 16. Upon the appointment of an administrator de bonis non the time, within which actions may be brought, is extended as follows: to such portion of the four years as remained unexpired before a vacancy shall be added so much time after the new appointment as will make five years; and every new administrator shall in all cases be liable to actions of creditors for two years after notice given of his appointment, although the whole time may be extended beyond five years.

SECT. 17. When an executor or administrator does not give legal notice of his appointment, actions may be commenced against a new administrator within four years after notice of his appointment, and if he fails to give legal notice of it, he can have no benefit of the limitations contained in this chapter.

SECT. 18. An action for the recovery of a legacy shall not be affected by the provisions of this chapter. When an executor or administrator is guilty of unfaithful administration he shall be liable on his administration bond for all damages occasioned thereby.

**Chapter 88.****PARTITION OF REAL ESTATE.**

- Sect* 1. Partition may be made by writ at common law.  
 2. Partition may be made by petition; what must be stated in it.  
 3. Petition may be filed in vacation if all cotenants are named.  
 4. Petition may be presented in any county, if all are not named, and notice ordered.  
 5. When persons not fully notified may appear; pleadings how made.  
 6. Plaintiff or petitioner may reply.  
 7. Guardians for infants and insane persons and agents for persons out of the state.  
 8. Division of time for occupation of saw mills.

*Sect. 9.* Respondent having no interest pays costs.

10. Petitioner owning a less share than claimed pays costs.
11. Petitioner dying or conveying, his heirs devisees or grantees admitted.
12. Respondent dying his heirs or devisees may be cited.
13. Commissioners to set off shares together or separately.
14. Commissioners to be sworn and certificate of oath made.
15. Commissioners to give notice of time and place for partition, majority may decide.
16. Commissioners to assign shares so as to include exclusive possessions. Value of improvements to be considered.
17. Commissioners may assign to one a parcel greater than his share on payment.
18. Court to determine share of expenses to be paid by each.
19. When a share too large or of too much value is set off, a new division.
20. How a new division shall be made.
21. Report of commissioners confirmed, recommitted, or set aside.
22. Judgment conclusive of all rights except as after provided.
23. When an unequal share is left for one out of the state, proceedings.
24. Person not a party claiming in severalty not precluded.
25. Person claiming a share assigned or left not precluded.
26. Person owning to whom no share assigned or left not precluded.
27. Person evicted of his share to have a new partition.
28. Mortgages, attachments and liens remain in force on a share.
29. Lots reserved for public uses to be first set off.

SECT. 1. Persons seized or having a right of entry into  
 2 real estate in fee simple or for life as tenants in common,  
 3 joint tenants, or copartners, may be compelled to divide the  
 4 same by writ of partition at common law. (*a*)

Partition may be made by writ at common law.

R. S., c. 121, § 1.

SECT. 2. Persons so entitled, and those in possession or  
 2 having a right of entry for a term of years as tenants in  
 3 common, may present a petition addressed to the supreme  
 4 judicial court held in the county where such estate is, clearly  
 5 describing it and stating, whether it is fee simple, for life,  
 6 or for years, and the proportion claimed by him, the other  
 7 tenants in common and their places of residence if known,  
 8 and whether any or all of them are unknown.

May be made by petition. What must be stated in it.

*Idem*, § 2, 3, 4.

SECT. 3. The petition may be filed in the clerk's office in  
 2 vacation, if all the cotenants are named in it. A copy  
 3 thereof attested by the clerk left with each or at his last  
 4 and usual place of abode twenty days before the session of  
 5 the court to which it is addressed shall be sufficient service.

When all cotenants are named, petition may be filed, &c.

*Idem*, § 5.

SECT. 4. When the cotenants are not all named in the peti-  
 2 tion, it may be presented to the court in that or in any other  
 3 county returnable in the county, where the estate is, and such  
 4 notice shall be given to the other cotenants, as the court  
 5 orders; and in case of noncompliance therewith or other  
 6 imperfection of notice, the court may order further notice  
 7 to be given. (*b*)

When not all named, it may be presented in any county, &c.

*Idem*, § 6, 7, 8.

(*a*) 12, Me. 142, 329, 398. 17, Me. 423. 21, Me. 47. 16, Me. 388. 35, Me. 107. 31, Me. 486.

(*b*) 5, Me. 458.



## CHAP. 88.

When persons  
not fully notified  
may appear.  
Pleadings, how  
made, by brief  
statement.

Idem, § 9, 11, 15.

Plaintiff or  
petitioner may  
reply, &c.

Idem, § 12, 15.

Guardians for  
infants and  
insane persons,  
and agents for  
those out of the  
state to be  
appointed.

Idem, § 10, 22.

Division of time  
for occupation of  
saw mills may  
be made.

1848, c. 56.

Respondent hav-  
ing no interest,  
pays costs.  
R. S., c. 121, § 13.

When petitioner  
owns a less  
share than  
claimed, he pays  
costs, &c.

Idem, § 14, 17.

When a peti-  
tioner dies or  
conveys, his  
heirs devisees  
or grantees may  
be admitted to  
proceed.

Idem, § 16.  
1842, c. 31, § 14.

Death of a  
respondent, his  
heirs or devisees  
may be cited in.

1854, c. 97.

SECT. 5. A person interested and not named in the peti-  
tion, or out of the state, and not so notified as to enable him  
to appear earlier, may be permitted to appear and defend at  
any time before final judgment. (a) And any person de-  
fendant in an action at law, or respondent in a petition for  
partition, may jointly with others or separately by brief state-  
ment without a plea of the general issue allege any matter  
tending to shew, that partition ought not to be made as  
prayed for. (b)

SECT. 6. The plaintiff or petitioner may reply by counter  
brief statement alleging, that the defendant or respondent  
has not any interest in the premises or other matter to shew  
the insufficiency of the defense.

SECT. 7. When an infant or insane person living in the  
state has no guardian and appears to be interested, the  
court shall appoint a guardian ad litem for him, and an  
agent for persons interested, who have been out of the state  
one year before the petition was presented and have not re-  
turned before judgment for partition is to be made.

SECT. 8. Tenants in common of a saw mill may have a  
division of the time, during which each may occupy accord-  
ing to his interest, as partition is made of an estate, and  
the court may make all necessary decrees in relation thereto.

SECT. 9. When it appears on trial, that the respondent  
has no interest in the estate, he shall no further be heard,  
and the petitioner shall recover of him the costs of the trial.

SECT. 10. When a petitioner is found to own a less share  
than is claimed in his petition, he shall have partition of such  
share, but the respondent shall recover costs. When found  
entitled to have partition of the share claimed he shall re-  
cover costs of the respondent. In such cases or on default  
a judgment, that partition be made, shall be entered.

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

SECT. 12. The petition is not abated by the death of a party  
respondent. His heirs or devisees, or if the estate be for a  
term of years his executor or administrator, may be cited to  
appear, and upon service on them, they shall become parties

5 to the proceedings, and the court may order such judgment  
6 and with such costs as the law and facts may require.

SECT. 13. After judgment that partition be made the court  
2 shall appoint three or five disinterested persons as commis-  
3 sioners to make partition and set off to each his share, which  
4 shall be expressed in the warrant. Their shares may be set  
5 off together or in one tract, or the share of each may be as-  
6 signed to him at his election.

Commissioners  
to set off shares  
together or  
each share  
separately.

R. S., c. 121,  
§ 19, 20.

SECT. 14. Before proceeding to discharge their duty the  
2 commissioners shall be sworn to the faithful and impartial  
3 performance of it; and the justice of the peace before whom  
4 they were sworn shall make his certificate thereof on the  
5 back of their warrant.

To be sworn and  
certificate of  
oath made on  
warrant.

Idem, § 21.

SECT. 15. They shall give reasonable notice of the time  
2 and place for making partition to all concerned who are  
3 known and within the state. They must all be present at  
4 the performance of their duties but the report of a majority  
5 shall be valid. (a)

Give notice of  
time and place  
for partition, &c.

Idem, § 23, 24.

SECT. 16. When one of the tenants in common by mutual  
2 consent has had the exclusive possession of a part of the  
3 estate and has made improvements thereon, his share shall  
4 be assigned from or including such part; and the value of the  
5 improvements made by a tenant in common shall be consid-  
6 ered and the assignment of shares be made in conformity  
7 therewith.

The share of a  
tenant to be  
assigned from or  
to include his  
exclusive  
possession, &c.

1855, c. 157.

SECT. 17. When any parcel of the estate to be divided is  
2 of greater value than either party's share and cannot be  
3 divided without great inconveniences, it may be assigned to  
4 one party by his paying such sum of money as may be awarded  
5 to the parties, who have less than their share; but the report  
6 shall not be accepted, until the sums so awarded are paid or  
7 secured to the satisfaction of the parties entitled thereto. (b)

A parcel of  
greater value  
than a share  
may be assigned  
to one who  
pays to others;  
when.

R. S., c. 121, § 25.

SECT. 18. An account of the charges attending the parti-  
2 tion shall on request of a petitioner be presented to the  
3 court, which shall determine after giving notice to all con-  
4 cerned the proportion to be paid by each; and execution  
5 therefor may be issued against any one neglecting to pay.

Court to  
determine share  
of expenses to be  
paid by each,  
and execution  
may be issued  
therefor.  
Idem, § 26.

SECT. 19. If a share larger than his real interest or more  
2 than equal in value to his proportion is set off to a part  
3 owner, an aggrieved part owner, who at the time of parti-  
4 tion was out of the state and not notified in season to pre-  
5 vent it, his heirs, or assigns, may within three years there-

When a larger  
share or one of  
greater value  
than his share  
is set off to a  
party, &c.  
Idem, § 27.  
1852, c. 235.

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How the new  
partition shall  
be made.

Idem, § 28.

Written report  
to be made  
which may be  
confirmed,  
recommitted, or  
set aside. When  
confirmed, to be  
recorded.

Idem, § 29, 30.

Judgment con-  
clusive of all  
rights, except as  
after provided.

Idem, § 31.

When an une-  
qual share is  
left for one out  
of state, a new  
partition may be  
made.

Idem, § 32.

Person not a  
party claiming  
in severalty not  
precluded by  
the judgment.

Idem, § 33.

A person  
claiming a share  
assigned or left,  
not precluded.

6 after apply to the court, which made the partition and it  
7 shall cause a new partition to be made.

SECT. 20. In such new partition so much and no more  
2 shall be taken from a share, as it is considered more than  
3 its proportion of the whole estimated as in the state when  
4 divided; and if any improvements have been made on the  
5 part taken off, reasonable satisfaction therefor to be estima-  
6 ted by the commissioners shall be made to him, who made  
7 them by him to whose share they are added; and the court  
8 may issue execution therefor and for costs of the new par-  
9 titution.

SECT. 21. Commissioners in all cases shall make and sign  
2 a written return of their proceedings and make return thereof  
3 with their warrant to the court, from which it issued. Their  
4 report may be confirmed, recommitted, or set aside and new  
5 proceeding be had as before. When confirmed judgment  
6 shall be entered accordingly and recorded by the clerk, and  
7 by the register of deeds of the district where the estate  
8 is. (a)

SECT. 22. Such judgment shall be conclusive on all rights  
2 of property and possession of all parties and privies to the  
3 judgment including all persons, who might have appeared  
4 and answered, except as hereinafter provided. (b)

SECT. 23. When a person, to whom a share was left, was  
2 out of the state, when notice was served on him and did not  
3 return in season to become a party to the proceedings, he  
4 may within three years after final judgment apply to the  
5 same court for a new partition; and if it appears to the  
6 court, that the share left for him was less than he was enti-  
7 tled to, or that it was not equal in value to his proportion  
8 of the premises, it may order a new partition as provided in  
9 section twenty.

SECT. 24. When a person not a party to the proceedings  
2 claims to hold the premises described or any part thereof in  
3 severalty, he shall not be precluded by the judgment for par-  
4 titution, but may bring his action therefor, as if no such judg-  
5 ment had been rendered.

SECT. 25. When a person not a party to the proceedings  
2 claims a share assigned to or left for a part owner, he shall  
3 be concluded so far as it respects the assignment of the  
4 shares, but shall not be prevented from maintaining an ac-  
5 tion within the time, in which it might have been brought, if

6 no judgment for partition had been rendered, for the share  
 7 claimed against the tenant in possession as if the demand-  
 8 ant had claimed the piece demanded instead of an undivided  
 9 part of the whole.

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Idem, § 34, 35.

SECT. 26. When a person not a party to the proceedings  
 2 claims to have been a part owner of the estate, to whom  
 3 no share was assigned or left, he shall be concluded so far  
 4 as it respects the partition, but not from maintaining an  
 5 action against each person holding a share for his proportion  
 6 of each share as owned before partition was made.

A part owner to whom no share was assigned or left, not precluded from recovering his proportion of each share.  
 Idem, § 36.

SECT. 27. When a person, to whom a share has been  
 2 assigned or left, has been evicted by an elder and better  
 3 title, than that of the parties to the judgment, he shall be  
 4 entitled to a new partition of the residue, as if no partition  
 5 had been made.

A person evicted of his share to have a new partition.  
 Idem, § 37.

SECT. 28. A person having a mortgage attachment or other  
 2 lien on the share in common of a part owner shall be con-  
 3 cluded by the judgment so far as it respects the partition,  
 4 but his mortgage or lien shall remain in force on the part  
 5 assigned or left to such part owner.

A mortgage attachment or lien on a share in common holds the share set out.  
 Idem, § 38.

SECT. 29. When portions or lots are reserved for public  
 2 uses in a tract of land to be divided, they shall first be set  
 3 out of an average quality and situation and a return made  
 4 thereof to the land office with a description of its quality  
 5 and location, and the commissioners' return of partition being  
 6 accepted and recorded as before provided shall be a valid  
 7 location of such reserved lands. (a)

Lots reserved for public uses to be first set off.  
 Idem, § 40.

## Chapter 89.

### PETITIONS AND ACTIONS OF REVIEW.

- Sect.* 1. One review granted on petition within three years after judgment.  
 2. Petition presented in any county and notice ordered.  
 3. When discovery of new evidence is alleged, proceedings.  
 4. Supersedeas granted in term time or vacation on bond filed.  
 5. Writ of review in county where judgment rendered, copies produced.  
 6. Writ of review describes former action, summons, and service.  
 7. Original plaintiff being plaintiff in review property attached.  
 8. Pleadings, how made, amended on leave, trial on former issue.  
 9. Plaintiff recovering greater sum than before, judgment.  
 10. Plaintiff recovering less sum than before, judgment.  
 11. In actions of replevin and in actions, in which a claim in set-off was filed defendant in position of a plaintiff for damages.  
 12. Party prevailing has costs, court may impose terms respecting them.

## CHAP. 89.

One review may be granted on petition within three years after judgment.

R. S., c. 123, § 1, 2, 5, 6, 1850, c. 183, § 1, 1852, c. 246, § 13.

Petition presented in any county and notice ordered, &c.

Idem, § 3, 4.

When discovery of new evidence is alleged, proceedings. Idem, § 7.

Any justice in term time or vacation may grant a supersedeas if execution on bond filed.

Idem, § 8, 1844, c. 95, § 3.

Writ of review entered at first term and trial in the county where judgment rendered, &c.

Idem, § 10, c. 124, § 1, 5.

Writ of review describe former action, &c.

R. S., c. 124, § 2, 3.

When original plaintiff is plaintiff in review property of defendant may be attached, &c.

SECT. 1. The supreme judicial court holden by one justice  
2 may grant one review in civil actions including petitions for  
3 partition and proceedings for the location of lands reserved  
4 for public uses, when judgment has been rendered in any  
5 judicial tribunal, if petition therefor be presented within  
6 three years after the rendition of judgment.

SECT. 2. The petition may be presented in any county, and  
2 notice be there ordered returnable in the county where the  
3 judgment was rendered. Such reasonable notice must be  
4 given to the adverse party as the court orders.

SECT. 3. When the discovery of new evidence is alleged in  
2 the petition, the names of the witnesses to prove it, and what  
3 each is expected to testify must be stated under oath.

SECT. 4. On presentation of a petition for review any just-  
2 ice of the court may in term time or in vacation stay execu-  
3 tion on the judgment complained of, or grant a supersedeas  
4 upon a bond filed with sureties approved by him or by such  
5 person as he may appoint in double the amount of the dama-  
6 ges and costs conditioned to pay said amount or the amount  
7 of the final judgment on review with interest thereon at the  
8 rate of twelve per cent. from the date of the bond to the  
9 time of final judgment.

SECT. 5. When a review is a matter of right as provided  
2 by the fourth section of chapter eighty-two, or when granted  
3 on petition, a writ of review shall be issued and the trial  
4 take place in the supreme judicial court in the county in  
5 which the judgment was rendered. It shall be entered at  
6 the next term after the review is granted, unless leave be  
7 granted to enter it at the second term; and the plaintiff in  
8 review shall produce and file attested copies of the writ,  
9 judgment, proceedings, and depositions or their originals, in  
10 the former suit.

SECT. 6. In the writ of review it shall be sufficient to de-  
2 scribe the former action and judgment so as to identify it.  
3 The writ shall contain a summons to appear and answer to  
4 the plaintiff in review, and it may be served as other writs,  
5 and when the party is not an inhabitant of or found within  
6 the state, it may be served on his attorney in the original  
7 suit.

SECT. 7. When the original plaintiff is plaintiff in review  
2 the property of the defendant may be attached, as it might  
3 have been in the original suit, and the form of the writ be  
4 varied accordingly; but no attachment made on bail taken

5 in the original action shall be holden to satisfy the judgment  
6 on review.

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Idem, § 4, 11.

SECT. 8. The proper pleadings shall be made in the original  
2 action on review when no issue had been joined before judg-  
3 ment; when issue has been joined, the cause shall be tried  
4 thereon; but amendments, brief statements, and other issues,  
5 may be made by leave of court, and the cause may be tried  
6 and disposed of as if it were an original writ.

When pleadings  
had been made,  
cause tried on  
that issue, if not  
on new plead-  
ings, amend-  
ments may be  
made on leave.  
Idem, § 6, 7, 8.

SECT. 9. Judgment in the suit reviewed shall be given  
2 without regard to the former judgment except as follows.  
3 When the original plaintiff recovers a greater sum than he  
4 did by the first judgment as debt or damage, he shall have  
5 judgment therefor, or for so much thereof as remains unsat-  
6 isfied, and for costs on the review.

When original  
plaintiff recovers  
a greater sum  
than before  
judgment, how  
rendered.

Idem, § 9, 13.

SECT. 10. When the sum first recovered is reduced the  
2 original defendant shall have judgment for the difference with  
3 costs on the review; and if the former judgment has not  
4 been satisfied, one judgment may be set off against the other  
5 and execution issued for the balance.

When sum first  
recovered is  
reduced, how  
judgment is  
rendered.

Idem, § 12.

SECT. 11. When actions of replevin and actions in which  
2 a claim in set-off was filed are reviewed, the defendant shall  
3 be regarded as in the position of a plaintiff so far as it  
4 respects the damages awarded to him.

In actions of  
replevin, &c.  
Idem, § 14.  
Party prevailing,  
has costs.  
Idem, § 10.

SECT. 12. The party prevailing in the action recovers costs,  
2 but this shall not prevent the court granting a review from  
3 imposing terms respecting costs.

Party prevailing  
has costs, &c.  
Idem, § 10.

## Chapter 90.

### MORTGAGES OF REAL ESTATE.

- Sect.* 1. How mortgages of real estate are made.  
2. Mortgagee may enter before breach, unless otherwise agreed.  
3. Modes of obtaining possession for foreclosure.  
4. Foreclosed in three years.  
5. Mode of foreclosing without taking possession.  
6. Mortgager may redeem within three years.  
7. Form of declaring in a suit to obtain possession on mortgage. Conditional judgment, and judgment as at common law, in certain cases.  
8. Form of conditional judgment; form of judgment when condition is for some act other than payment of money.  
9. Judgment for defendant if nothing be due.  
10. Action for foreclosure by executor or administrator.  
11. Mortgages to be assets in the hands of administrators, who are to be seized to the use of heirs.  
12. Against whom action on a mortgage shall be brought.  
13, 14. Proceedings in equity to redeem a mortgage.  
15. Courts to order notice, if mortgagee be out of the state. Fraudulent mortgage.

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- Sect. 16.* Provisions for redemption when the mortgagee is out of the state.  
 17. Limitation of such bill in equity.  
 18. Court may allow other persons joined as defendants, and notified.  
 19. Award of execution on decree of court.  
 20. Deduction of rents and profits from the sum brought into court for redemption.  
 21. State treasurer may discharge or foreclose mortgages made or assigned to the state.  
 22. Bill in equity for redemption may be filed against the state.  
 23. Where to be filed, and proceedings thereon.  
 24. On decease of a person entitled to redeem, his administrator or heir may redeem.  
 25. Tender to guardian of mortgagee, if under guardianship.  
 26. How mortgages may be discharged.  
 27. Redemption of mortgaged estate from purchaser of the equity of redemption.

*Mortgages of real estate.*

How mortgages  
of real estate are  
made.

R. S., c. 125, § 1.

Mortgage may  
enter before  
breach, unless  
otherwise  
agreed.

R. S., c. 125, § 2.

Modes of obtain-  
ing possession  
for foreclosure.

SECT. 1. Mortgages of real estate mentioned in this chapter include those made in the usual form, in which the condition is set forth in the deed, those made by a conveyance appearing on its face to be absolute with a separate instrument of defeasance executed at the same time or as part of the same transaction.

SECT. 2. Any mortgagee or person claiming under him may enter on the premises or recover possession thereof before any breach of the condition of the mortgage, when there is no agreement to the contrary; but in such case, if the debt is afterwards paid or the mortgage redeemed, the amount of the clear rents and profits from the time of the entry shall be accounted for, and deducted from the amount due on the mortgage.

SECT. 3. After breach of the condition, if the mortgagee or any one claiming under him desires to obtain possession of the premises for the purposes of foreclosure, he may proceed in either of the 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, as provided in the eighth section duly executed by an officer. An abstract of such writ stating the time of obtaining possession certified by the clerk shall be recorded in the registry of deeds of the district, in which the estate is, within thirty days after possession obtained. (a)  
 Second—He may enter into possession and hold the same by consent in writing of the mortgager or the person holding under him.

15 *Third*—He may enter peaceably and openly, if not opposed,  
 16 in the presence of two witnesses and take possession of the  
 17 premises; and a certificate of the fact and time of such entry  
 18 shall be made and signed and sworn to by such witnesses  
 19 before any justice of the peace; and such written consent  
 20 and certificate shall be recorded in each registry of deeds in  
 21 which the mortgage is or by law ought to be recorded within  
 22 thirty days next after the entry is made.

R. S., c. 125, § 3.  
 1849, c. 105.

SECT. 4. Possession obtained in either of these three  
 2 modes continued for the three following years shall forever  
 3 foreclose the right of redemption. (a)

Foreclosed in  
 three years.  
 R. S., c. 125, § 4.

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, he may proceed for the  
 4 purpose of foreclosure in either of the following modes:

Mode of fore-  
 closing without  
 taking  
 possession.

5 *First*—He may give public notice in a newspaper printed  
 6 in the county, where the premises are situated if any, or if  
 7 not in the state paper, three weeks successively of his claim  
 8 by mortgage on such real estate describing the premises in-  
 9 telligibly and naming the date of the mortgage, and that the  
 10 condition in the same is broken, by reason whereof he claims  
 11 a foreclosure; and cause a copy of such printed notice, and  
 12 the name and date of the newspaper in which it was last pub-  
 13 lished, to be recorded in each registry of deeds, in which the  
 14 mortgage deed is or by law ought to be recorded, within  
 15 thirty days after such last publication. (b)

16 *Second*—He may cause an attested copy of such notice to  
 17 be served by the sheriff or his deputy of the county, in which  
 18 the mortgager or his assignee lives, if in this state, by a de-  
 19 livery to him in hand or by leaving it at his place of last and  
 20 usual abode; and cause the original notice and the sheriff's  
 21 return thereon to be recorded within thirty days after such  
 22 service in manner aforesaid; and in all cases the certificate  
 23 of the register of deeds shall be prima facie evidence of the  
 24 fact of such entry, notice, publication of foreclosure, and of  
 25 the sheriff's return.

R. S., c. 125, § 5.

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

Mortgager may  
 redeem within  
 three years.

R. S., c. 125, § 6.

(a) 23, Me. 25. 7, Me. 31, 102. 24, Me. 155. (b) 25, Me. 383. 38, Me. 256, 548. 37, Me. 386.  
 (c) 21, Me. 126. 20, Me. 269.



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Form of declaring in a suit to obtain possession on mortgage, &c.

SECT. 7. The mortgagee, and where the mortgage has been assigned, the person claiming under him, in an action for possession may declare on his own seizin in a writ of entry without naming the mortgage or assignment; and if it appears to the court on default, demurrer, verdict or otherwise, that the plaintiff is entitled to the possession of the premises for breach of the condition of the mortgage, the court shall on the motion of either party award the conditional judgment hereinafter mentioned, unless it appears that the tenant is not the mortgager, or a person claiming under him, in which case judgment may be entered as at common law, unless the plaintiff consents that the conditional judgment shall be entered.

R. S., c. 125,  
§ 7, 8.

Form of conditional judgment, &c.

SECT. 8. The conditional judgment shall be, that if the mortgager his heirs executor or administrator pays to the mortgagee his executor or administrator the sum, the court adjudges to be due, within two months from the time of entering up judgment with interest, no writ of possession shall issue and the mortgage shall be void; otherwise it shall issue in due form of law. When the condition is for doing some other act than the payment of money, the court may vary such conditional judgments as the circumstances require, and the writ of possession shall issue, if the terms of the conditional judgment are not complied with within the two months.

R. S., c. 125,  
§ 9, 15.  
1844, c. 10, § 4.

Judgment for defendant if nothing be due.

R. S., c. 125, § 10.

Action for foreclosure by executor or administrator.

SECT. 9. If it appears that nothing is due on the mortgage judgment shall be rendered for the defendant and for his costs, and he shall hold the land discharged of the mortgage.

SECT. 10. When a mortgagee or person claiming under him is dead, the same proceedings to foreclose the mortgage may be had by his executor or administrator declaring on the seizin of the deceased, as he might have done if living.

R. S., c. 125, § 11.

Mortgages to be assets in the hands of administrators, &c.

SECT. 11. Lands mortgaged to secure the payment of debts or the performance of any collateral engagement and the debts so secured, in case of the decease of the mortgagee or person claiming under him, shall be assets in the hands of his executors or administrators; and they shall have the control of them as of a personal pledge; and when they recover seizin and possession thereof, it shall be to the use and behoof of the widow and heirs or devisees of the deceased, or his creditors as the case may be; and when redeemed they may receive the money and give effectual discharges therefor and releases of the mortgaged premises.

R. S., c. 125,  
§ 13.

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SECT. 12. 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  
 5 any interest or not in the premises ; but he shall not be lia-  
 6 ble for costs, when he has no interest in the premises, and  
 7 makes his disclaimer thereto upon the records of the court.

Against whom  
 action on a  
 mortgage shall  
 be brought.

R. S., c. 125,  
 § 14.

SECT. 13. Any mortgager or other person having a right  
 2 to redeem lands mortgaged may demand of the mortgagee  
 3 or person claiming under him a true account of the sum due  
 4 on the mortgage, and of the rents and profits, and money  
 5 expended in repairs and improvements if any ; and if he  
 6 unreasonably refuses or neglects to render such account in  
 7 writing or in any other way by his default prevents the plain-  
 8 tiff from performing or tendering performance of the condi-  
 9 tion of the mortgage, he may bring his bill in equity for the  
 10 redemption of the mortgaged premises within the time lim-  
 11 ited in the sixth section of this chapter ; and therein offer to  
 12 pay the sum found to be equitably due or to perform any  
 13 other condition, as the case may require ; and such offer shall  
 14 have the same force as a tender of payment or performance  
 15 before the commencement of the suit ; and the bill shall be  
 16 sustained without such tender, and thereupon he shall be  
 17 entitled to judgment for redemption and costs. (a)

Proceedings in  
 equity to redeem  
 a mortgage.

R. S., c. 125,  
 § 16.

SECT. 14. When the amount due on a mortgage has been  
 2 paid or tendered to the mortgagee or person claiming under  
 3 him by the mortgager or the person claiming under him  
 4 within the time limited as before mentioned, he may have a  
 5 bill in equity for the redemption of the mortgaged premises,  
 6 and compel the mortgagee or person claiming under him by  
 7 a decree of the supreme judicial court to release to him all  
 8 his right and title therein ; though such mortgagee or his  
 9 assignee has never had actual possession of the premises for  
 10 breach of the condition, or without having made a tender  
 11 before the commencement of the suit he may have his bill in  
 12 the manner prescribed in the sixteenth section, and the cause  
 13 shall be tried in the same manner.

When the  
 amount due on a  
 mortgage has  
 been paid or  
 tendered, &c.

R. S., c. 125,  
 § 17, 18.

SECT. 15. When the bill to redeem is brought before an  
 2 actual entry for breach of the condition, and before payment  
 3 or tender, if the mortgagee or the person claiming under  
 4 him is out of the state and has not had actual notice, the  
 5 court shall order proper notice to be given to him, and con-

Courts to order  
 notice if mort-  
 gagee be out of  
 the state, &c.

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R. S., c. 125,  
§ 19.

Provisions for  
redemption  
when the mort-  
gagee is out of  
the state.

1841, c. 1, § 23.

Limitation of  
such a bill in  
equity.

R. S., c. 125,  
§ 20.

Court may allow  
other persons  
joined as defend-  
ants, and  
notified.

R. S., c. 125,  
§ 21.

Award of execu-  
tion on decree of  
court.

R. S., c. 125,  
§ 22.

Deduction of  
rents and profits  
from the sum  
brought into  
court for  
redemption.

R. S., c. 125,  
§ 23.

6 tinue the cause as long as necessary. *When a mortgage is*  
7 *alleged and proved to be fraudulent in whole or in part, an*  
8 *innocent assignee of the mortgager for a valuable consider-*  
9 *ation may file his bill within the time allowed to redeem*  
10 *and be allowed to redeem without any tender. (a)*

SECT. 16. When the mortgagee or person claiming under  
2 him has commenced proceedings for foreclosure under the  
3 fifth section, if he resides out of the state, or if his residence  
4 is unknown to the party having the right to redeem, he may  
5 file his bill, as is prescribed in section thirteen, and pay at  
6 the same time to the clerk of the courts the sum due, which  
7 payment shall have the same effect as a tender before the  
8 suit; and the court shall order such notice to be given of the  
9 pendency of the suit, as they judge proper.

SECT. 17. No bill in equity shall be brought for redemp-  
2 tion of mortgaged premises founded on a tender of payment  
3 or performance of the condition made before the commence-  
4 ment of the suit, unless within three years next after mak-  
5 ing such tender.

SECT. 18. In any suit brought for redemption of mortgaged  
2 premises, when it is necessary to the attainment of justice  
3 that any other person besides the defendant claiming an  
4 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 amended, in such  
7 manner as they may direct, and on his appearance the cause  
8 shall proceed, as though he had been originally joined.

SECT. 19. The court, when a decree is made for the re-  
2 demption of mortgaged lands, may award execution jointly  
3 or severally, as the case requires; and for sums found due  
4 for rents and profits over and above the sums reasonably  
5 expended in repairing and increasing the value of the estate  
6 redeemed.

SECT. 20. When any sum of money is brought into court  
2 in a suit for redemption of mortgaged premises, the court  
3 may deduct therefrom such sum, as the defendant is charge-  
4 able with on account of rents and profits by him received or  
5 costs awarded against him; and the person, to whom a sum  
6 of money is tendered to redeem such lands, if he receives a  
7 larger sum than he is entitled to retain, shall refund the  
8 excess.

(b) New. There is no express provision respecting fraudulent mortgages; and does it seem desirable to make a tender to pay, what ought not to be paid.

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SECT. 21. When a mortgage is made or assigned to the state, the treasurer may demand and receive the money due thereon and discharge it by his deed of release. After breach of the condition he may in person or by his agent make use of the like means for the purpose of foreclosure, which an individual mortgagee might, as prescribed in the third and fifth sections of this chapter.

State treasurer may discharge or foreclose mortgages made or assigned to the state.

R. S., c. 125, § 12.

SECT. 22. If the treasurer of state and the person applying to redeem any lands mortgaged to the state disagree as to the sum due thereon, such person may bring a bill in equity against the state for the redemption thereof in the supreme judicial court.

Bill in equity for redemption may be filed against the state.  
R. S., c. 125, § 24.

SECT. 23. The court shall order notice to be served on the treasurer of state in the usual form, and shall hear the cause and decide, what sum is due on said mortgage to the state and award costs, as they may deem equitable; and it shall be the duty of the treasurer to accept the sum adjudged by the court to be due and discharge and release the mortgage.

Where to be filed, and proceedings thereon.

R. S., c. 125, § 25.

SECT. 24. If any person entitled to redeem any mortgaged estate, or to redeem an equity of redemption which has been sold on execution, or the right to redeem such right, or the right to redeem lands set off on execution, dies without having made any tender for that purpose, a tender may be made and a bill for redemption commenced and prosecuted by the executors or administrators or the heirs or devisees of the deceased person; and if the plaintiff in any such bill in equity dies pending the suit, it may be prosecuted to final judgment by his heirs or devisees or his executors or administrators.

On decease of a person entitled to redeem, &c.

R. S., c. 125, § 26.

SECT. 25. When the mortgagee or person holding under him is under guardianship, a tender may be made to the guardian, and he shall receive the sum due on the mortgage; and upon receiving it, or on performance of such other condition, as the case requires, shall execute a release or discharge of the mortgage.

Tender to guardian of mortgage, if under guardianship.

R. S., c. 125, § 27.

SECT. 26. In all cases the mortgage may be discharged by the deed of release of the person authorized to discharge it, or by his causing satisfaction and payment to be entered in the margin of the record of such mortgage in the register's office under his hand. (a)

How mortgages may be discharged.

R. S., c. 128, § 28.

SECT. 27. If the purchaser of an equity of redemption sold on execution has satisfied and paid to the mortgagee or

Redemption of mortgaged estate from purchaser of the equity of redemption.

**CHAP. 91.**

R. S., c. 125,  
§ 29.

- 3 those claiming under him the sum due on the mortgage, the
- 4 mortgager or those claiming under him having redeemed
- 5 the equity of redemption within one year after such sale
- 6 shall have a right to redeem such mortgaged estate of such
- 7 purchaser or any person claiming under him within the time
- 8 and in the manner, he might have redeemed the same of the
- 9 mortgagee had there been no such sale made, and within
- 10 such time only.

**Chapter 91.****MORTGAGES OF PERSONAL PROPERTY. LIENS AND THEIR ENFORCEMENT.****MORTGAGES OF PERSONAL PROPERTY.**

- Sect. 1.* Mortgages not valid except between the parties, unless recorded, or possession of the property taken.
2. Clerk records mortgages in a book noting therein and on the mortgage when received.
  3. Property may be redeemed within sixty days after breach of condition.
  4. Property may be redeemed by tender of sum due and charges; if not restored proceedings.
  5. Contracts for liens and transfers of vessels and goods at sea or abroad not defeated.

**LIENS ON VESSELS.**

6. Lien on a vessel building and on one repaired for labor and materials, how enforced.
7. Officer attaching to file with clerk of the town and deliver to owner a copy of his return.
8. Service of writ by sheriff deputy or coroner, and subsequent attachments by same officer.
9. Attachments preserved till thirty days after judgments in all suits, disposition of property.

**LIENS ON BUILDINGS AND LOTS.**

10. Liens on buildings and lots for labor and materials under contract with owner.
11. When owner dies before suit, how to be brought and when.
12. Lien on buildings for rent placed on leased land, how enforced.

**LIENS ON LOGS AND LUMBER.**

13. Liens on logs and lumber for personal labor for sixty days after arrival at destination.
14. Boonage to be paid by attaching officer. Lien not defeated by taking note. Notice to owner.

**GENERAL PROVISIONS FOR ENFORCEMENT OR DISCHARGE.**

15. Attachments to have precedence. Suits after death and insolvency.
16. Tender of amount due discharges lien.

**LIENS ON GOODS IN POSSESSION HOW ENFORCED.**

17. Lien on goods in possession enforced by sale.
18. Petition to be filed; contents of it.
19. Service on owners within the state.
20. Service on owners when unknown or out of the state.

- Sect.* 21. When owner appears, proceedings.  
 22. When owner appears may be required to give bond.  
 23. Court may order property to be sold.  
 24. Disposition of the proceeds.  
 25. Liens less than twenty dollars enforced by justices of the peace.

SECT. 1. No mortgage of personal property made to secure payment of more than thirty dollars shall be valid against any other person than the parties thereto, unless possession of such property be delivered to and retained by the mortgagee, or the mortgage be recorded by the clerk of the town, in which the mortgager resides. (*a*) When a corporation makes a mortgage, it shall be recorded in the town, where it has its established place of business. When the mortgager resides in an unincorporated place, the mortgage shall be recorded in the oldest adjoining town in the county.

Mortgages not valid except between the parties, unless recorded or possession of the property taken.

R. S., c. 125, § 32.  
 1849, c. 103.  
 1850, c. 180.  
 1852, c. 262.  
 1854, c. 103.

SECT. 2. The clerk on payment of the same fees allowed to registers of deeds for like services shall record all such mortgages delivered to him in a book kept for that purpose noting therein and on the mortgage the time, when it was received, and it shall then be considered as recorded. (*b*)

Clerk records mortgages in a book, noting therein and on the mortgage when received. Idem, § 33.

SECT. 3. The property may be redeemed by the mortgager or person claiming under him within sixty days after breach of the condition, unless it has been sold by virtue of a contract, or on execution against the mortgager. (*c*)

Property may be redeemed within sixty days after breach of condition. Idem, § 30.

SECT. 4. To redeem the sum due on the mortgage with reasonable charges incurred must be paid or tendered; and if the property is not immediately restored, it may be replevied; and damages for withholding it may be recovered in an action on the case.

Sum due and charges to be paid or tendered to redeem, &c.

Idem, § 31.

SECT. 5. Nothing in the preceding sections shall defeat a contract of bottomry, respondentia, transfer, assignment, or hypothecation, of a vessel or goods at sea or abroad, if possession be taken as soon as may be after their arrival within the state. (*d*)

Contracts for liens and transfers of vessels or goods at sea or abroad, not defeated. Idem, § 34.

### *Liens on vessels.*

SECT. 6. A person, who furnished labor or materials for a vessel building before launched shall have a lien on such vessel therefor, which may be enforced by an attachment of the vessel within four days after launched. (*e*) And a person, who does so *after she is launched*, or for repair of a vessel,

Lien on a vessel building, and on one repaired for labor and materials, how and when enforced.

(*a*) 22, Me. 560. 31, Me. 73. 37, Me. 181, 543. (*b*) 19, Me. 167.

(*c*) 24, Me. 131. 29, Me. 429. 31, Me. 104, 501. 36, Me. 47.

(*d*) 19, Me. 9. (*e*) 33, Me. 474.

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R. S., c. 125,  
§ 35.

Officer attaching  
to file with clerk  
of the town, and  
deliver to an  
owner or master  
workman a  
copy of his  
return.

1848, c. 78, § 1.  
R. 1.

Service of writ  
must be made  
by a sheriff,  
deputy or  
coroner, &c.

Idem, § 2, 3.

Attachments  
preserved until  
thirty days after  
judgments in all  
suits, &c.

Idem, § 4.

Liens on build-  
ings and lots for  
labor and  
materials  
furnished, &c.

Idem, § 37, 38;  
1850, c. 159, § 1.

When owner  
dies before  
suit, &c.

1850, c. 159, § 2.

Lien on build-  
ings for rent  
placed on land  
leased, how  
enforced.

6 shall have a lien on her therefor, which may be enforced by  
7 attachment *within four days after the work has been com-*  
8 *pleted.*

SECT. 7. The officer making such attachment shall within  
2 twenty-four hours thereafter file with the clerk of the town,  
3 in which the vessel is, and deliver to some owner or master  
4 workman of the vessel, a copy of his return of such attach-  
5 ment *with the date of the writ, the amount sued for, and the*  
6 *names of the parties*, which shall be sufficient to preserve the  
7 attachment without a keeper.

SECT. 8. Service of such writ must be made by the sheriff  
2 or his deputy or a coroner; and all subsequent attachments  
3 to enforce a lien, made before the first attachment is dis-  
4 solved, must be made by the officer, who made the first one,  
5 unless disqualified, when they may be made by another com-  
6 petent officer, by giving notice thereof to him, *as he is required*  
7 *to give notice to the clerk*, and such attachment shall secure  
8 a share of the proceeds as if made by the first attaching  
9 officer.

SECT. 9. All the attachments shall remain in force until  
2 thirty days after judgment is rendered in all the suits, when  
3 the vessel shall be sold and the net proceeds shall be paid  
4 to the creditors, or if not sufficient to pay in full, distrib-  
5 uted to them equally in proportion to the amounts of their  
6 judgments.

### *Liens on buildings and lots.*

SECT. 10. A person, who performs or furnishes labor or  
2 materials for erecting altering or repairing a house building  
3 or appurtenances by virtue of a contract with the owner  
4 thereof, shall have a lien on such house or building and the  
5 lot of land, on which it stands or equity of redemption, if  
6 under mortgage, to secure payment thereof, to continue in  
7 force ninety days from the time when payment becomes due,  
8 to be enforced by attachment. (a)

SECT. 11. When the owner dies within the ninety days  
2 and before commencement of a suit, it may be commenced  
3 within sixty days after notice given of the appointment of  
4 an executor or administrator, and the lien shall be extended  
5 accordingly.

SECT. 12. When a lease with a rent payable is made of  
2 land to have a mill or other building placed thereon, the

3 buildings placed thereon and all the interest of the lessee  
4 shall be subject to a lien and liable to be attached for the  
5 rent due. Such attachment made within six months after  
6 the rent becomes due shall be effectual against any transfer  
7 of the property by lessee.

R. S., c. 125, § 40.

*Liens on logs and lumber.*

SECT. 13. A person who labors at cutting hauling or driv-  
2 ing logs or lumber, shall have a lien thereon for the amount  
3 due for his personal services to take precedence of all other  
4 claims, except liens reserved to the state, and to continue  
5 for sixty days after the logs or lumber arrive at the place  
6 of destination for sale or manufacture and to be enforced by  
7 attachment. (a)

Lien on logs and  
lumber for per-  
sonal labor for  
sixty days after  
arrival at place  
of destination.

1848, c. 72, § 1.  
1851, c. 216, § 1.

SECT. 14. The officer making an attachment of such logs  
2 or lumber may pay the boomage due thereon, not exceeding  
3 the rate per thousand on the amount attached, and return  
4 the amount paid on the writ, which shall be included in the  
5 damages recovered. The action or lien shall not be defeated  
6 by taking a note, unless it was taken in discharge of the  
7 amount due and of the lien. Notice of the suit, such as the  
8 court orders, shall be given to the owner of the logs or  
9 lumber, and he may be admitted to defend it.

Boomage may be  
paid by attaching  
officer. Lien  
not defeated by  
taking a note.  
Notice to owner  
of logs.

1848, c. 72, § 1, 2.  
1855, c. 144.

*General provisions for enforcement or discharge.*

SECT. 15. Suits to enforce *any of the liens before named*  
2 *in this chapter* shall have precedence of all attachments and  
3 incumbrances made after the lien attached and not made to  
4 enforce a lien, and may be maintained, although the employer  
5 or debtor is deceased and his estate represented to be in-  
6 solvent; and his executor or administrator may be sum-  
7 moned and held to answer to an action brought or pending  
8 to enforce the lien. (b)

Attachments to  
have precedence  
of other incum-  
brances, &c.

1850, c. 159, § 1.  
1851, c. 216, § 1.

SECT. 16. All liens named in this chapter may be dis-  
2 charged by tender of a sum sufficient to pay all, that is justly  
3 due, made by the debtor or owner of the property or their  
4 agents.

Tender of  
amount due,  
discharges lien.  
R. S., c. 125,  
§ 36, 39.

*Liens how enforced on goods in possession.*

SECT. 17. Any person, who has a lien on anything of which  
2 he has possession, may enforce said lien, and have the thing

Lien on goods in  
possession,  
enforced by sale.



CHAP. 91. 3 sold for the satisfaction thereof in the manner herein pro-  
 1856, c. 273, § 1. 4 vided.

Petition to be  
 filed, contents of  
 it.

SECT. 18. The person claiming the lien may file in the  
 2 supreme judicial court in the county where he resides, or in  
 3 the office of the clerk thereof, a petition briefly setting forth  
 4 the nature and amount of his claim, a description of the  
 5 article possessed, and the name and residence of the own-  
 6 ers of the article if known to him, and a prayer for process  
 7 to enforce his lien.

Idem, § 2.

Service on  
 owners within  
 the state.

SECT. 19. If the owners are set forth in a petition filed  
 2 in the clerk's office and are residents of this state, the clerk  
 3 may issue an order of notice on such owners by serving them  
 4 with a copy of the petition with the order thereon fourteen  
 5 days before the next term of the court in such county.

Idem, § 3.

Service when  
 owners  
 unknown or  
 out of the state.

SECT. 20. If the owners are not known or not residents  
 2 in the state, or the petition is filed in court, the court may  
 3 order such notice to the owners and others interested as it  
 4 may deem fit, and said notice may be returnable at the same  
 5 or a subsequent term, and may be by personal service of a  
 6 copy of the petition with the order of court thereon, or by  
 7 publication in a newspaper, or both, as the court shall direct.  
 8 But such order shall always allow at least fourteen days from  
 9 the service or publication before the time fixed for the ap-  
 10 pearance of the persons notified.

Idem, § 4.

When owner  
 appears,  
 proceedings.

SECT. 21. At the time fixed in the notice, any party inter-  
 2 ested in the article as owner, mortgagee, or otherwise, may  
 3 appear, and from the time of such appearance the proceed-  
 4 ings shall be the same as in an action on the case, in which  
 5 the petitioner is plaintiff and the parties appearing are de-  
 6 fendants. Questions of fact, at the instance of either party,  
 7 shall be submitted to a jury upon an issue to be framed  
 8 under the direction of the court.

Idem, § 5.

Owner may be  
 required to give  
 bond.

SECT. 22. If in the opinion of the court the article on  
 2 which the lien is claimed is not of sufficient value to pay  
 3 the petitioner's claim, with the probable costs of the suit,  
 4 the court may order the persons appearing in defense to  
 5 give bond to the petitioner with sufficient sureties to be  
 6 approved by the court to pay such costs as may be awarded  
 7 against him, so far as they are not paid out of the proceeds  
 8 of the articles on which the lien is claimed.

Idem, § 6.

Court may  
 order property to  
 be sold.

SECT. 23. After trial of the cause and final adjudication  
 2 in favor of the petitioner, the court may order any officer  
 3 competent to serve precepts in civil actions to sell the article  
 4 on which the lien is claimed, in the manner in which personal

CHAP. 92.

5 property is sold on execution, and out of the proceeds, after  
 6 deducting his fees and the expenses of sale, to pay to the  
 7 petitioner the amounts awarded him with the costs awarded  
 8 him, and to pay the balance to the person or persons legally  
 9 entitled to receive it, if such persons are known to the court,  
 10 otherwise to pay the same into court.

Idem, § 7.

SECT. 24. Money paid into court may be paid over to the  
 2 person legally entitled to receive it, upon petition and order  
 3 of the court. If it is not called for at the first term after  
 4 it is paid into court, it shall be paid into the county treasury,  
 5 and if afterwards the person legally entitled to it petitions  
 6 and establishes his claim to it, the court may order the county  
 7 treasurer to pay it to him.

Disposition of  
the proceeds.

Idem, § 8.

SECT. 25. Liens for less amount than twenty dollars may  
 2 be enforced before any justice of the peace for the county  
 3 where the person having the lien resides, in the manner  
 4 herein provided, so far as the nature of the tribunal will  
 5 admit, and the justice shall have the same power to order  
 6 notice and sale; and the balance if any remaining after  
 7 payment of the lien shall be paid as hereinbefore provided,  
 8 or deposited in the county treasury subject to be drawn out  
 9 upon petition, as is provided in section twenty-four. Either  
 10 party may appeal, and in case of appeal the proceedings  
 11 shall be the same as provided in appeals in civil actions  
 12 before justices of the peace.

Lien less than  
\$20, justices  
have jurisdic-  
tion.

Idem, § 9.

**Chapter 92.****THE RIGHT OF ERECTING MILLS AND MILL-DAMS, AND OF FLOWING  
LANDS AND DIVERTING WATER TO SUPPLY MILLS, AND THE MODE  
OF OBTAINING DAMAGES THEREFOR.**

*Sect. 1.* Right to erect and maintain mill-dams, and to divert water by a canal for  
mills.

2. Not to injure a mill or canal previously built.
3. Restriction as to height of dam and quantity of water.
4. Damages for flowing, &c., recoverable on complaint.
5. Form of complaint.
6. How presented and served.
7. What may be pleaded in bar.
8. Mode of trial. Appeal. Costs for respondent if complainant fails.
9. Proceedings, if complainant recovers.
10. Trial by jury. Commissioners' report to be evidence.
11. Acceptance of commissioners' report.
12. Verdict or report to bar any future action.
13. Yearly damages, how fixed.
14. Security to be given for yearly damages, if required.
15. Complainant may sue for damages, if unpaid.

CHAP. 92.*Sect. 16. Lien upon mill and land for damages.*

17. Mill and land may be seized and sold on the execution after thirty days.  
Effect of such sale.
18. Right of redemption.
19. Either party may file a new complaint.
20. Restriction of this right.
21. Owner may offer an increased compensation. Consequence.
22. Injured party may offer to accept a less compensation. Consequence.
23. Restriction of suits for damages.
24. Tenants may make such offers as well as owners.
25. Double damages if dam is raised higher, kept up longer, or more water diverted than allowed by the judgment.
26. Agreement of parties binding, if recorded.
27. Judgment no bar to a new complaint.
28. Tender of damages, and effect thereof.
29. Complaint not to abate by death of either party.
30. If complaint abates, rights may be preserved by new complaint within a year.
31. Provisions of this chapter apply to streams forming the boundary of the state.
32. Compensation of commissioners. Costs.

Right to erect  
and maintain  
mill dams, and  
to divert water  
by a canal for  
mills.

SECT. 1. Any man may erect and maintain a water mill  
2 and dams to raise water for working it on his own land upon  
3 and across any stream, that is not navigable; or for the pur-  
4 pose of propelling mills or machinery may cut a canal and  
5 erect walls and embankments upon his own land not exceed-  
6 ing one mile in length, and thereby divert from its natural  
7 channel the water of any stream not navigable upon the  
8 terms and conditions and subject to the regulations herein-  
9 after expressed.

R. S., c. 126, § 1.  
1855, c. 133, § 1.

Not to injure a  
mill or canal  
previously built.

SECT. 2. No such dam shall be erected or canal constructed  
2 to the injury of any mill or canal lawfully existing on the  
3 same stream; nor to the injury of any mill site, on which a  
4 mill or mill dam has been lawfully erected and used, unless  
5 the right to maintain a mill on such last mentioned site has  
6 been lost or defeated. (a)

R. S., c. 126, § 2.  
1855, c. 133, § 2.

Restriction as to  
height of dam  
and quantity of  
water.

SECT. 3. The height to which the water may be raised,  
2 and the length of time during which it may be kept up in  
3 each year, and quantity of water that may be so diverted  
4 by such canal, shall be liable to be restricted and regulated  
5 by the verdict of a jury or report of commissioners, as here-  
6 inafter is provided.

1855, c. 133, § 3.  
R. S., c. 126, § 4.

Damages for  
flowing, &c.

SECT. 4. Any person sustaining damages in his lands by  
2 their being overflowed by a mill dam or by the diversion of  
3 the water by such canal, may obtain compensation for the in-  
4 jury by complaint to the supreme judicial court in the county,  
5 where the lands or any part thereof are situated; but no  
6 compensation shall be awarded for damages sustained more  
7 than three years before the institution of the complaint.

1855, c. 133, § 1.  
R. S., c. 126, § 5.

<p>SECT. 5. The complaint shall contain such a description  of the land flowed or injured, and such a statement of the  damage, that the record of the case shall show the matter  heard and determined in the suit. (a)</p>	<p>CHAP. 92.  Form of  complaint.  R. S., c. 126, § 6.</p>
<p>SECT. 6. The complaint may be presented to the court in  term time, or be filed in the clerk's office in vacation; and  a copy shall be served by the proper officer fourteen days  before the term day on the respondent by being left at his  dwelling-house, if he has any in the state; otherwise it shall  be left at the mill in question, or with the occupant of the  mill.</p>	<p>How presented  and served.    R. S., c. 126,  § 7, 8.</p>
<p>SECT. 7. The owner or occupant of such mill or canal  may plead in bar, that the complainant has no right title or  estate in the lands alleged to be injured; or that he has a  right to maintain such dam and flow the lands or divert the  water for an agreed price, or without any compensation; or  any other matter, which may show that the complainant  cannot maintain the suit; but he shall not plead in bar of  the complaint, that the land described therein is not injured  by such dam or canal. (b)</p>	<p>What may be  pleaded in bar.          R. S., c. 126, § 9.</p>
<p>SECT. 8. When any such plea is filed, and an issue in fact,  or in law is joined, it shall be decided as similar issues are  decided in cases at common law; and if judgment is for the  respondent, he shall recover his costs.</p>	<p>Mode of trial.  Appeal, &amp;c.  R. S., c. 126,  § 10, 11.</p>
<p>SECT. 9. If the issue is decided in favor of the complainant  or if the respondent is defaulted or does not plead or show  any legal objection to proceeding, the court shall appoint  three or more disinterested commissioners of the same  county, who shall go upon and examine the premises and  make a true and faithful appraisement under oath of the  yearly damages, if any done to the complainant by the flow-  ing of his lands or the diversion of the water described in  the complaint, and determine how far the same is necessary  and ascertain and make report what portion of the year such  lands ought not to be flowed or water diverted, or what quan-  tity of water shall be diverted.</p>	<p>Proceedings, if  complainant  recovers.              R. S., c. 126,  § 12.</p>
<p>SECT. 10. If either party requests that a jury may be em-  paneled to try the cause at the bar of the court, the report  of the commissioners shall under the direction of the court  be given in evidence to the jury; but evidence shall not be  admitted to contradict it, unless misconduct, partiality, or</p>	<p>Trial by jury.  Commissioners'  report to be  evidence.    Idem, § 13.  1856, c. 269.</p>

## CHAP. 92.

Acceptance of  
commissioners'  
report.

R. S., c. 126, § 14.

Verdict or report  
to bar any  
future action.

R. S., c. 125,  
§ 15.

Yearly damages,  
how fixed.

R. S., c. 126,  
§ 17.

Security to be  
given for yearly  
damages, if  
required.

R. S., c. 126,  
§ 18.

Complainant  
may sue for  
damages, if  
unpaid.

R. S., c. 126,  
§ 20.

Lien upon mill  
and land for  
damages.

R. S., c. 126,  
§ 19.  
1855, c. 133.

6 unfaithfulness on the part of some commissioner shall be  
7 shown.

SECT. 11. If neither party requests a trial by jury the re-  
2 port of the commissioners may be accepted by the court and  
3 judgment rendered thereon.

SECT. 12. The verdict of the jury or the report of the com-  
2 missioners so accepted shall be a bar to any action brought  
3 for such damages, and the owner or occupant shall not flow  
4 the lands or divert the water during any portion of the  
5 period, when prohibited, or divert the water beyond the  
6 quantity allowed by the commissioners or jury.

SECT. 13. 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 the lands or  
4 the owner or occupant of the mill or canal shall on a new  
5 complaint to the court and by proceedings as in the former  
6 case obtain an increase or decrease of such damages.

SECT. 14. When any person, whose lands are so flowed or  
2 from whose lands the water is thus diverted, files his com-  
3 plaint for ascertaining or increasing his damages, or brings  
4 his action of debt as provided in the following section,  
5 moves the court to direct the owner or occupant of such  
6 mill or canal to give security for the payment of the an-  
7 nual damages, and the court so orders, the owner or occu-  
8 pant refusing or neglecting to give such security shall have  
9 no benefit of this chapter; but shall be liable to be sued for  
10 the damages occasioned by such flowing in an action at com-  
11 mon law.

SECT. 15. The party entitled to such annual compensation  
2 may maintain an action of debt or assumpsit therefor against  
3 any person, who owns or occupies the said mill or canal and  
4 mills supplied thereby, when the action is brought; and  
5 shall therein recover the whole sum due and unpaid with  
6 costs. (a)

SECT. 16. The person entitled to receive the annual com-  
2 pensation shall have a lien therefor from the time of the in-  
3 stitution of the original complaint on the mill and mill dam,  
4 or on the canal and the mill supplied thereby with the ap-  
5 purtenances and the land under and adjoining the same, and  
6 used therewith; *provided*, that it shall not extend to any sum  
7 due more than three years before the commencement of the  
8 complaint. (b)

## CHAP. 92.

SECT. 17. The execution on such judgment if not paid may  
 2 at any time within thirty days be levied on the premises sub-  
 3 ject to the lien; and the officer may sell the same at public  
 4 auction, or so much thereof in common with the residue, as  
 5 shall be necessary to satisfy the execution proceeding in  
 6 giving notice of such sale in the same manner, as in making  
 7 sale of an equity of redemption upon execution. Such sale  
 8 shall be effectual against all persons claiming the premises  
 9 by any title, which accrued within the time covered by the lien.

Mill and land  
 may be seized  
 and sold on  
 the execution  
 after thirty  
 days, &c.

R. S., c. 126,  
 § 21, 22.

SECT. 18. Any person entitled to the premises may redeem  
 2 the same within one year after the sale by paying to the pur-  
 3 chaser or the person holding under him the sum paid there-  
 4 for with interest at the rate of twelve per cent. deducting  
 5 therefrom any rents and profits received by such purchaser  
 6 or person holding under him; and may have the same pro-  
 7 cess to compel the purchaser to account, as might be had  
 8 against a purchaser of an equity of redemption.

Right of  
 redemption.

R. S., c. 126,  
 § 23.

SECT. 19. When either party is dissatisfied with the annual  
 2 compensation established as before provided, a new complaint  
 3 may be filed, and proceedings had and conducted substan-  
 4 tially in the manner before provided in case of an original  
 5 complaint.

Either party  
 may file a new  
 complaint.

R. S., c. 126,  
 § 24.

SECT. 20. No new complaint shall be brought, until the  
 2 expiration of one month after the payment of the then last  
 3 year is due and one month after notice to the other party;  
 4 and the other party may within that time make an offer or  
 5 tender, as hereinafter is provided.

Restriction of  
 this right.

R. S., c. 126,  
 § 25.

SECT. 21. The owner of the mill or dam or canal within  
 2 said month may offer in writing to the owner of the land  
 3 injured any increase of compensation to be paid thereafter  
 4 for maintaining said dam or canal; and if the owner of the  
 5 land does not agree to accept it, but brings a new complaint  
 6 for the purpose of increasing the compensation, he shall not  
 7 recover any costs, unless he obtains an increase of damages.

Owner may  
 offer an  
 increased  
 compensation.  
 Consequence.

R. S., c. 126,  
 § 26.

SECT. 22. The owner of the land injured may within said  
 2 month offer in writing to the owner of the mill or dam or  
 3 canal to accept any sum smaller than the annual compensa-  
 4 tion established to be paid thereafter for maintaining said  
 5 dam or canal; and if the owner of the mill or dam or canal  
 6 declines to pay such reduced compensation, but brings a new  
 7 complaint to obtain a reduction of the same, he shall not  
 8 recover costs, unless such compensation is reduced to a less  
 9 sum than was offered.

Injured party  
 may offer to  
 accept a less  
 compensation.  
 Consequence.

R. S., c. 126,  
 § 27.

## CHAP. 92.

Restriction of  
suits for  
damages.

R. S., c. 126,  
§ 28.

Tenants may  
make such offers  
as well as  
owners.

R. S., c. 126,  
§ 30.

Double damages  
if dam is raised  
higher, &c.

1848, c. 86.

Agreement of  
parties binding,  
if recorded.

R. S., c. 126,  
§ 31.

Judgment no  
bar to a new  
complaint.

R. S., c. 126,  
§ 32.

Tender of  
damages, and  
effect thereof.

R. S., c. 126,  
§ 33.

Complaint not to  
abate by death  
of either party.

R. S., c. 126,  
§ 34.

If complaint  
abates, rights  
may be pre-  
served by new  
complaint  
within a year.

R. S., c. 126,  
§ 35.

SECT. 23. No action shall be sustained at common law for  
2 the recovery of damages occasioned by the overflowing of  
3 lands or for the diversion of the water as before mentioned,  
4 except in the special cases provided in this chapter, to enforce  
5 the payment of damages after they have been ascertained by  
6 process of complaint as aforesaid.

SECT. 24. Such offers may be made by or to the tenants or  
2 occupants of the land and of the mill and dam, or canal in  
3 like manner and with like effect, as if made by or to the  
4 owners; but no agreements founded thereon shall bind the  
5 owners unless made by their consent.

SECT. 25. If after judgment the restrictions imposed by  
2 the report of the commissioners or finding of the jury respect-  
3 ing the flowing or diverting of the waters shall be violated,  
4 the party injured thereby may recover of the wrong-doers  
5 double damages for the injury sustained in an action at com-  
6 mon law.

SECT. 26. When an annual compensation upon the accept-  
2 ance by one party of an offer made by the other is estab-  
3 lished and signed by the owners of the mill or dam, or canal  
4 and of the land and recorded in the office of the clerk of the  
5 court, in which the former judgment was rendered, with a  
6 reference on the record of the former judgment and to the  
7 book where the agreement is recorded, such agreement shall  
8 be as binding as a verdict and judgment on a new complaint.

SECT. 27. A judgment against a complainant as not entitled  
2 to any compensation shall be no bar to a new complaint for  
3 damages, which have arisen after the former verdict and for  
4 compensation for damages subsequently sustained.

SECT. 28. In case of an original complaint the respondent  
2 may with the same advantages to himself tender and bring  
3 money into court, as in an action at common law; and if the  
4 money is accepted, the judgment shall have the same effect as  
5 if rendered on a verdict.

SECT. 29. No complaint for so flowing lands or diverting  
2 water shall abate by the death of any party thereto; but it  
3 may be prosecuted or defended by the surviving complain-  
4 ants or respondents, or the executors or administrators of  
5 the deceased.

SECT. 30. If such complaint is abated or defeated for want  
2 of form, or if after a verdict for the complainant judgment  
3 is reversed, he may bring a new complaint at any time within  
4 one year after such abatement or reversal, and thereon  
5 recover such damages as were sustained during three years

6 next before the institution of the first complaint or at any  
7 time afterwards.

SECT. 31. The provisions of this chapter shall apply to  
2 mills and dams erected upon streams forming the boundary  
3 line of the state, although a part of the dam is not in the  
4 state; and the rights and remedies of all parties concerned  
5 shall be ascertained and determined as if the whole of such  
6 streams were in the state.

Provisions of  
this chapter  
apply to streams  
forming the  
boundary of the  
state.

1855, c. 133, § 4.

SECT. 32. The court shall award a suitable compensation  
2 to be paid to the commissioners and taxed and recovered by  
3 the prevailing party. The prevailing party shall recover his  
4 costs, except where it is otherwise expressly provided.

Compensation of  
commissioners.  
Costs.  
R. S., c. 126,  
§ 16, 29.

## Chapter 93.

### INQUESTS OF OFFICE, AND INFORMATIONS FOR INTRUSION.

*Sect.* 1. Proceedings to revest in the state lands granted on condition.

2. Attorney general to file information.

3. Scire facias to issue. Service.

4. Judgment on default.

5. Consequence of disclaimer by defendant.

6. Proceedings, if defendant claims title.

7, 8. Proceedings, if it is adjudged that defendant holds too much land.

9. Cases in which information may be filed, without order of the legislature.

Notice.

10. Proceedings, judgment and costs.

11. Information to recover escheats. Notice.

12. Tenant to set up no title, unless he claims under it.

13. Costs, if defendant recovers.

14. Defendant may hold by title subsequently acquired. What judgment, if the state recovers.

15. Effect of judgment, that the state be resezied.

16. Tenant under the state to have betterments, though occupying less than six years.

17. Proceedings by attorney general to obtain betterments.

18. Execution therefor, how levied.

SECT. 1. Where lands have been granted by the colony or  
2 province of Massachusetts Bay, the commonwealth of Mas-  
3 sachusetts, or by this state, or shall be hereafter granted on  
4 certain conditions alleged to have been violated, and the  
5 state claims to be revested therein, the following proceedings  
6 shall be had.

Proceedings to  
revest in the  
state lands  
granted on  
condition.

R. S., c. 127, § 1.

SECT. 2. When the legislature directs, the attorney general  
2 shall file an information in the supreme judicial court in the  
3 county, where the lands lie, stating the grant and conditions  
4 breaches and claims of the state.

Attorney general  
to file  
information.

R. S., c. 127, § 2.



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Scire facias to  
issue. Service.

R. S., c. 127, § 3.

Judgment on  
default.

R. S., c. 127, § 4.

Consequence of  
disclaimer by  
defendant.

R. S., c. 127, § 5.

Proceedings, if  
defendant  
claims title.

R. S., c. 127, § 6.

Proceedings, if  
it is adjudged  
that defendant  
holds too much  
land.

R. S., c. 127, § 7.

Such part shall  
be located by  
persons ap-  
pointed by the  
court, &c.

R. S., c. 127, § 8.

Cases in which  
information  
may be filed, &c.

R. S., c. 127,  
§ 9, 10.

Proceedings,  
judgment and  
costs.

SECT. 3. The court shall issue a scire facias against the person stated holding the lands under such grant returnable to said court; which shall be served according to law thirty days before the return day.

SECT. 4. Should the defendant not appear and answer to such information, judgment shall be rendered that the state be reseized of their lands.

SECT. 5. If he appears and disclaims holding said lands or any part thereof, the attorney general shall take nothing by his information, so far as respects the lands disclaimed; and the defendant and all subsequently claiming under him shall be estopped from claiming or holding such disclaimed lands.

SECT. 6. If the defendant claims all or any part of the lands under such grant and traverses the breaches, the cause shall be tried by jury, and if the issue is found in favor of the state, judgment shall be rendered, that the state be reseized of said estate and for costs; but if the issue is found for the defendant, he shall have judgment for his costs of suit to be taxed and paid from the state treasury.

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

SECT. 8. Such part shall be located by persons appointed by the court at the expense of the defendant, and a plan thereof returned to the court; and if confirmed by the court, they shall order an attested copy of the location and plan to be filed in the land office, and judgment shall be rendered, that the state be rescized of the residue and for costs.

SECT. 9. In all other cases, where an inquest is necessary, the attorney general without order of the legislature may file an information in said court describing the estate claimed and stating the title asserted thereto by the state; and notice shall be given as before mentioned, if there is any tenant in possession; if not, the notice shall be given as the court orders at least ninety days before the sitting of the court, to which it is returnable.

SECT. 10. If no person appears and answers to the information, or if a verdict is found, that the state has good title to such estate, judgment shall be rendered, that the state be

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4 seized thereof and recover costs; but if the verdict is in  
5 favor of the defendant, he shall recover his costs of suit to  
6 be taxed and paid as provided in section six.

R. S., c. 127,  
§ 11.

SECT. 11. The attorney general may file an information in  
2 manner before mentioned for recovering seizin by the state  
3 for any real estate supposed to have escheated to the state  
4 for want of legal heirs; and on such information being filed  
5 the court shall order such notice as they judge proper.

Information to  
recover escheats.  
Notice.

R. S., c. 127,  
§ 12.

SECT. 12. In such case the defendant shall not avail him-  
2 self of the title of an alien or subject of another nation or  
3 sovereign or of any other person, unless he shows that he  
4 is the tenant or agent of such alien or other person.

Tenant to set up  
no title, unless  
he claims under  
it.  
R. S., c. 127,  
§ 13.

SECT. 13. If on trial he proves, that he is such tenant or  
2 agent, or the legal owner of such estate, he shall recover  
3 his costs to be paid as aforesaid.

Costs, if defend-  
ant recovers.  
R. S., c. 127,  
§ 14.

SECT. 14. If it is found, that he was not legal owner of  
2 such estate, nor had any right as tenant or agent, when the  
3 process was commenced against him, but afterwards acquired  
4 a good title or became tenant or agent, the attorney general  
5 shall cease further to prosecute the suit; but when the de-  
6 fendant proves no such title to the estate as owner or inter-  
7 est therein as tenant or agent, judgment shall be rendered  
8 that the state be seized thereof and recover rents and profits  
9 as in case of a writ of entry between private persons.

Defendant may  
hold by title  
subsequently  
acquired, &c.

R. S., c. 127,  
§ 15.

SECT. 15. When judgment on information is rendered,  
2 that the state be reseized or seized of any lands, the state  
3 shall be deemed in law to be so seized and any judgment so  
4 rendered shall conclude all privies and parties and those  
5 claiming under them so long as it remains in force subject  
6 to the provisions of the following section.

Effect of judg-  
ment, that the  
state be  
reseized.

R. S., c. 127,  
§ 16.

SECT. 16. Should any person appear and by due process of  
2 law prove himself to have a legal title to such estate and re-  
3 cover the same against the state or its grantee or tenant,  
4 the same estate shall be liable for all expenses of improve-  
5 ments thereon made over and above the rents and profits  
6 thereof; though the tenant and those claiming under the  
7 state had not been in possession six years.

Tenant under  
the state to have  
betterments, &c.

R. S., c. 127,  
§ 17.

SECT. 17. For the purpose of ascertaining the amount of  
2 such improvements the attorney general; or the tenant or  
3 grantee of the estate, may file a bill in equity in the supreme  
4 judicial court for recovering the same; and proceedings shall  
5 be had thereon as in other cases in equity to ascertain and  
6 adjust the amount.

Proceedings by  
attorney general  
to obtain  
betterments.

R. S., c. 127,  
§ 18.

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Execution therefor, how levied.  
R. S., c. 127,  
§ 19.

- SECT. 18. 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 94.

## FORCIBLE ENTRY AND DETAINER. TENANCIES.

- Sect. 1. Forcible entry and detainer, when may be commenced.  
2 Tenancy at will, how terminated.  
3 What magistrates have jurisdiction.  
4 Complaint how made, summons issued and served.  
5 When defendant fails to shew sufficient cause or is defaulted, proceedings.  
6 When defendant files a brief statement claiming title in himself or another, proceedings.  
7 Complainant may allege, that brief statement is intended for delay, proceedings.  
8 Either party may appeal, proceedings.  
9 When judgment is for complainant, he may in all cases have possession.  
10 Sums due for rent and claims for damages may be recovered by action of assumpsit.

Forcible entry and detainer, when may be commenced.

R. S., c. 123, § 5.  
1847, c. 4.  
1850, c. 160.  
1853, c. 39, § 1.  
New.

Tenancy at will, or sufferance, how terminated.

R. S., c. 95,  
§ 19, 20.  
1849, c. 98.  
1853, c. 39, § 1.

What magistrates have jurisdiction of cases of forcible entry and detainer.

R. S., c. 128,  
§ 1, 6.

- SECT. 1. A process of forcible entry and detainer may be  
2 commenced against a disseizor, *who has not acquired any*  
3 *claim by possession and improvement*; and against a tenant  
4 holding under a written lease or contract, or person holding  
5 under such tenant, at the expiration or forfeiture of the  
6 term without notice; if the process be commenced within  
7 seven days from the expiration or forfeiture of the term; and  
8 against a tenant at will, whose tenancy has been terminated  
9 as provided in the following section.

- SECT. 2. A tenancy at will may be terminated by a written  
2 notice to quit served on the tenant thirty days before the  
3 time named for its termination; but if no rent is due *when*  
4 *a rent is payable*, it shall not be terminated, except at the  
5 option of the tenant, until rent shall become due. When  
6 terminated the tenant shall be liable to the process afore-  
7 said without further notice and without proof of any rela-  
8 tion of landlord and tenant, unless he has paid after ser-  
9 vice of the notice rent accrued after the termination of the  
10 tenancy.

- SECT. 3. Justices of the peace and judges of municipal and  
2 police courts have jurisdiction of cases of forcible entry and  
3 detainer respecting estates within their counties. Such  
4 judges have exclusive jurisdiction of them within their cities  
5 or towns unless interested.

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SECT. 4. On a written complaint sworn to charging a forcible and unlawful entry or detainer of real estate in manner aforesaid, a summons may be issued to a proper officer commanding the person complained of to appear and shew cause, why judgment should not be rendered against him, which shall be served, as other writs of summons are required to be, seven days before the day for his appearance.

Complaint, how made, summons issued and served.

Idem, § 2.

SECT. 5. When he is defaulted or fails to shew sufficient cause, judgment shall be rendered against him for possession of the premises, and a writ of possession issued to remove him, which may be served by a constable.

When fails to show sufficient cause, &c. Idem, § 3. 1853, c. 39, § 5.

SECT. 6. When the defendant pleads not guilty and files a brief statement of title in himself or in another person, under whom he claims the premises, he shall, except as hereafter provided, recognize in a reasonable sum to the complainant with sufficient sureties conditioned to pay all intervening damages and costs and a reasonable rent for the premises; and the complainant shall in like manner recognize to the defendant conditioned to enter the suit at the next term of the supreme judicial court and pay all costs adjudged against him. If either party neglects so to recognize, judgment shall be rendered against him as on nonsuit or default.

When defendant files a brief statement, &c.

Idem, § 4.

SECT. 7. But the complainant may make a written allegation, that the brief statement of the defendant is frivolous and intended for delay, and the magistrate may then examine the case so far as to ascertain the truth respecting it, and if satisfied of the truth of such allegation, he may proceed to try the cause upon the plea of not guilty, and if determined in favor of the complainant may issue a writ of possession for removal of the defendant; but this shall not prevent an appeal as provided in the following section.

Complainant may allege that brief statement is intended for delay; proceedings

1853, c. 39, § 3.

SECT. 8. Either party may appeal from a judgment to the supreme judicial court next to be holden in the same county. When the complainant appeals, he shall recognize in manner aforesaid to the defendant, except as hereafter provided, conditioned to enter the suit and pay all costs adjudged against him. When the defendant appeals, he shall recognize in like manner to the complainant conditioned to enter the suit and pay all intervening costs and such reasonable rent of the premises, as the magistrate shall adjudge, if the judgment is not reversed.

Either party may appeal; proceedings.

R. S., c. 128, § 4. 1853, c. 39, § 2.

SECT. 9. When judgment is rendered for the complainant a writ of possession shall issue in all cases, if the complain-

When judgment is rendered, &c.

## CHAP. 95.

3 ant recognizes to the defendant in manner before provided  
 4 conditioned to pay all such damages and costs, as may be  
 5 awarded against him, if final judgment is rendered for the  
 6 defendant; and on trial if the jury find for the defendant,  
 7 they shall find the damages sustained by him; and in case  
 8 of nonsuit his damages shall be assessed by the court; and  
 9 the complainant may give evidence of any claim for rent of  
 10 the premises to be set off against damages claimed by the  
 11 defendant. If the defendant prevails, the court may or not,  
 12 as justice requires, issue a writ to restore to him possession  
 13 of the premises.

1853, c. 39, § 2.

Sums due for  
 rent and claims  
 for damages  
 recoverable in  
 assumpsit.

Idem, § 4.

SECT. 10. Sums due for rent on leases under seal or other-  
 2 wise and claims for damages to premises rented may be re-  
 3 covered in an action of assumpsit on amount annexed to the  
 4 writ specifying the items and amount claimed.

## Chapter 95.

## WASTE AND TRESPASS ON REAL ESTATE.

- Sect.* 1. Remedy if tenant for life or years commits waste; the heir may sue for waste committed in his ancestor's time, as well as in his own time.  
 2. Proceedings in court; jury in all cases to assess damages, with or without a view of the premises; action of the case may be brought.  
 3. Reversioner and remainder man may sue.  
 4. The action will lie against the executor or administrator.  
 5. Part owners not to commit waste without giving thirty days' notice; treble damages to be awarded in such case; how recovered and appropriated.  
 6. Defendant not to pay treble damages in certain cases.  
 7. Injunction to prevent waste pending a process for the recovery of lands, and on lands attached.  
 8. Treble damages may be recovered for waste on lands pending a suit therefor.  
 9. Trespass on lands of another without his consent.  
 10. Trespasses on public buildings or property.  
 11. Trespasses by taking grass, fruit, or other vegetables from improved lands.  
 12. Penalty for waste on lands of a person deceased insolvent.  
 13. Liability of executor or administrator for committing waste.  
 14. One or more tenants in common may join or sever in actions for damages.  
 15. Notice to the other cotenants to be given, who may become plaintiffs.  
 16. Judgment to be rendered for the whole damage, and execution to issue for the proportion which the plaintiffs have sustained.  
 17. Scire facias on such judgment by the other cotenants for their shares.  
 18. If one or more joint tenant takes the whole rent, the cotenants may recover their share, after demand.

Remedy if  
 tenant for life or  
 years commits  
 waste, &c.

SECT. 1. If any tenant in dower, by curtesy, for life, or for  
 2 years, commits or suffers any waste on the premises, the per-  
 3 son having the next immediate estate of inheritance in an  
 4 action of waste against such tenant may recover the place  
 5 wasted and the damages done to the premises; and an heir

6 in the same action may recover for waste done in his own  
7 time and the time of his ancestor.

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R. S., c. 129,  
§ 1, 2.

SECT. 2. Any issue of fact in the case shall be tried by a  
2 jury with or without a view of the premises, as the court  
3 orders; and the jury that enquires of the waste shall assess  
4 the damages. An action of the case in nature of waste  
5 may be substituted for the action of waste.

Proceedings in  
court, &c.

R. S., c. 129,  
§ 3, 4.

SECT. 3. The remainder man or reversioner for life, or  
2 years only, or fee simple or fee tail, after an intervening  
3 estate for life, may maintain such action, and recover the  
4 damages he has suffered by the waste.

Reversioner and  
remainder man  
may sue.

R. S., c. 229, § 5.

SECT. 4. Such action may be originally commenced against  
2 the executors or administrators of the tenant, or prosecuted  
3 against them after his death, when the action was brought  
4 against him.

The action will  
lie against the  
executor or  
administrator.  
R. S., c. 129, § 6.

SECT. 5. If any joint tenant, coparcener, or tenant in com-  
2 mon, of undivided lands cuts down, destroys or carries away  
3 any trees, timber, wood or underwood, standing or lying on  
4 such lands, or digs up or carries away any ore, stone or other  
5 valuable thing found thereon, or commits any strip or waste,  
6 without first giving thirty days notice in writing under his  
7 hand to all other persons, or to their agents or attorneys,  
8 and to mortgagors and mortgagees, if any there are, inter-  
9 ested therein of his intention to enter upon and improve the  
10 land; and if any persons interested are unknown, or their  
11 residence is unknown, or out of the state, the notice to them  
12 may be published in the state paper three times, the first  
13 publication to be forty days before such entry; or if he does  
14 any such acts pending a process for partition of the premises,  
15 he shall forfeit three times the amount of damages; and any  
16 one or more of the cotenants without naming the others, may  
17 sue for and recover their proportion of such damages.

Part owners not  
to commit waste  
without giving  
thirty days'  
notice, &c.

R. S., c. 129,  
§ 7, 8.  
1842, c. 31, § 15.  
1854, c. 78, § 1.

SECT. 6. If the jury finds, that the defendant in such suit  
2 has good reason to believe himself the owner of the land in  
3 severalty, or that he and those under whom he claims had  
4 been in the exclusive possession thereof claiming it as their  
5 own for three years next before the acts complained of were  
6 committed, only single damages shall be recovered.

Defendant not to  
pay treble dam-  
ages in certain  
cases.

R. S., c. 129, § 9.  
1854, c. 78, § 1.

SECT. 7. If any defendant in an action to recover posses-  
2 sion of real estate, or any person whose real estate is at-  
3 tached in a civil action, does any act of waste thereon, or  
4 threatens or makes preparations so to do, any justice of the  
5 supreme judicial court in vacation or term time may issue an  
6 injunction to stay such waste; but notice shall first be given

Injunction to  
prevent waste  
pending a  
process for the  
recovery of  
lands, and on  
lands attached.

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R. S., c. 129,  
§ 14.  
1843, c. 188,  
§ 12.

Treble damages  
may be recover-  
ed for waste  
on lands pending  
a suit therefor.

R. S., c. 129,  
§ 11.

Trespass on  
lands of another  
without his  
consent.

R. S., c. 129,  
§ 10.

Trespasses on  
public buildings  
or property.

R. S., c. 129,  
§ 12.

Trespasses by  
taking grass,  
fruit, or other  
vegetables from  
improved lands.

R. S., c. 129,  
§ 13.

Penalty for  
waste on lands  
of a person  
deceased  
insolvent.

R. S., c. 129,  
§ 15.

Liability of  
executor or  
administrator for  
committing  
waste.

R. S., c. 129,  
§ 16.

7 to the adverse party to appear and answer, unless the appli-  
8 cant files a bond with sufficient sureties to respond all dam-  
9 ages and costs; and the court may enforce obedience to such  
10 injunctions by such process as may be employed in an equity  
11 case, and dissolve it when deemed proper.

SECT. 8. If during the pendency of any action for the re-  
2 covery of land, the tenant makes any strip or waste by cut-  
3 ting, felling, or destroying any wood, timber, trees, or poles,  
4 standing on said land, he shall pay to the aggrieved party  
5 treble damages to be recovered in an action of trespass.

SECT. 9. If any person cuts down, destroys, injures, or car-  
2 ries away, any ornamental or fruit trees, timber, wood, under-  
3 wood, stones, gravel, ore, goods, or property of any kind, from  
4 land not his own without license of the owner, or injures or  
5 throws down any fences, bars, or gates, or leaves such gates  
6 open or breaks any glass in any building, he shall be liable  
7 in damages to the owner in an action of trespass.

SECT. 10. Where any trespasses are committed on any  
2 buildings, inclosures, monuments, or mile stones, belonging  
3 to any county, town, or parish, the treasurer of such corpora-  
4 tion may sue for the damages in the name of the corporation;  
5 and if the property injured belongs to a school district, the  
6 treasurer of the town may sue in the name of such district.

SECT. 11. If any person enters on any grass land, orchard,  
2 or garden, and takes therefrom without permission of the  
3 owner, any grass, hay, fruit, vegetable, or shrub, he shall be  
4 liable to the party injured in a sum equal to three times the  
5 value of the articles so taken away in an action of trespass.

SECT. 12. If an heir or devisee of a person deceased,  
2 whose estate is represented as insolvent, shall afterwards  
3 and before sale of the real estate for payment of debts or  
4 before all the debts are paid remove, or injure, any build-  
5 ing or trees, except what is needed for fuel or repairs, or  
6 commit any strip or waste on such estate, he shall forfeit  
7 treble the amount of damages to be recovered by the  
8 executor or administrator in an action of trespass.

SECT. 13. If such executor or administrator is heir or  
2 devisee, and commits any such trespass or waste, on proof  
3 thereof before the judge of probate he shall be liable to the  
4 same extent as the heirs or devisees; and in both cases the  
5 damages, when recovered by the executor or administrator  
6 or adjudged against him by the judge of probate, shall be  
7 accounted for in the administration account.

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SECT. 14. All or any of the tenants in common coparceners or joint tenants of any lands may join or sever in personal actions for injuries done to the same setting forth in the declaration the names of all other cotenants, if known.

One or more tenants in common may join, &c.

R. S., c. 129, § 17.

SECT. 15. When any such action is brought, the court may order notice to be given to all other cotenants known, and all or any of them at any time before final judgment may become plaintiffs in the action, and prosecute the suit for the benefit of all concerned.

Notice to the other co-tenants to be given, &c.

R. S., c. 129, § 18.

SECT. 16. The court shall enter judgment for the whole amount of the injury proved; but shall award execution only for the proportion thereof sustained by the plaintiffs.

Judgment to be rendered for the whole damage, &c.

R. S., c. 129, § 19.

SECT. 17. The remaining cotenants may afterwards either jointly or severally sue out a scire facias on such judgment, and execution shall be thereupon awarded for their proportion of the damages adjudged in the original suit.

Scire facias on such judgment by the other co-tenants for their shares.

R. S., c. 129, § 20.

SECT. 18. If any one or more of the joint tenants or tenants in common take the whole rents or income of the joint estate, or more than their share without the consent of their cotenants, and refuse after demand in a reasonable time to pay such tenants their share thereof, any one or more of said cotenants may have an action of special assumpsit against their cotenants so withholding the rents and income to recover their proportion thereof.

If one or more joint tenant takes the whole rent, &c.

1848, c. 61, § 1, 2.

## Chapter 96.

## REPLEVIN OF BEASTS AND CHATTELS.

## REPLEVIN OF BEASTS.

Sect. 1. Owner of beasts distrained, may replevy them.

2. The mode of proceeding, process, &c.

3. Bond to be given before service of writ.

4. If the beasts are lawfully distrained, defendant to have judgment for forfeiture or damages, fees, costs and expenses or for a return.

5. If unlawfully distrained, plaintiff to have judgment for damages and costs.

6. Either party may appeal.

7. In what cases a cause may be transferred from a justice to the supreme judicial court.

## REPLEVIN OF GOODS.

8. Any goods, unlawfully detained, may be replevied.

9. In what courts replevin may be brought.

10. Bond to be given before service.

11. If plaintiff fails in his suit, defendant to have judgment for return, and for damages and costs.

12. Assessment of damages on judgment for return of property to an attaching officer.

13. Disposal of the money recovered by the officer.



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- Sect. 14.* Appropriation of the money received by the creditor in such cases.  
 15. Judgment for damages and costs if plaintiff recovers.  
 16. Continuance of attachment, if goods are replevied.  
 17. When a writ of reprisal may issue.  
 18. Defendant's remedy on the replevin bond.  
 19. Limitation of surety's liability on replevin bond.

*Replevin of beasts.*

Owner of beasts  
distrained, may  
replevy them.

SECT. 1. Any person, whose beasts are distrained or im-  
 2 pounded to recover any penalty or forfeiture supposed to  
 3 be incurred by their going at large or to obtain satisfaction  
 4 for any damages alleged to be done by them, may maintain  
 5 a writ of replevin against the impounder or finder therefor  
 6 before any justice of the peace for the county in the form  
 7 prescribed by law. (a)

R. S., c. 130, § 1.

The mode of  
proceeding,  
process, &c.

SECT. 2. The writ shall be sued out served and returned  
 2 and the cause shall be heard and determined as is provided  
 3 in the case of other civil actions before a justice of the peace  
 4 except as otherwise prescribed.

R. S., c. 130, § 2.

Bond to be given  
before service of  
writ, &c.

SECT. 3. The writ shall not be served, unless the plaintiff  
 2 or some one in his behalf executes and delivers to the officer  
 3 a bond to the defendant with sufficient sureties to be approved  
 4 by the officer in a penalty double the actual value of the prop-  
 5 erty to be replevied conditioned, as in the prescribed form  
 6 of the writ and to be returned with the writ for the use of  
 7 the defendant.

R. S., c. 130, § 3.

If the beasts  
are lawfully  
distrained, &c.

SECT. 4. If it appears that the beasts were lawfully taken  
 2 or distrained, the defendant shall have judgment for such sum  
 3 as is found due from the plaintiff for the penalty or forfeit-  
 4 ure, or for damages for which the beasts were impounded,  
 5 with the legal fees costs and expenses occasioned by the dis-  
 6 tress and the costs of the replevin suit; or instead thereof  
 7 the justice or court in their discretion may enter judgment  
 8 for a return of the beasts to the defendant to be held by him  
 9 for the original purpose irrepleviable by plaintiff and for the  
 10 defendant's damages and costs in the replevin suit.

R. S., c. 130, § 4.

If unlawfully  
distrained, &c.

SECT. 5. If it appears, that the beasts were taken or  
 2 distrained without justifiable cause, the plaintiff shall have  
 3 judgment for his damages and costs.

R. S., c. 130, § 5.

Either party  
may appeal.  
R. S., c. 130, § 6.

SECT. 6. Either party may appeal from the final judgment  
 2 of the justice, as in other civil actions.

In what cases a  
cause may be  
transferred from

SECT. 7. When it appears, that the sum demanded for the  
 2 penalty forfeitures or damages exceeds twenty dollars, or

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a justice to the  
supreme judicial  
court.

3 that the property of the beasts is in question and their value  
4 exceeds twenty dollars, or that the title to real estate is in  
5 question, at the request of either party the case shall be  
6 transferred to the supreme judicial court to be there dis-  
7 posed of, as is provided by law respecting actions brought  
8 before a justice of the peace, in which the title to real estate  
9 is brought in question; but the party requesting such trans-  
10 fer shall recognize in such reasonable sum, as the justice  
11 orders, to enter the action at the next term of said court  
12 and prosecute it with effect and pay all intervening damages  
13 and costs.

R. S., c. 130, § 7.

*Replevin of goods.*

SECT. 8. When any goods unlawfully taken or detained  
2 from the owner or person entitled to the possession thereof,  
3 or attached on mesne process, or taken in execution, are  
4 claimed by any person other than the defendant in the suit,  
5 in which they are so attached or taken, such owner or person  
6 may cause them to be replevied. (a)

Any goods,  
unlawfully  
detained, may  
be replevied.

R. S., c. 130, § 8.

SECT. 9. If the value of the goods exceeds the sum of  
2 twenty dollars, the action shall be brought in the supreme  
3 judicial court for the county where the goods are detained;  
4 and if the value of the goods does not exceed twenty dollars  
5 the action shall be brought before a justice of the peace of  
6 the county where the goods are detained.

In what courts  
replevin may be  
brought.

R. S., c. 130, § 9.

SECT. 10. The officer before serving the writ shall take  
2 from the plaintiff or some one in his behalf a bond to the  
3 defendant with sufficient sureties in double the value of the  
4 goods to be replevied conditioned as in the prescribed form  
5 of the writ, which bond shall be returned to the court from  
6 which the writ issued with the writ for the use of the  
7 defendant. (b)

Bond to be  
given before  
service.

R. S., c. 130,  
§ 10.

SECT. 11. If it appears, that the defendant is entitled to  
2 a return of the goods, he shall have judgment and a writ of  
3 return accordingly with damages for the taking and costs.

If plaintiff fails  
in his suit, &c.  
R. S., c. 130,  
§ 11.

SECT. 12. If the goods when replevied were taken in exe-  
2 cution or attached, and judgment is afterwards rendered for  
3 the attaching creditor, in either case, if the service of the  
4 execution is delayed by the replevin, the damages in case of  
5 a judgment for a return shall not be less than at the rate of

Assessment of  
damages on  
judgment for  
return of  
property to an  
attaching officer.

R. S., c. 130,  
§ 12.

(a) 12, Me. 261. 15, Me. 373. 19, Me. 255. 20, Me. 267. 22, Me. 537. 30, Me. 184, 370.  
31, Me. 296, 340. 32, Me. 192, 322. 37, Me. 326.

(b) 27, Me. 443. 29, Me. 566. 34, Me. 84. 35, Me. 53.

## CHAP. 96.

Disposal of the  
money recovered  
by the officer.

R. S., c. 130,  
§ 13.

Appropriation  
of the money  
received by the  
creditor in such  
cases.

R. S., c. 139,  
§ 14.

Judgment for  
damages and  
costs if plaintiff  
recovers.  
R. S., c. 130, § 15.

Continuance  
of attachment, if  
goods are  
replevied.

R. S., c. 130,  
§ 16.

6 twelve per cent. by the year on the value of the goods for so  
7 long a time, as the service of the execution is so delayed. (a)

SECT. 13. All sums recovered by an officer in an action of  
2 replevin on account of goods attached or taken in execution  
3 by him, or recovered in a suit upon the replevin bond, shall  
4 be applied:

5 *First*—To pay the lawful fees and charges of the officer,  
6 and the reasonable expenses of the replevin suit and of the  
7 action on the bond, so far as they are not reimbursed by the  
8 costs recovered.

9 *Second*—To pay the creditor, at whose suit the goods were  
10 attached or taken in execution, the sum if any recovered by  
11 him in that suit or what remains unpaid, with interest there-  
12 for at the rate of twelve per cent. by the year for the time  
13 the money was withheld from the creditor or the service of  
14 his execution delayed by reason of the replevin.

15 *Third*—If the attaching creditor in such case does not re-  
16 cover judgment in his suit, or if any balance remains of the  
17 money so recovered by the officer after paying the creditor  
18 his due, such balance or the whole amount, as the case may  
19 be, shall be applied, as the surplus of the proceeds of sale  
20 should be applied, if the same goods had been sold on exe-  
21 cution.

SECT. 14. All sums received by such creditor as proceeds  
2 of sales of goods attached or taken in execution which are  
3 afterwards returned, for any of such goods not returned, and  
4 of the officer for the insufficiency of the bond, shall be ap-  
5 plied in discharge of the creditor's judgment; but all sums  
6 received as interest or damages for delay of his execution  
7 shall be retained to his own use, and not go in discharge of  
8 the judgment.

SECT. 15. If it appears that the goods were taken attached  
2 or detained unlawfully the plaintiff shall have judgment for  
3 his damages caused thereby and for his costs.

SECT. 16. If the goods replevied had been attached, in case  
2 of judgment for a return they shall be held by the attachment  
3 until thirty days after judgment in the suit, in which they were  
4 attached; and if such final judgment is rendered before the  
5 return of the goods, or if the goods when replevied were  
6 seized on execution, they shall be held by the same attach-  
7 ment or seizure for thirty days after the return liable to be  
8 taken and disposed of, as if they had not been replevied.

## CHAP. 97.

SECT. 17. When the officer in the service of the writ of return and restitution is not able to find in his precinct the beast or other property directed to be returned in his precinct, he shall certify that fact in his return; and the court whence it issued upon notice may grant a writ of reprisal of the form prescribed by law against the plaintiff in replevin to take his goods or beasts, not exempted from attachment, of the full value to be delivered to the defendant to be held and disposed of by him according to law, until the plaintiff restores the beast or other property replevied by him.

When writ of reprisal may issue.

R. S., c. 130, § 17.

SECT. 18. The foregoing provisions shall not preclude the defendant from resorting to his remedy on the replevin bond, or to his remedy against the officer for the insufficiency of sureties on the bond, to recover the value of the goods together with the damage or loss occasioned by the replevin thereof, notwithstanding he has endeavored to recover the same by the writs of return and of reprisal as aforesaid.

Defendant's remedy on the replevin bond.

R. S., c. 130, § 18.

SECT. 19. No action shall be maintained against any person as surety in a replevin bond, unless the writ is served on him within one year after the final judgment in the action of replevin; or if the action is not entered by the plaintiff, and the defendant does not obtain judgment upon a complaint, such writ against the surety may be served on him within one year after the end of the term, at which the action of replevin ought to have been entered and not afterwards.

Limitation of surety's liability on replevin bond.

R. S., c. 130, § 19.

## Chapter 97.

## BASTARD CHILDREN AND THEIR MAINTENANCE.

- Sect. 1. Accusations by a woman pregnant with a bastard child, and her examination.
2. Justice may issue a warrant.
  3. Person arrested to give bond.
  4. On refusal, to be committed.
  5. Cause to be continued, if complainant is not delivered, or unable to attend court.
  6. Surrender of principal by his sureties, and proceedings.
  7. Declaration must be filed before trial; form thereof.
  8. Complainant may be a witness, if she has continued constant in her accusations.
  9. Proceedings if respondent is adjudged guilty.
  10. If not guilty, respondent to be discharged.
  11. Complainant not to settle with the father, unless by the written consent of the overseers of the poor.
  12. The father may be discharged from imprisonment, on taking the poor debtor's oath; his liability to the mother and town, after such discharge.

## CHAP. 97.

Accusations by  
a woman  
pregnant with a  
bastard child,  
and her  
examination.

R. S., c. 131, § 1.

Justice may  
issue a warrant.

R. S., c. 131, § 2.

Person arrested  
to give bond.

R. S., c. 131, § 3.

On refusal, to be  
committed.

R. S., c. 131, § 4.

Cause to be  
continued, &c.

R. S., c. 131, § 5.

Surrender of  
principal by his  
sureties, &c.  
R. S., c. 131, § 6.  
R. S., c. 114,  
§ 100.

Declaration  
must be filed  
before trial;  
form thereof.

R. S., c. 131, § 7.

Complainant  
may be a  
witness, &c.

SECT. 1. When any woman pregnant with a child, which  
2 if born alive may be a bastard, or who has been delivered  
3 of a bastard child, accuses any man of being the father  
4 thereof before any justice of the peace and requests a pros-  
5 ecution against him, such justice shall take her accusation  
6 and examination on oath respecting the accused, and the  
7 time and place when and where the child was begotten, as  
8 correctly as they can be described, and all such other circum-  
9 stances as he deems useful in the discovery of the truth. (a)

SECT. 2. He may issue his warrant for the apprehension  
2 of such person directed to the sheriff of any county, in which  
3 the accused is supposed to reside, accompanied by such  
4 accusation and examination.

SECT. 3. When the person is brought before such or any  
2 other justice, he may require him to give bond to the com-  
3 plainant with sufficient sureties, in such reasonable sum as  
4 he orders, conditioned for his appearance at the next supreme  
5 judicial court for the county in which she resides, and for his  
6 abiding the order of court thereon. (b)

SECT. 4. If the accused refuses or neglects to give such  
2 bond, the justice shall commit him to the jail of the county  
3 of such justice, until such bond is given.

SECT. 5. If at such next or any subsequent court the com-  
2 plainant has not been delivered of her child, or is unable to  
3 attend court, or for other good reason, the cause may be  
4 continued, and the bond shall remain in force until final  
5 judgment, unless it becomes void as mentioned in the follow-  
6 ing section.

SECT. 6. The sureties of the accused may surrender him  
2 in court at any time before final judgment, and thereupon  
3 they shall be discharged; and he shall be committed until a  
4 new bond is given.

SECT. 7. Before proceeding to trial the complainant must  
2 file a declaration, stating that she has been delivered of a  
3 bastard child begotten by the accused, the time and place  
4 when and where it was begotten, with as much precision as  
5 the case will admit, that being put on the discovery of the  
6 truth during the time of her travail she accused the respond-  
7 ent of being the father of the child, and that she has been  
8 constant in such accusation.

SECT. 8. When the complainant has made said accusation,  
2 been examined on oath as before mentioned, and been put

3 upon the discovery of the truth of the same accusation at  
 4 the time of her travail, and thereupon has accused the same  
 5 man with being the father of the child of which she is about  
 6 to be delivered, and has continued constant in such accusa-  
 7 tion, and prosecutes him as the father of such child before  
 8 such court, the man shall be held to answer to such com-  
 9 plaint, and she may be a witness in the trial, unless incom-  
 10 petent by reason of a conviction of some crime. (a)

R. S., c. 131, § 8.

SECT. 9. If on such issue the jury finds the respondent  
 2 guilty, or the facts in the declaration filed are admitted by  
 3 default or on demurrer, he shall be adjudged the father of  
 4 such child, and stand charged with its maintenance with the  
 5 assistance of the mother, as the court may order; and shall  
 6 give a bond with sufficient sureties approved by the court to  
 7 the complainant to perform said order, and a bond with suffi-  
 8 cient sureties approved as aforesaid to the town that may  
 9 be liable for the maintenance of such child; the latter bond  
 10 to be deposited with the clerk of the court for the use of  
 11 such town; and he shall be committed till he gives such bonds.

Proceedings if  
respondent is  
adjudged guilty.

R. S., c. 131, § 9.

SECT. 10. If on trial the jury finds the respondent not  
 2 guilty, the court shall order him to be discharged.

If not guilty, &c.  
R. S., c. 131,  
§ 10.

SECT. 11. No woman, whose accusation and examination  
 2 on oath have been taken by a justice of the peace at her  
 3 request, shall make any settlement with the father, or give  
 4 him any discharge to bar or affect any such complaint with-  
 5 out the consent in writing of the overseers of the poor of the  
 6 town interested in the support of such mother or child. (b)

Complainant  
not to settle  
with the father,  
&c.R. S., c. 131,  
§ 11.

SECT. 12. When the father of such bastard child has  
 2 remained ninety days in jail without being able to comply  
 3 with the order of court, he may be liberated by taking the  
 4 poor debtor's oath, as persons committed on execution: but  
 5 he shall give fifteen days notice of his intention to take  
 6 the benefit of such oath to the complainant, if then living,  
 7 and to the clerk of the town where the child has its legal  
 8 settlement if in this state. The mother of such child and  
 9 said town may, after such liberation of such prisoner, recover  
 10 of him by action of debt any sum of money, which ought  
 11 to have been paid pursuant by the order of court. (c)

The father may  
be discharged  
from imprison-  
ment, &c.R. S., c. 131,  
§ 12, 13.

(a) 23, Me. 573. 34, Me. 237. 35, Me. 433. (b) 18, Me. 150. (c) 32, Me. 21.

## CHAP. 98.

## Chapter 98.

## PERSONAL PROPERTY SEIZED, AND LOST GOODS; AND PROCEEDINGS THEREON.

- Sect.* 1. Seizure of forfeited personal property, by the person entitled thereto.  
 2. To be restored to claimant, on his giving bond.  
 3. The same to be appraised.  
 4. Inventory and appraisal, if there is no claimant.  
 5. If the value exceeds twenty dollars, libel to be in the supreme judicial court.  
 6. How notice of libel to be given.  
 7, 8. Proceedings and decree thereon.  
 9. If the value is less than twenty dollars, libel to be before a justice.  
 10. Appeal; decree to be affirmed, if appeal is not prosecuted; depositions may be used in the trial.  
 11, 12. Duty of finder of goods worth three dollars, or more; also, worth ten dollars or more.  
 13. Proceedings, if owner appears in one year.  
 14. If no owner appears within one year, the finder to have the money, or goods, on paying one half the value to the town treasurer.  
 15. Penalty, if finder neglects to give notice.

Seizure of forfeited personal property, &c.

R. S., c. 132, § 1.

To be restored to claimant, on his giving bond.

R. S., c. 132, § 2.

The same to be appraised.

R. S., c. 132, § 3.

Inventory and appraisal, if there is no claimant.

R. S., c. 132, § 4.

If the value exceeds \$20, &c.

R. S., c. 132, § 5.

SECT. 1. When any personal property is forfeited for any offense, and no special mode is prescribed for recovering it, any person entitled to the whole or part of the same may seize and keep it till final judgment, unless restored on the bond as herein provided.

SECT. 2. If the person claiming it for himself or another gives bond to the party seizing with sufficient surety to pay the appraised value thereof, when it is decreed forfeited, it shall be restored to such claimant.

SECT. 3. The value shall be ascertained by the appraisement of three disinterested men mutually chosen by the parties; or if they cannot agree, by a justice of the peace of the same county.

SECT. 4. If no person claims the property, after it has been so seized, the party seizing shall cause an inventory and appraisement thereof to be made by three disinterested persons under oath appointed by a justice of the same county; which shall be the rule for deciding where the libel shall be filed.

SECT. 5. If the property seized exceeds twenty dollars, the party seizing within twenty days thereafter shall file a libel in the clerk's office of the supreme judicial court in the county, where the offense was committed, stating the cause of seizure and praying for a decree of forfeiture. The clerk thereupon shall make out a notice to all persons to appear at such court at the time appointed to show cause, why such decree should not be passed.

## CHAP. 98.

SECT. 6. Such notice shall be published in some newspaper  
 2 printed in the same county if any, if not in the state paper,  
 3 at least fourteen days before the time of trial.

How notice of  
 libel to be given.  
 R. S., c. 132, § 6.

SECT. 7. When there is a claimant the court may hear and  
 2 determine the cause by a jury, or without if the parties  
 3 agree, and may allow costs against the claimant; if there is  
 4 no claimant, the court shall decree the forfeiture and dispo-  
 5 sition of the property according to law, and a sale and dis-  
 6 tribution of the proceeds after deducting all proper charges.

Proceedings  
 and decrees  
 thereon.

R. S., c. 132, § 7.

SECT. 8. If the libel is not supported or is discontinued,  
 2 the court shall decree a restoration of the property with  
 3 costs. If the jury or court finds the seizure without proba-  
 4 ble cause, reasonable damages shall be decreed for the  
 5 claimant.

If the libel is  
 not supported or  
 is discontinued,  
 &c.

R. S., c. 132, § 8.

SECT. 9. When the property seized does not exceed  
 2 twenty dollars, the libel shall be filed before a justice of the  
 3 peace of the county, where the offense was committed, and  
 4 after notice as before mentioned has been posted at two or  
 5 more public places in the same county seven days at least  
 6 before the day of trial, such justice shall try and decide the  
 7 cause, and make such decree therein as the law requires.

If the value is  
 less than \$20,  
 &c.

R. S., c. 132,  
 § 9.

SECT. 10. Either party may appeal to the next supreme judi-  
 2 cial court in the same county recognizing as in other cases of  
 3 appeal; if the appeal is not prosecuted, the court on com-  
 4 plaint may affirm the decree of the justice with costs; and  
 5 depositions duly taken may be used in the trial of the action.

Appeal; decree  
 to be affirmed,  
 &c.

R. S., c. 132,  
 § 10, 11, 12.

SECT. 11. The finder of any money or goods of the value  
 2 of three dollars or more, if the owner is unknown, within  
 3 ten days next following shall give notice thereof in writing  
 4 to the clerk of the town where they are found, and post up  
 5 a notification thereof in some public place in said town, and  
 6 cause the same to be publicly cried therein on three several  
 7 days, if there is any public crier in said town. And if the  
 8 value of said money or goods is ten dollars or more, the  
 9 same shall be cried and notice given by posting as aforesaid  
 10 in two towns adjoining in addition.

Duty of finder  
 of goods worth  
 \$3, or more, &c.

R. S., c. 132,  
 § 13, 14.

SECT. 12. Every finder of lost goods of the value of ten  
 2 dollars or more within two months after finding and before  
 3 using them to their disadvantage shall procure a warrant  
 4 from the town clerk or a justice of the peace directed to  
 5 two persons appointed by said clerk or justice not inter-  
 6 ested, except as inhabitants of the town, returnable within  
 7 seven days from the date in the said clerk's office to ap-  
 8 praise said goods under oath.

Also, worth \$10,  
 or more.

R. S., c. 132,  
 § 15.



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Proceedings, if  
owner appears  
in one year.

R. S., c. 132,  
§ 16.

If no owner  
appears within  
one year, &c.

R. S., c. 132,  
§ 17.

Penalty, if  
finder neglects  
to give notice.

R. S., c. 132,  
§ 18.

SECT. 13. If the owner of such lost money or goods ap-  
2 pears within one year after said notice to the clerk, and  
3 gives reasonable evidence of his ownership to the finder, he  
4 shall have restitution of the same or the value thereof allow-  
5 ing and paying all necessary charges and reasonable com-  
6 pensation to the finder to be adjudged by some justice of the  
7 peace of the county, if the owner and finder cannot agree.

SECT. 14. If no owner appears within one year, such money  
2 or lost goods shall belong to the finder by paying one half  
3 their value to the treasurer of said town after deducting all  
4 necessary charges; but if he neglects to pay the same on  
5 demand, it may be recovered in an action brought by said  
6 treasurer in the name of the town.

SECT. 15. If the finder of any lost money or goods, of the  
2 value of three dollars or more neglects to give notice to the  
3 town clerk and cause the same to be cried and advertised  
4 as herein provided, he shall forfeit the full value thereof,  
5 one half to the use of the town, and the other half to him  
6 who sues therefor, and be liable to the owner for the lost  
7 money or goods.

**Chapter 99.****HABEAS CORPUS.**

- Sect. 1.* Who may prosecute the writ, as matter of right.  
 2. Minors enlisting in the army or navy, entitled to benefits of this chapter.  
 3. Parent, master or guardian of minor restrained, entitled to such writ.  
 4. Supreme judicial court may grant such writ, on application of any person, in  
 behalf of one incapable of making his own application.  
 5. Who are not so entitled as of right.  
 6. Application; how made by persons not of right entitled.  
 7. To be returnable before the court, or any justice thereof.  
 8. Application to be in writing, signed and sworn to, and shall state the case  
 clearly.  
 9. When the writ shall not issue.  
 10. Proceedings, if excessive bail is demanded.  
 11. If the officer refuses a copy of the precept, the writ shall issue forthwith.  
 12. Form of writ, in cases mentioned in the fifth section.  
 13. Time of service and return. Tender of fees.  
 14. Officer, when he makes return, to bring the body of the person restrained.  
 15. Proceedings, if the person is sick, and cannot be brought.  
 16. Examination of the causes of restraint.  
 17. Persons interested to be notified before discharged.  
 18, 19, 20. Proceedings and decision upon the application.  
 21. Form of writ, if the restraint is not by an officer.  
 22. By whom issued and where served.  
 23. If the person restraining is unknown, how designated.  
 24. If the person restrained is unknown, how designated.  
 25. Form of return in the cases mentioned in the thirteenth and twenty-first sec-  
 tions.

- Sect.* 26. How such return shall be authenticated.
27. Manner of keeping the party before judgment.
28. Penalty for neglect of an officer to give a copy of his precept for detaining a prisoner.
29. Punishment, if an officer neglects to serve a writ of habeas corpus.
30. If attachment is issued against a sheriff.
31. Proceedings in such case for release of the person for whose benefit the writ issued.
32. Persons discharged on habeas corpus, not to be arrested again, except in certain cases.
33. Conveyance to prison of persons ordered to be committed. Penalty for eluding the service of a writ of habeas corpus.
34. Penalties no bar to actions for damages.
35. A third person may appear for the party detained in certain cases.
36. Supreme court may allow bail, at discretion, or any justice thereof. Exception.
37. Admission of a person to bail, when committed for not finding sureties.
38. Habeas corpus may issue to bring in a prisoner as a witness.
39. Habeas corpus may issue, on application, in behalf of an insane person, committed on mesne process, or execution.

SECT. 1. Every person unlawfully deprived of his personal liberty by the act of another, except in the cases hereinafter mentioned, shall of right have a writ of habeas corpus according to the provisions herein contained.

Who may prosecute the writ, as matter of right.  
R. S., c. 140, § 1.

SECT. 2. Any minor enlisted within this state into the army or navy of the United States without the written consent of his parent guardian or master shall have all the benefits of this chapter on the application of himself parent guardian or master.

Minors enlisting into the army or navy, &c.

R. S., c. 140,  
§ 37.

SECT. 3. The parent master or guardian of any minor imprisoned or restrained of his liberty shall be entitled to the writ of habeas corpus for such minor, in case the minor would be entitled to said writ on his own application.

Parent, master or guardian of minor restrained, &c.  
1845, c. 138, § 1.

SECT. 4. The supreme judicial court or any justice thereof on application of any person may issue the writ of habeas corpus to bring before them any party alleged to be imprisoned or restrained of his liberty, who would be entitled to said writ on his own application, when from any cause he is incapable of making such application.

Supreme judicial court may grant such writ, &c.

1845, c. 138, § 2.

SECT. 5. The following persons shall not of right have such writ:

Who are not so entitled as of right.

*First*—Persons committed to and confined in prison for treason, felony, or suspicion thereof, or as accessories before the fact to a felony, when the same is plainly and specially expressed in the warrant of commitment.

*Second*—Persons convicted or in execution upon legal process criminal or civil.

## CHAP. 99.

R. S., c. 140, § 2.

Application ;  
how made by  
persons not of  
right entitled.

R. S., c. 140, § 3.

To be returnable  
before the court,  
&c.

R. S., c. 140, § 4.

Application to  
be in writing,  
&c.R. S., c. 140, § 5.  
1845, c. 138,  
§ 2, 3.When the writ  
shall not issue.

R. S., c. 140, § 6.

Proceedings, if  
excessive bail is  
demanded.

R. S., c. 140, § 7.

If the officer  
refuses a copy of  
the precept, &c.

R. S., c. 140, § 8.

Form of writ in  
cases mentioned  
in the fifth  
section.

9 *Third*—Persons committed on mesne process in any civil  
10 action, on which they are liable to be arrested and impris-  
11 oned.

SECT. 6. Every application for such writ by any such per-  
2 son shall be made to the supreme judicial court in the county  
3 where the restraint exists, if it is in session; if not to any  
4 justice thereof; and when issued by the court, it shall be re-  
5 turnable thereto; but if the court is adjourned without day  
6 or for more than seven days, it may be returned before any  
7 justice thereof and heard and determined by him.

SECT. 7. When issued by a justice of the court, it may be  
2 made returnable before the court or himself or any other  
3 justice thereof.

SECT. 8. The application shall be in writing and signed  
2 and sworn to by the person making it. The applicant shall  
3 state the place where and the person by whom, he or the  
4 person in whose behalf the application is made is restrained;  
5 and produce to the court or justice a copy of the precept by  
6 virtue of which he or such other person is so restrained at-  
7 tested by the officer holding it.

SECT. 9. If on inspection of the copy of such precept it  
2 appears to the court or justice, that such person is lawfully  
3 imprisoned or restrained of his liberty by virtue thereof, a  
4 writ of habeas corpus shall not be granted.

SECT. 10. If it appears by such copy that such person is  
2 committed and imprisoned on mesne process for want of  
3 bail, and the court or justice is of the opinion that excessive  
4 bail is demanded, the court or justice shall decide what bail  
5 is reasonable, and on giving such bail to the plaintiff he  
6 shall be discharged.

SECT. 11. If the prison keeper or other officer having the  
2 custody of such person refuses or unreasonably delays to  
3 deliver to the applicant an attested copy of the precept by  
4 which he restrains him on demand therefor, the court or  
5 justice on proof of such demand and refusal shall forthwith  
6 issue the writ of habeas corpus as prayed for.

SECT. 12. When such writ is issued on application in be-  
2 half of any person described in the fifth section, it shall be  
3 substantially as follows:

4 STATE OF MAINE.

5 C——, ss. To A. B. of——;

6 [L. S.]

Greeting.

7 We command you, that the body of C. D., in our prison,  
8 at —— under your custody, (or by you imprisoned and re-

9 strained of his liberty, as the case may be) as it is said,  
 10 together with the day and cause of his taking and detaining,  
 11 by whatsoever name the said C. D. is called or charged, you  
 12 have before our supreme judicial court holden at \_\_\_\_\_ in  
 13 and for the county of \_\_\_\_\_ immediately after the receipt  
 14 of this writ to do and receive, what our said court shall then  
 15 and there consider concerning him in this behalf, and have  
 16 you there this writ.

17 Witness \_\_\_\_\_, at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_,  
 18 in the year \_\_\_\_\_.

19 \_\_\_\_\_, clerk.

20 The like form shall be used by any justice of said court,  
 21 changing what should be changed, when such writ is awarded  
 22 by him.

R. S., c. 140, § 9.

SECT. 13. When such writ is offered to the officer to whom  
 2 it is directed, he shall receive it; and on payment or tender  
 3 of such sum as the court or justice thereof directs shall make  
 4 due return thereof within three days, if the place of return  
 5 is within twenty miles of the place of imprisonment; if over  
 6 twenty and less than one hundred miles within seven days;  
 7 and if more than one hundred miles within fourteen days;  
 8 but if such writ was issued against such officer, on his refusal  
 9 or neglect to deliver on demand to the applicant a copy of  
 10 the precept by which he restrained the person of his liberty,  
 11 in whose behalf application was made, then the officer shall  
 12 be bound to obey the writ without payment or tender of  
 13 expenses.

Time of service  
and return, &c.

R. S., c. 140,  
§ 10.

SECT. 14. The person making the return shall at the same  
 2 time bring the body of the party, if in his custody or power  
 3 or under his restraint, according to the command of the writ,  
 4 unless prevented by sickness or infirmity of such party.

Officer, when he  
makes return, to  
bring the body  
of the person  
restrained.  
R. S., c. 140,  
§ 11.

SECT. 15. When by reason of such sickness or infirmity he  
 2 cannot without danger be brought to the place appointed in  
 3 the writ, that fact shall be stated in the return, and if proved  
 4 to the satisfaction of the court or justice, any justice of the  
 5 court may proceed to the place where the party is confined  
 6 and there make his examination, or may adjourn the same  
 7 to another time, or make such other order in the case as  
 8 law and justice requires.

Proceedings, if  
the person is  
sick, and cannot  
be brought.

R. S., c. 140,  
§ 12.

SECT. 16. On the return of the writ the court or justice  
 2 without delay shall proceed to examine the causes of impris-  
 3 onment or restraint; and may adjourn such examination from  
 4 time to time.

Examination of  
the causes of  
restraint.  
R. S., c. 140,  
§ 13.

## CHAP. 99.

Persons interested to be notified before discharge.

R. S., c. 140, § 14.

Proceedings and decision upon the application.

R. S., c. 140, § 15.

If no legal cause is shown for imprisonment or restraint of party, court or justice shall discharge, &c.

R. S., c. 140, § 16.

Party imprisoned and detained for any offense which is bailable, shall be admitted to bail.

Bail, &c.  
R. S., c. 140, § 17.

Form of writ, if the restraint is not by an officer.

SECT. 17. When it appears that the party is detained on  
2 any process, under which any other person has an interest  
3 in continuing such imprisonment or restraint, the party shall  
4 not be discharged until notice has been given to such other  
5 person or his attorney if within the state or within thirty  
6 miles of the place of examination to appear and object, if he  
7 see cause; and if imprisoned on any criminal accusation he  
8 shall not be discharged, until sufficient notice has been given  
9 to the attorney general or other attorney for the state, that  
10 he may appear and object, if he thinks fit.

SECT. 18. The party imprisoned or restrained may deny  
2 any facts stated in the return or statement and may allege  
3 any other facts, that are material; and the court or justice  
4 may in a summary way examine the cause of imprisonment  
5 or restraint, and hear evidence produced by any person  
6 interested both in support of such imprisonment or restraint  
7 and against it; and thereupon may dispose of the party, as  
8 law and justice requires.

SECT. 19. If no legal cause is shown for the imprisonment  
2 or restraint of the party, the court or justice shall discharge  
3 him; but this provision shall not apply to the case of a per-  
4 son committed on mesne process, where excessive bail is  
5 demanded. (a)

SECT. 20. If the party is imprisoned and detained for any  
2 offense, which is bailable, he shall be admitted to bail, if  
3 sufficient bail is offered; and if not he shall be remanded  
4 with an order of the court or justice 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  
7 any time before the sitting of the court bail the party pur-  
8 suant to such order.

SECT. 21. In cases of imprisonment or restraint of personal  
2 liberty by any person not a sheriff, deputy sheriff, coroner,  
3 constable, jailer, or marshal, deputy marshal, or other officer  
4 of the courts of the United States, the writ shall be in the  
5 following form viz:

## STATE OF MAINE.

(Seal.) To the sheriffs of our several counties and their  
8 respective deputies, Greeting.  
9 We command you, that the body of C. D. of ——— im-  
10 prisoned and restrained of his liberty, as it is said, by A. B.  
11 of ———, you take and have before our supreme judicial

12 court holden at ——— immediately after receipt of this  
 13 writ to do and receive, what our court shall then and there  
 14 consider concerning him in this behalf; and summon the said  
 15 A. B. then and there to appear before our said court to show  
 16 cause of the taking and detaining of the said C. D., and have  
 17 you there this writ with your doings thereon. Witness,  
 18 our ——— at ———, this ——— day of ———, in the  
 19 year ———. ———, Clerk.

R. S., c. 140,  
 § 18.

SECT. 22. Such writ may be issued by the supreme judicial  
 2 court, when sitting in any county in which the person in  
 3 whose behalf application is made is restrained, or by any  
 4 justice thereof, the form to be varied so far as necessary,  
 5 when issued by a justice of the court, and served in any  
 6 county in the state.

By whom issued  
 and where  
 served.

R. S., c. 140,  
 § 19, 20.

SECT. 23. The person having custody of the prisoner may  
 2 be designated by the name of his office, if he has any, or by  
 3 his own name; or if both are unknown or uncertain, he may  
 4 be described by an assumed name; and any one, who is  
 5 served with the writ, shall be deemed the person thereby  
 6 intended.

If the person  
 restraining is  
 unknown, &c.

R. S., c. 140,  
 § 21.

SECT. 24. The person detained and to be produced shall  
 2 be designated by his name if known; and if unknown or un-  
 3 certain he may be described in any other way, so as to make  
 4 known who is intended.

If the person  
 restrained is  
 unknown, &c.  
 R. S., c. 140,  
 § 22.

SECT. 25. In cases provided for in the thirteenth section  
 2 the person who makes the return, and in cases provided for  
 3 in the twenty-first section the person in whose custody the  
 4 prisoner is found, shall state in writing to the court or jus-  
 5 tice before whom the process is returned plainly and unequiv-  
 6 ocally,—

Form of return  
 in the cases men-  
 tioned in the  
 13th and 21st  
 sections.

7 *First*—Whether he has or has not the party in his custody  
 8 or power or under restraint;

9 *Second*—If he has, he shall state at large the authority and  
 10 the true and whole cause of such imprisonment or restraint  
 11 upon which the party is detained; and,

12 *Third*—If he has had the party in his custody or power or  
 13 under his restraint, and has transferred such custody or  
 14 restraint to another, he shall state particularly to whom, at  
 15 what time, for what cause, and by what authority, such trans-  
 16 fer was made.

R. S., c. 140,  
 § 23.

SECT. 26. Such return or statement shall be signed and  
 2 sworn to by the person making it, unless he is a sworn pub-  
 3 lic officer, and makes and signs his return in his official  
 4 capacity.

How such return  
 shall be authen-  
 ticated.  
 R. S., c. 140,  
 § 24.

## CHAP. 99.

Manner of keeping the party before judgment.  
R. S., c. 140, § 25.

Penalty for neglect of an officer to give a copy of his precept, &c.

R. S., c. 140,  
§ 26.

Punishment, if an officer neglects to serve a writ of habeas corpus.

R. S., c. 140,  
§ 27.

If attachment is issued against a sheriff.

R. S., c. 104,  
§ 28.

Proceedings in such case for release of the person for whose benefit the writ issued.

R. S., c. 140,  
§ 29.

Persons discharged on habeas corpus, &c.

R. S., c. 140,  
§ 30.

Conveyance to prison of persons ordered to be committed, &c.

R. S., c. 140,  
§ 31.

SECT. 27. The party may be bailed to appear from day to day, until judgment is rendered, or remanded, or committed to the sheriff, or placed in custody, as the case may require.

SECT. 28. If any officer refuses or neglects for four hours to deliver a true and attested copy of the warrant or process, by which he detains any prisoner, to any person who demands it and tenders the fees therefor, he shall forfeit to such prisoner two hundred dollars.

SECT. 29. If any person or officer, to whom such writ is directed, refuses to receive it, or neglects to obey and execute it, as hereby required, and no sufficient cause is shown for such refusal or neglect, he shall forfeit to the aggrieved party four hundred dollars; and the court or judge before whom the writ was returnable shall proceed forthwith by attachment, as for a contempt, to compel obedience to the writ, and to punish for the contempt.

SECT. 30. If such attachment is issued against a sheriff or his deputy, it may be directed to a coroner or any other person therein designated, who shall thereby have power to execute it; and the sheriff or his deputy may be committed to jail on such process in any county but his own.

SECT. 31. If the person to whom the writ is directed refuses to obey and execute it, the court or judge may issue a precept to any officer or other person therein named commanding him to bring the person for whose benefit the writ was issued before the court or judge; and the prisoner shall thereupon be discharged bailed or remanded as if brought in on habeas corpus.

SECT. 32. No person, who has been enlarged by habeas corpus, shall be again imprisoned or restrained for the same cause, unless indicted therefor, convicted thereof, or committed for want of bail, or after a discharge for defect of proof, or some material defect in the commitment in a criminal case, he is arrested on sufficient proof and committed by legal process for the same offense.

SECT. 33. Any person ordered to be committed to prison on any criminal charge shall be carried to such prison, as soon as may be and shall not be delivered from one officer to another, except for easy and speedy conveyance; nor removed without his consent from one county to another unless by habeas corpus; and if any one, who has in his custody or under his power any person entitled to a writ of habeas corpus, whether issued or not, transfers such person to the custody of another, or changes his place of confinement, with intent

10 to elude the service of such writ, he shall forfeit to the party  
 11 aggrieved the sum of four hundred dollars.

SECT. 34. No penalty established by this chapter shall bar  
 2 any action at common law for damages for false imprison-  
 3 ment.

Penalties no bar  
 to actions for  
 damages.  
 R. S., c. 140,  
 § 32.

SECT. 35. When any person is unlawfully carried out of  
 2 the state or imprisoned in a secret place, any other person  
 3 may appear for him in any action therefor in his name, who  
 4 shall stipulate for the payment of costs as the court orders.

A third person  
 may appear for  
 the party, &c.  
 R. S., c. 140,  
 § 33.

SECT. 36. Nothing in this chapter shall be construed to  
 2 restrain the supreme judicial court in term time, or any jus-  
 3 tice thereof in vacation, from bailing any person for any  
 4 offense whatever at their discretion, when the circumstances  
 5 of the case require it; except persons committed by the gov-  
 6 ernor and council senate or house of representatives for the  
 7 causes mentioned in the constitution.

Supreme court  
 may allow  
 bail, &c.

R. S., c. 140,  
 § 34.

SECT. 37. When any person is confined in a jail for a bail-  
 2 able offense or for not finding sureties on a recognizance,  
 3 any two justices of the peace and of the quorum on applica-  
 4 tion may inquire into the case and admit any such person to  
 5 bail, and exercise the same power which any one of the jus-  
 6 tices of the supreme judicial court may do; and may issue  
 7 a writ of habeas corpus and cause such person to be brought  
 8 before them for the purpose expressed in this section, and  
 9 may take such recognizance.

Admission of a  
 person to bail,  
 &c.

R. S., c. 140,  
 § 35.

SECT. 38. Any court may issue a writ of habeas corpus,  
 2 when necessary, to bring before them any prisoner for trial in  
 3 any cause pending in such court, or to testify as a witness,  
 4 when his personal attendance may be deemed necessary for  
 5 the attainment of justice.

Habeas corpus  
 may issue to  
 bring a prisoner  
 as a witness.  
 R. S., c. 140,  
 § 36.

SECT. 39. When an insane person is arrested or impris-  
 2 oned on mesne process or execution in a civil suit, any judge  
 3 of the supreme judicial court, or judge of probate within his  
 4 county, on application may inquire into the case, and issue a  
 5 writ of habeas corpus, and cause such person to be brought  
 6 before him for examination, and after notice to the creditor  
 7 or his attorney, if either is living in the state, and a hearing,  
 8 if proved to the satisfaction of said judge that the person is  
 9 insane, he may discharge him from arrest or imprisonment;  
 10 and the creditor shall have the right to make a new arrest,  
 11 on the same demand, when the debtor becomes of sound  
 12 mind. But if he is arrested on the same demand a second  
 13 time, before he becomes of sound mind, and again discharged  
 14 for that reason, his body forever after shall be exempted  
 15 from arrest therefor.

Habeas corpus  
 may issue, on  
 application, &c.

Act of amend-  
 ment, 1841, § 24.



- Sect. 1.* Form of the writ.  
 2. In what court and county to be sued out.  
 3. Proceedings in court.  
 4. Complainant may recover special damages.  
 5. Pleadings, and filing exceptions.  
 6. Proceedings, if complainant is in prison.  
 7. Effect of a surrender to jail.

Form of the writ.

R. S., c. 141, § 1.

In what court and county to be sued out.

R. S., c. 141, § 2.

Proceedings in court.

R. S., c. 141, § 3.

Complainant may recover special damages.

R. S., c. 141, § 4.

Pleadings, and filing exceptions.

R. S., c. 141, § 5.

Proceedings, if complainant is in prison.

R. S., c. 141, § 6.

Effect of a surrender to jail.

R. S., c. 141, § 7.

SECT. 1. The writ of audita querela may be sued out in 2 the form of a writ of attachment or summons; and shall be 3 sealed, signed, tested, and indorsed, as other writs. (a)

SECT. 2. When brought to prevent, set aside, or annul, 2 proceedings on a judgment or execution, it shall be sued out 3 of the court in which judgment was rendered, but in all other 4 cases in the county and court having jurisdiction of the case 5 according to the provisions of law as to personal actions.

SECT. 3. If the defendant does not appear after being duly 2 served with process he shall be defaulted; and if he appears, 3 a trial shall be had as in common civil actions.

SECT. 4. The complainant may declare in his writ for any 2 special damages he has suffered by the service of such exe- 3 cution; and on proof he shall have judgment and execution 4 for such damages instead of recovering therefor in a subse- 5 quent suit.

SECT. 5. The defendant may plead the general issue of not 2 guilty with or without a brief statement or any special mat- 3 ter in bar; and exceptions may be alleged to the rulings 4 instructions and opinion of the court as in civil actions.

SECT. 6. When the complainant is in prison on execution 2 the court before which such action is brought may admit him 3 to bail to be approved by the court; the bond shall be con- 4 ditioned, that if final judgment is rendered for the respond- 5 ent, the complainant within thirty days thereafter shall sur- 6 render himself to the jail keeper to be detained on the exe- 7 cution, or within that time satisfy the execution, and such 8 final judgment as the respondent recovers.

SECT. 7. If the complainant surrenders himself to jail, he 2 shall be in lawful custody on such execution and there de- 3 tained, until discharged according to law.

## Chapter 101.

## CHAP. 101.

## WRIT FOR REPLEVYING A PERSON.

Sect. 1. Who is entitled to the writ.

2. Writ to issue from the supreme judicial court. Service.

3. Form of the writ.

4. Bond to be given.

5. Officer responsible for the sureties.

6. What judgment, if the action is or is not maintained.

7. What judgment, if defendant is entitled to the custody of the plaintiff.

8. If defendant has eligned the plaintiff, he may be arrested.

9. Defendant may be enlarged by giving bail.

10. Discharge and costs, if not guilty of eligning.

11. If guilty, to be imprisoned; and discharged on proof of plaintiff's death.

12. Form of writs of reprisal.

13. Proceedings, if the plaintiff is produced.

SECT. 1. If any person is imprisoned, restrained of his liberty, or held in duress, unless by a lawful writ warrant or other process civil or criminal, he shall be entitled of right by his own application or by any one in his behalf without any express power to the writ for replevying a person. (a)

Who is entitled to the writ.

R. S., c. 142, § 1, 18.

SECT. 2. The writ shall issue from and be returnable to the supreme judicial court in the county where the plaintiff is confined, and directed to a proper officer and served as soon as may be fourteen days at least before the return day.

Writ to issue from the S. J. court. Service.

R. S., c. 142, § 2.

SECT. 3. The form of the writ shall be as follows:

Form of the writ.

## STATE OF MAINE.

[L. s.] S—— ss. To the sheriff of our county of S——; Greeting.

We command you, that justly and without delay you cause C. D., who, as it is said, is taken and detained in a place called N, in our said county of S——, by the duress of G. H. that said C. D. may appear at our supreme judicial court, next to be held at —— within and for the county of S——, on the —— day of —— next, then and there in our said court to demand right and justice against said G. H., for the duress and imprisonment aforesaid, and to prosecute his replevin, as the law directs; provided that the said C. D. (the plaintiff,) before his deliverance gives bond to the defendant in such sum as you judge reasonable with two sufficient sureties with condition to appear at said court to prosecute his replevin against the defendant, and to have his body there to be redelivered, if thereto ordered by the court, and to pay all such damages and costs as are awarded against him; and if the plaintiff is delivered by you at a day before the sitting

## CHAP. 101.

21 of said court, you are to summon the defendant to appear  
 22 at said court.  
 23 Witness J. S., Esquire, at —, the — day of —, in the  
 24 year of our Lord —. L. M., Clerk.

Bond to be  
 given.

R. S., c. 142, § 4.

Officer responsi-  
 ble for sureties.

R. S., c. 142, § 5.

What judgment,  
 if the action is  
 or is not  
 maintained.

R. S., c. 142,  
 § 6, 7.

What judgment,  
 if defendant is  
 entitled to the  
 custody of the  
 plaintiff.

R. S., c. 142, § 8.

If defendant has  
 eloiigned the  
 plaintiff, he may  
 be arrested.

R. S., c. 142, § 9.

Defendant may  
 be enlarged by  
 giving bail.  
 R. S., c. 142,  
 § 10.

Discharge and  
 costs, if not  
 guilty of  
 eloiigning.  
 R. S., c. 142,  
 § 11.

If guilty, to be  
 imprisoned, &c.

R. S., c. 142,  
 § 12, 14.

SECT. 4. No person shall be delivered by such writ until a  
 2 bond is given by the plaintiff or person suing on his behalf;  
 3 and the bond shall be returned to the court with the writ.

SECT. 5. The officer serving the writ shall be answerable  
 2 for the sufficiency of the bond, as in case of bail in civil  
 3 actions. (a)

SECT. 6. If the plaintiff maintains his action, he shall be  
 2 discharged and recover his costs; but if not, the defendant  
 3 shall recover his costs and such damages as the jury assess;  
 4 or if the defendant is defaulted, or the parties consent, the  
 5 court may assess the damages.

SECT. 7. If it appears that the defendant is bail for the  
 2 plaintiff, or that as his child; ward, apprentice or otherwise,  
 3 he is entitled to his custody, he shall have judgment for a  
 4 redelivery of his body to be held or disposed of according  
 5 law.

SECT. 8. If it appears, that the defendant has eloiigned the  
 2 plaintiff's body, so that the officer cannot deliver him, the  
 3 court on motion shall issue a writ of reprisal to take the  
 4 defendant's body and him safely keep, so that he may be at  
 5 the then next term of the court to traverse the return of  
 6 said writ for replevying the plaintiff.

SECT. 9. The defendant may be enlarged by giving bail  
 2 for his appearance at court with two sufficient sureties, in  
 3 such sum as the officer requires.

SECT. 10. The defendant may traverse the return on the  
 2 writ for replevying the plaintiff; and if it appears, that he  
 3 is not guilty of eloiigning the plaintiff, he shall be discharged  
 4 and recover costs.

SECT. 11. If such return is not traversed, or if on such  
 2 traverse it appears that the defendant did eloiign the plain-  
 3 tiff, an alias writ of reprisal shall issue, on which he shall  
 4 be committed to the common jail to remain irrepleviable,  
 5 till he produces the body of the plaintiff or proves his  
 6 death. He may suggest the plaintiff's death, and the court  
 7 shall empanel a jury to try the fact at the defendant's ex-  
 8 pense; and if the death is proved, he shall be discharged.

SECT. 12. Said writs shall be substantially in the form  
2 heretofore established and used in this state.

CHAP. 102.

Form of writs  
of reprisal.

R. S., c. 142, § 13.

Proceedings, if  
the plaintiff is  
produced.

SECT. 13. If the defendant after the return of eloignment  
2 produces the body of the plaintiff in court, the court shall  
3 deliver him from imprisonment on his giving the defendant  
4 such bond as before directed to be taken by the officer, when  
5 the plaintiff is delivered by him; and for want of the bond  
6 he shall stand committed to abide the judgment on the writ  
7 for replevying the plaintiff; and in either case the suit shall  
8 be tried as aforesaid.

R. S., c. 142,  
§ 15, 16.

## Chapter 102.

### WRITS OF ERROR AND CERTIORARI.

#### WRITS OF ERROR.

Sect. 1. Writs of error may issue from the supreme judicial court in vacation or term  
time.

2. Execution not to stay, unless bond is given.
3. Bond to be approved by a justice of the court, or the clerk.
4. Filing of the bond deemed a delivery thereof; clerk to issue certificate to  
stay proceedings.
5. Costs to prevailing party; damages and costs if defendant prevails.
6. Form of writ of error.
7. Scire facias to specify the errors of fact and law.
8. Proceedings on writs of error, according to the common law.
9. Writs of error in capital cases; notice to attorney general.
10. Effect of writs of error in other criminal cases.
11. Provision for keeping plaintiff in error on stay of proceedings.
12. Limitation of writs of error.

#### WRITS OF CERTIORARI.

13. How writs of certiorari to be issued.
14. Costs on application, or on final decisions.
15. Limitations of applications for certiorari.

### *Writs of Error.*

SECT. 1. Writs of error in civil cases may issue out of the  
2 supreme judicial court in vacation or term time returnable  
3 to the same court. (a)

Writs of error  
may issue from  
S. J. Court, &c.  
R. S., c. 143, § 1.

SECT. 2. No writ of error shall stay or supersede execution  
2 in any civil action, unless the plaintiff in error or some per-  
3 son in his behalf gives bond to the defendant with one or  
4 more sureties conditioned, that the plaintiff shall prosecute  
5 his suit with effect and satisfy such judgment as is rendered  
6 therein.

Execution not to  
stay, unless bond  
is given.

R. S., c. 143, § 2.

(a) 16, Me. 81. 19, Me. 219. 23, Me. 251. 29, Me. 360. 30, Me. 194. 31, Me. 57, 420.  
32, Me. 185. 33, Me. 25, 265, 350, 368. 35, Me. 92. 36, Me. 198.

CHAP. 102.

Bond to be approved by a justice of the court, or clerk.  
R. S., c. 143, § 3.

Filing of the bond deemed a delivery thereof, &c.

R. S., c. 143, § 4.

Costs to prevailing party, &c.

R. S., c. 143, § 5.

Form of writ of error.

SECT. 3. The penal sum and sufficiency of the bond shall be determined by any justice of the supreme judicial court, or by the clerk from whose office the writ is issued in accordance with the rules of court.

SECT. 4. When the bond is given, the filing of it in the clerk's office for the use of the defendant shall be deemed a delivery thereof; and no execution shall be issued on the judgment complained of, while such suit is pending; and if execution has already issued, the clerk shall make a certificate of the issuing of such writ and filing of the bond; and after notice thereof to the officer holding the execution, all further proceedings thereon shall be stayed.

SECT. 5. The prevailing party in such writ in a civil action in all cases shall be entitled to his costs; and if the judgment is affirmed, the defendant in error shall be entitled to not less than six nor more than twelve per cent. a year on the amount of his former judgment as damages for his delay, and in such case the court in their discretion may allow him double costs.

SECT. 6. The writ of error may be a scire facias issued substantially as follows without any assignment of errors or other preliminary proceedings:

STATE OF MAINE.

[L. s.]        ss. To the sheriff, &c.

Greeting.

We command you, that you make known unto ——— of ——— to appear, if he sees cause, before our supreme judicial court to be holden at ——— within and for our said county of ——— on the ——— to answer to ——— of ——— in a plea of error, whereas the said ——— alleges that in the process proceedings and judgment had before ——— at ——— on ———, wherein the said ——— was plaintiff and the said ——— was defendant, there occurred the errors hereinafter specified, by which the present plaintiff was injured, and for which he therefore seeks that said judgment may be reversed recalled or corrected, as law and justice require; that is to say the following errors: ———.

Hereof fail not, and have you there this writ with your doings thereon.

Witness, ——— Esq., at ——— the ——— day of ———.

————, Clerk.

1852, c. 269,  
§ 1, 2.

Scire facias to specify the errors of fact and law.

SECT. 7. The scire facias shall specify the errors of fact and law, upon which the plaintiff relies; and a transcript of the record process and proceedings attested by the clerk

4 of the court or justice of the peace rendering the judgment  
5 without further authentication or the introduction of the  
6 record shall be competent evidence in such trial; and in  
7 case of mistake in the transcript the court may grant leave  
8 to amend.

1852, c. 269, § 3.

SECT. 8. The proceedings upon writs of error not herein  
2 provided for shall be according to the common law as mod-  
3 ified by the practice and usage in this state and the general  
4 rules of court.

Proceedings on  
writs of error,  
&c.  
R. S., c. 143, § 9.  
1852, c. 269, § 4.

SECT. 9. No writ of error upon a judgment for a capital  
2 offense shall issue, unless allowed by one of the justices of  
3 the law court after notice to the attorney general or other  
4 attorney for the state.

Writs of error  
in capital cases,  
&c.  
R. S., c. 143, § 7.

SECT. 10. Writs of error shall issue of course upon all  
2 other judgments in criminal cases, but not to stay or delay  
3 execution of sentence or judgment, unless allowed by a jus-  
4 tice of the supreme judicial court with an express order  
5 thereon to stay all proceedings on such judgment or sentence.

Effect of writ of  
error in other  
criminal cases.

R. S., c. 143, § 8.

SECT. 11. When a stay of proceedings is thus ordered,  
2 the judge may make such order as the case requires for the  
3 custody of the plaintiff in error or letting him to bail; or  
4 upon a writ of habeas corpus if entitled he may procure his  
5 enlargement by giving bail.

Provision for  
keeping plaintiff  
in error on stay  
of proceedings.

R. S., c. 143, § 9.

SECT. 12. No writ of error shall be sustained, unless  
2 brought within six years next after the entering up of the  
3 judgment sought to be reversed or avoided; but if the per-  
4 son entitled to such writ is a minor, a married woman,  
5 insane, imprisoned, or not in the United States, when becom-  
6 ing so entitled, then he his heirs executors or administra-  
7 tors may sue out the writ within five years after the remo-  
8 val of such disability.

Limitation of  
writs of error.

R. S., c. 143,  
§ 10.

### *Writs of Certiorari.*

SECT. 13. All writs of certiorari to correct errors in pro-  
2 ceedings, that are not according to the course of the com-  
3 mon law, shall be issued from the supreme judicial court  
4 according to the practice heretofore established and subject  
5 to such further regulations, as are made from time to time  
6 by such court. (*b*)

How writs of  
certiorari to be  
issued.

R. S., c. 143,  
§ 11.

SECT. 14. Upon every application for a certiorari, and on  
2 the final adjudication thereof, the court in their discretion

Costs on appli-  
cations, or on  
final decisions.

(a) 23, Me. 9, 511. 25, Me. 69. 26, Me. 353. 28, Me. 121. 30, Me. 19, 270, 302, 351. 31, Me. 578. 33, Me. 450, 452. 33, Me. 237, 260. 35, Me. 373. 36, Me. 74. 37, Me. 561. 38, Me. 492.

## CHAP. 103.

R. S., c. 143,  
§ 12.Limitation of  
applications for  
certiorari.R. S., c. 143,  
§ 13.

3 may award costs against any party, who appears and under-  
4 takes to maintain or object to the proceedings.

SECT. 15. No application for a writ of certiorari shall be  
2 sustained, unless made within six years next after the pro-  
3 ceedings complained of, or in case of such disability of the  
4 one entitled to the same, as is provided for in the twelfth  
5 section, within five years from the removal of such disability.

## Chapter 103.

## ESTATES IN DOWER AND BY CURTESY AND ACTIONS OF DOWER.

## ESTATES IN DOWER AND BY CURTESY.

- Sect. 1. Of what lands a woman is dowable.  
2. Of what she is not dowable.  
3. When judge of probate may assign dower.  
4. Mode of proceeding in assignment of dower.  
5. Special assignment in certain cases.  
6. Rights of widow before dower is assigned.  
7. Widow of naturalized alien entitled to dower.  
8. A married woman may bar her right to dower by deed; how executed.  
9. A woman may bar her right to dower by accepting a jointure before marriage.  
10. Also by a pecuniary provision made for the benefit of an intended wife in lieu of dower.  
11. Widow may waive jointure in certain cases.  
12. She may waive provision in her husband's will.  
13. Remedy if she is evicted of her dower.  
14. When dowable of an equity of redemption.  
15. Penalty if she commits waste.  
16. Rights of widow to remain in her husband's house.  
17. Tenancy by curtesy.

## ACTION OF DOWER.

18. Rights of widow to sue for dower.  
19. Previous demand, and time of bringing the action.  
20. Demand upon a corporation, and time for bringing the action.  
21. Defendant may plead in abatement, but not in bar, that he is not tenant of the freehold.  
22. Damages for detaining dower.  
23. Suit to be against the tenant of the freehold; liable for damages only while he held possession. Separate action against prior tenant, of whom demand was made.  
24. If demandant dies pending an action for dower, executor or administrator may prosecute for the damages.  
25. Writ of seizin and proceedings in setting off dower.  
26. Assignments of rents and profits in certain cases.

ARTICLE 1. *Estates in dower and by curtesy.*

SECT. 1. Every woman shall be entitled to her dower at  
2 the common law in the lands of her husband, with the excep-  
3 tions hereafter mentioned, to be assigned to her after his  
4 decease unless lawfully barred.

Of what lands a  
woman is  
dowable.

R. S., c. 95, § 1.

SECT. 2. A widow shall not be endowed of wild lands of  
2 which her husband dies seized, nor of wild lands conveyed  
3 by him though afterwards cleared; but she shall have right  
4 to dower in any wood lot or other land used with the farm or  
5 dwelling house, though the same has never been cleared. (a)

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Of what she is  
not dowerable.

R. S., c. 95, § 2.

SECT. 3. The judge of probate for the county in which the  
2 husband's estate is settled may assign dower to the widow  
3 in the lands, of which the husband died seized, in whatever  
4 counties situated, where her right of dower is not disputed  
5 by the heirs or devisees. (b)

When judge of  
probate may  
assign dower.

R. S., c. 95, § 3.

SECT. 4. The judge of probate may issue his warrant to  
2 three discreet and disinterested persons to assign the dower  
3 by metes and bounds, when it can be done without prejudice  
4 to the whole estate; who shall be first sworn to assign the  
5 same equally and impartially without favor and affection, as  
6 conveniently as may be in one or more parcels for the best  
7 interest of the parties.

Mode of pro-  
ceeding in  
assignment of  
dower.R. S., c. 95, § 4.  
c. 108, § 14.

SECT. 5. When a division by metes and bounds cannot be  
2 conveniently made, dower shall be assigned in a special man-  
3 ner as of a third part of the rents and profits.

Special assign-  
ment in certain  
cases.  
R. S., c. 95, § 5.

SECT. 6. The widow shall be entitled to receive one undi-  
2 vided net third part of the rents and profits of the estate,  
3 of which her husband died seized, until her dower is assigned  
4 either by the heirs the judge of probate or judgment of  
5 court. (c)

Rights of widow,  
before dower is  
assigned.

R. S., c. 95, § 6.

SECT. 7. The widow of a citizen of the United States, who  
2 was an alien when she married him, shall be entitled to  
3 dower in her husband's estate, which was not conveyed by  
4 him or taken from him by execution, prior to the twenty-  
5 third day of February, 1813.

Widow of nat-  
uralized alien  
entitled to  
dower.

R. S., c. 95, § 7.

SECT. 8. A married woman may bar her right of dower  
2 in an estate conveyed by her husband by joining with him  
3 in the deed of conveyance or in a subsequent deed; and by  
4 her sole deed, when her husband is under guardianship. (d)

A married  
woman may bar  
her right to  
dower by deed,  
&c.  
Idem, § 9.  
1853, c. 33.

SECT. 9. A woman may be barred of her dower in her  
2 husband's lands, by a jointure settled on her with her con-  
3 sent before marriage; such jointure shall consist of a free  
4 hold estate in lands for the life of the wife at least to take  
5 effect immediately on the husband's death; if of full age she  
6 shall express her consent by becoming a party to the convey-  
7 ance; if under age by joining with her father or guardian. (e)

A woman may  
bar her right to  
dower by  
accepting a  
jointure before  
marriage.

R. S., c. 95, § 10.

(a) 14, Me. 290. 15, Me. 351, 371. 18, Me. 39. 19, Me. 141. 25, Me. 94, 101. 31, Me. 91, 243,  
403. 32, Me. 412. 37, Me. 11. (b) 23, Me. 276. (c) 34, Me. 423. (d) 29, Me. 415.  
30, Me. 191. 33, Me. 396. (e) 21, Me. 364.



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Also by a pecuniary provision made for the benefit of an intended wife in lieu of dower.  
R. S., c. 95, § 11.

Widow may waive jointure in certain cases.

R. S., c. 95, § 12.

She may waive provision in her husband's will.

R. S., c. 95, § 13.

Remedy if she is evicted of her dower.

R. S., c. 95, § 14.

When dowable of an equity of redemption.

R. S., c. 95, § 15.

Penalty if she commits waste.

R. S., c. 95, § 16.

SECT. 10. Any pecuniary provision made for the benefit  
2 of an intended wife in lieu of dower consented to by her,  
3 as provided in the preceding section, shall bar her right of  
4 dower in her husband's lands.

SECT. 11. If such jointure or pecuniary provision is made  
2 before marriage without the consent of the intended wife, or  
3 if made after marriage, it shall bar her dower, unless, within  
4 six months after the husband's death she makes her election  
5 to waive such provision, and files the same in writing in the  
6 probate court.

SECT. 12. When a specific provision is made in her hus-  
2 band's will for the widow, within six months after probate  
3 of the will she shall make her election, whether to accept  
4 it or claim her dower; but shall not be entitled to both,  
5 unless it appears by the will, that the testator plainly so  
6 intended. (a)

SECT. 13. If a woman is lawfully evicted of lands assigned  
2 to her as dower, or settled upon her as a jointure, or is de-  
3 prived of the provision made for her by will otherwise in  
4 lieu of dower, she may be endowed anew as though no such  
5 assignment or provision had been made.

SECT. 14. If the wife has released her right of dower in  
2 any mortgage made by her husband, or if her husband is  
3 seized of land mortgaged by another person or by himself  
4 before their marriage, she shall be entitled to dower in the  
5 mortgaged premises as against every person except the mort-  
6 gagee and those claiming under him; and if the mortgager  
7 or other person claiming under the husband redeems the  
8 mortgage, the widow shall repay such proportion of the  
9 money so paid by him, as her interest in the mortgaged  
10 premises bears to the whole value; else she shall be entitled  
11 to dower only according to the value of the estate after de-  
12 ducting the money so paid for its redemption. (b)

SECT. 15. If any woman endowed of lands commits or  
2 suffers any waste thereon, she shall forfeit the place wasted  
3 and the amount of the damages done to the premises to be  
4 recovered in an action of waste by the person having the  
5 next immediate estate of inheritance therein: but taking  
6 fuel necessary for her own use and materials for the repair  
7 of buildings and for fences thereon from any woodlands, of  
8 which she is endowed, shall not be considered waste.

## CHAP. 103.

SECT. 16. A widow may remain in the house of her husband ninety days next after his death without being chargeable with rent therefor; and in the meantime she shall have her reasonable sustenance out of the estate.

Rights of widow to remain in her husband's house. R. S., c. 95, § 17.

SECT. 17. When a man and his wife are seized of lands in fee in her right acquired before March 22, 1844 which are under improvement, and issue is born alive of her body that may inherit the same, the husband shall hold such estate after his wife's decease, during his life as tenant by the curtesy.

Tenancy by curtesy.

R. S., c. 95, § 18.

ARTICLE II.—*Action of dower.*

SECT. 18. When a woman is entitled to dower, and it is not lawfully set out to her by the heir or tenant of the freehold nor assigned to her by the judge of probate, she may recover it by a writ of dower as herein provided.

Rights of widow to sue for dower. R. S., c. 144, § 1. R. S., c. 95, § 8. Act of amendment, 1841, § 25.

SECT. 19. She must demand her dower of the person who is at the time seized of the freehold, if he is in the state, otherwise of the tenant in possession, and shall not commence her action of dower before the expiration of one month, nor after the expiration of one year, from the time of demand; but she may make a new demand and commence an action thereon, if an action is not brought within one year after the first demand. (a)

Previous demand and time of bringing the action.

R. S., c. 144, § 2.

SECT. 20. When a corporation is the tenant of the freehold, she must demand her dower in writing of any officer thereof, on whom by law a writ in a civil action against the same may be served; but in that case the time shall be sixty instead of thirty days between the demand and the suit; but a second demand may be made as provided in the preceding section.

Demand upon a corporation, &c.

R. S., c. 144, § 3.

SECT. 21. In such actions, the defendant may plead in abatement but not in bar, that he is not tenant of the freehold. (b)

Defendant may plead in abatement, &c. R. S., c. 144, § 4.

SECT. 22. If the demandant recovers judgment for her dower, she shall in the same action recover her damages for its detention.

Damages for detaining dower. R. S., c. 144, § 5.

SECT. 23. The action shall be brought against the person who is at the time tenant of the freehold; but if he is not the person of whom demand was made, he shall be liable for damages only for the time he held the possession; and if the demandant recovers her dower and damages, she may

Suit to be against the tenant of the freehold, &c.

## CHAP. 104.

R. S., c. 144,  
§ 6, 7.

If demandant  
dies pending an  
action for dower,  
&c.

1852, c. 259, § 1.

Writ of seizin  
and proceedings  
in setting off  
dower.

R. S., c. 144, § 8.

Assignments of  
rents and  
profits in certain  
cases.

R. S., c. 144, § 9.

6 afterwards maintain an action on the case against the prior  
7 tenant, of whom her demand was made, for the rents and  
8 profits, while he held the premises after the demand.

SECT. 24. If the demandant dies during the pendency of  
2 an action of dower, her executor or administrator may prose-  
3 cute the action to final judgment and recover therein the  
4 damages to which she would be entitled to the time of her  
5 decease. He may in like manner prosecute any action com-  
6 menced by her under the provisions of the twenty-third  
7 section; or commence an action for the damages as provided  
8 in said section if not done by her, and recover therein the  
9 damages to which she would be entitled if any.

SECT. 25. When judgment for her dower is rendered in  
2 favor of the demandant, a writ of seizin shall be issued re-  
3 quiring the proper officer to cause her dower to be assigned  
4 and set out to her by three disinterested persons to be  
5 appointed by the plaintiff defendant and officer, as in case  
6 of the levy of an execution on land; they shall be duly  
7 sworn to set out the same equally and impartially and as  
8 conveniently as may be and according to their best skill and  
9 judgment; and the officer shall make return of the writ and  
10 doings thereon to the court with the assignment of dower  
11 indorsed thereon or annexed thereto; which being accepted  
12 shall be conclusive. (a)

SECT. 26. When the estate, out of which the dower is to  
2 be assigned, consists of a mill or other tenement, which  
3 cannot be divided without damage to the whole, the dower  
4 may be assigned of the rents and profits thereof to be re-  
5 ceived by the demandant as tenant in common with the other  
6 owners of the estate.

## Chapter 104.

### REAL ACTIONS.

*Sect. 1.* Recovery of estates by writ of entry; mode of service.

2. Demandant to declare on his own seizin, within twenty years, and disseizin by tenant.

3. To set forth the estate he claims in the premises.

4. Proof of seizin.

5. Demandant must have right of entry; such right not defeated by descent or discontinuance.

6. Who may be considered a disseizor. Disclaimer.

- Sect. 7.* If defendant has ousted demandant, he may be considered a disseizor, though he claims less than a freehold. CHAP. 104.
8. Proof to entitle the demandant to recover on trial.
  9. Joinder of demandants.
  10. Demandant may recover, on proof of title.
  11. Demandant may recover damages in the same action.
  - 12, 13, 14. Estimation of rents and profits.
  15. Recovery of damages against other persons.
  16. Real actions not to abate by death or intermarriage of a party.
  17. Appointment of guardians, for minors. Amendments.
  18. Writs of possession to conform to the case; judgment conclusive against all persons interested, who were notified.
  19. Allowance of costs, and stay of execution, in such cases.
  20. Betterments allowed after six years possession.
  21. The premises to be clearly defined and described, in such action.
  22. Tenant may consent that demandant may recover a specified part; effect thereof.
  23. Tenant may have betterments upon demurrer or default.
  24. Request of tenant for appraisal of improvements, and by demandant for appraisal of the land; the jury to allow for no improvements, except those made by tenant, or those under whom he claims, and that were judicious and proper.
  25. The difference between the appraised value of the land, when tenant entered, and the value of it with improvements, at the time of trial, to be taken for the value of betterments.
  26. Demandant may elect to abandon; and if so, must give bond to tenant, to refund, if ousted by better title.
  27. Tenant allowed to pay one third the value of the land, the first year, interest on the whole, and costs.
  28. At the end of two years, he may pay another third, with interest.
  29. And at the end of three years, he may pay the balance, or the demandant have his execution, and a lien on the premises.
  30. Tenant's remedy if he is evicted.
  31. If demandant does not abandon, he cannot have writ of possession, till he pays for the improvements.
  32. Restriction of the right to betterments.
  33. Tenant not to commit waste after judgment against him.
  34. Parties may agree as to value of improvements.
  35. Tenant may propose a sum at which the value may be estimated. Effect thereof.
  36. Set off of costs, against the appraised value of improvements in certain cases.
  37. Jurors disqualified, if interested in similar questions.
  38. Execution may issue after a year.
  39. What constitutes a possession and improvement.
  40. Proceedings, if either party dies before the cause is disposed of.
  41. How writ of possession shall issue in such case.
  42. Either party may have a view by the jury.
  43. Proceedings if a life estate is demanded.
  44. If tenant is ousted after six years possession, he may recover for his buildings and improvements.
  45. The value of improvements in such case to be estimated, under the provisions of this chapter.
  46. Cases, in which defendant may impeach the plaintiff's title deeds.
  47. If tenant and those under whom he claims have been in possession forty years, demandant to recover no costs.
  48. Court may appoint and protect surveyors.

SECT. 1. Any estate of freehold, in fee simple, fee tail, for 2 life, or any term of years, may be recovered by a writ of 3 entry; and such writs and the writ in an action of dower 4 shall be served by attachment and summons or copy of the

Recovery of estates by writ of entry; mode of service.

CHAP. 104.

R. S., c. 145, § 3.  
1842, c. 31, § 18.

Demandant to  
declare on his  
own seizin, &c.

R. S., c. 145, § 4.

To set forth the  
estate he claims  
in the premises.

R. S., c. 145, § 5.

Proof of seizin.

R. S., c. 145, § 6.

Demandant  
must have right  
of entry, &c.

R. S., c. 145,  
§ 7, 8.

Who may be  
considered a  
disseizor.  
Disclaimer.

5 writ on the defendant, but if the defendant is not in posses-  
6 sion, the officer shall give the tenant in hand or leave at his  
7 last and usual place of abode an attested copy of the writ;  
8 and if the defendant is not an inhabitant of this state, the  
9 service on the tenant shall be sufficient notice to the defend-  
10 ant, or the court may order further notice. (a)

SECT. 2. The demandant shall declare on his own seizin  
2 within twenty years then last past without naming any par-  
3 ticular day, and shall allege a disseizin by the tenant; but  
4 need not aver a taking of the profits.

SECT. 3. He shall set forth the estate he claims in the  
2 premises, whether in fee simple, fee tail, or for life, or for  
3 years; and if for life, then whether for his own life or the  
4 life of another; but shall not be required in any case to  
5 state in the writ the origin of his title or the deduction of  
6 it to himself; but on application of the tenant the court may  
7 direct the demandant to file in the case an informal state-  
8 ment of the title, on which he relies and its origin.

SECT. 4. The demandant shall not be required to prove an  
2 actual entry under his title, but proof that he is entitled to  
3 such an estate in the premises, as he claims and that he has  
4 a right of entry therein, shall be deemed sufficient proof of  
5 his seizin.

SECT. 5. No such action shall be maintained, unless at the  
2 time of commencing it the demandant had such right of  
3 entry; and no descent or discontinuance shall defeat any  
4 right of entry for the recovery of real estate.

SECT. 6. Every person alleged to be in possession of the  
2 premises demanded in such writ claiming any freehold  
3 therein may be considered a disseizor for the purpose of  
4 trying the right; but the defendant may plead in abatement  
5 but not in bar, that he is not tenant of the freehold, or by a  
6 brief statement under the general issue filed within the time  
7 allowed for pleas in abatement, unless by leave of court the  
8 time therefor is enlarged, and he may show that he was not  
9 in possession of the premises when the action was com-  
10 menced and disclaim any right title or interest therein, and  
11 proof of such fact shall defeat the action; and if he claimed  
12 or was in possession of only a part of the premises, when  
13 the action was commenced, he shall describe such part in a  
14 statement signed by him or his attorney and filed in the case,  
15 and may disclaim the residue; and if the facts contained in

16 such statement are proved on trial, the demandant shall  
 17 recover judgment for no more than such part. (a)

## CHAP. 104.

R. S., c. 145, § 9.  
 1846, c. 221, § 1.

SECT. 7. If the person in possession has actually ousted the  
 2 demandant or withheld the possession, at the demandant's  
 3 election he may be considered a disseizor for the purpose of  
 4 trying the right, though he claims an estate therein less than  
 5 a freehold. (b)

If defendant has  
 ousted demand-  
 ant, &c.

R. S., c. 145,  
 § 10.

SECT. 8. In the trial upon such writ on the general issue,  
 2 if the demandant proves that he is entitled to such estate in  
 3 the premises as he has alleged, and had a right of entry  
 4 therein when he commenced his action, he shall recover the  
 5 premises, unless the tenant proves a better title in himself. (c)

Proof to entitle  
 the demandant  
 to recover on  
 trial.

R. S., c. 145,  
 § 11.

SECT. 9. Persons claiming as tenants in common, joint ten-  
 2 ants, or coparceners, may all join, or any two or more may  
 3 join, in a suit for recovery of lands; or any one may sue  
 4 alone for his share.

Joinder of  
 demandants.  
 R. S., c. 145,  
 § 12.

SECT. 10. The demandant in all cases may recover any  
 2 specific part of the premises or any undivided portion thereof,  
 3 to which he proves a title though it is less than is demanded.

Demandant may  
 recover on proof  
 of title.  
 R. S., c. 145,  
 § 13.

SECT. 11. When a demandant recovers judgment in a writ  
 2 of entry, he shall be entitled to recover in the same action  
 3 damages for the rents and profits of the premises from the  
 4 time his title accrued subject to the limitation herein con-  
 5 tained; and for any destruction or waste of the buildings or  
 6 other property, for which the tenant is by law answerable.

Demandant may  
 recover damages  
 in the same  
 action.

R. S., c. 145,  
 § 14.

SECT. 12. The rents and profits, for which the tenant shall  
 2 be liable, shall be the clear annual value of the premises for  
 3 the time he was in possession after deducting all lawful taxes,  
 4 which the tenant has paid, and all the necessary and ordi-  
 5 nary expenses of repairs and cultivating the land or collect-  
 6 ing the rents and profits.

Estimation of  
 rents and profits.

R. S., c. 145,  
 § 15.

SECT. 13. In estimating the rents and profits the value of  
 2 the use by the tenant of any improvements made by himself,  
 3 or those under whom he claims, shall not be allowed to the  
 4 demandant.

Same subject.

R. S., c. 145,  
 § 16.

SECT. 14. The tenant shall not be liable for the rents and  
 2 profits for any longer time than six years, nor for any waste  
 3 or other damage committed before that time, unless the rents  
 4 and profits are allowed by way of set-off to his claim for  
 5 improvements.

Tenant not  
 liable for rents  
 and profits, &c.

R. S., c. 145,  
 § 17.

(a) 22, Me. 312. 24, Me. 308. (b) 34, Me. 79. (c) 5, Me. 224. 12, Me. 346. 19, Me. 383.  
 23, Me. 234. 27, Me. 357. 31, Me. 143, 306, 583. 33, Me. 355, 541. 38, Me. 78.

## CHAP. 104.

Recovery of  
damages against  
other persons.

R. S., c. 145,  
§ 18.

Real actions not  
to abate by  
death or  
inter-marriage  
of a party.

R. S., c. 145,  
§ 19.

Appointment of  
guardians, &c.

R. S., c. 145,  
§ 20.

Writs of pos-  
session to con-  
form to the case,  
&c.

R. S., c. 145,  
§ 21.

Allowance of  
costs, &c.

R. S., c. 145,  
§ 22.

Betterments  
allowed after  
six years  
possession.

R. S., c. 145,  
§ 23.

The premises to  
be clearly  
defined and  
described in such  
action.

SECT. 15. Nothing herein contained shall prevent the de-  
mandant from maintaining an action for mesne profits or for  
damage to the premises against any person except the ten-  
ant in a writ of entry, who has had possession of the prem-  
ises or is otherwise liable to such action.

SECT. 16. No action, wherein the possession of land is  
demanded, after its entry in court shall be abated by the  
death or intermarriage of either party; but the court shall  
proceed to try and determine such action, after such notice  
as the court may order has been duly served upon all inter-  
ested in his estate either personally or by publication in  
some newspaper. (a)

SECT. 17. In such case, if any heir is a minor, the court  
shall order notice to the guardian, and may appoint a guard-  
ian ad litem if necessary, and direct all necessary amend-  
ments in the forms of proceeding.

SECT. 18. If the demandant recovers judgment in any such  
case, the court may order one or more writs of possession  
to issue, as may be necessary; and a writ of possession may  
issue against all such as have been so notified, whether they  
appeared and defended or not; and the judgment shall be  
conclusive against all who were so notified, whether they  
appeared or not.

SECT. 19. The prevailing party shall recover full costs in  
all such cases, and the court may order one or more execu-  
tions to be issued therefor against the goods and estate of a  
deceased party in the hands of his executor or administra-  
tor, or otherwise according to the legal rights and liabilities  
of the parties, and may stay any such execution, if the situa-  
tion of the estate requires it.

SECT. 20. When the demanded premises have been in the  
actual possession of the tenant or those under whom he  
claims for six successive years or more before commence-  
ment of the action, such tenant shall be allowed a compensa-  
tion for the value of any buildings and improvements on the  
premises made by him or those under whom he claims to  
be ascertained and adjusted in the manner hereinafter pro-  
vided.

SECT. 21. In such action the demanded premises shall be  
clearly defined and described in the declaration, otherwise  
the court may direct a nonsuit. And if the tenant or person  
under whom he claims has been in possession of a tract of

5 land lying in one body for six years or more before the  
 6 commencement of the action, and only a part thereof is de-  
 7 manded, and the tenant alleges that the demandant has as  
 8 good a title to the whole as to the part demanded, he may  
 9 request the jury to inquire and decide that fact; and if they  
 10 so find, they shall proceed no farther, but the court shall  
 11 enter judgment that the writ abate, unless the declaration is  
 12 amended so as to include the whole tract, which amendment  
 13 the court may allow without costs.

R. S., c. 145,  
 § 24.

SECT. 22. If the tenant enters notice on record in open  
 2 court, that the demandant may recover a specified part of  
 3 the demanded premises, by consent of the demandant judg-  
 4 ment may be rendered in his favor for such part, and for the  
 5 tenant for the residue; but if the demandant does not con-  
 6 sent and recovers only such part, he shall recover no costs,  
 7 and the tenant shall recover his costs from the time of such  
 8 notice.

Tenant may  
 consent that  
 demandant may  
 recover a  
 specified part;  
 effect thereof.

R. S., c. 145,  
 § 25.

SECT. 23. The tenant shall have the benefit of the provis-  
 2 ions in the following sections as to the increased value of  
 3 premises, when the cause is determined in favor of the de-  
 4 fendant upon demurrer, default, or by verdict, including all  
 5 real actions brought by a reversioner or remainder man or  
 6 his assigns after the termination of a tenancy in dower or  
 7 any other life estate against the assignee or grantee of the  
 8 tenant of the life estate, or against the heirs or legal repre-  
 9 sentatives of such tenant.

Tenant may  
 have betterments  
 upon demurrer  
 or default.

R. S., c. 145,  
 § 26.  
 1843, c. 6, § 1.

SECT. 24. The tenant may file a claim in writing to com-  
 2 pensation for buildings and improvements on the premises,  
 3 and a request for an estimation by the jury of the increased  
 4 value of the premises by reason thereof; and the demandant  
 5 may file a request in writing, that the jury would also esti-  
 6 mate what would have been the value of the premises at the  
 7 time of trial, if no buildings had been erected or improve-  
 8 ments made or waste committed; both these estimates they  
 9 shall make and state in their verdict; and the jury shall al-  
 10 low for no buildings or improvements, except those that they  
 11 find were made by the tenant his grantor or assignor and  
 12 were judicious and proper under the circumstances of the  
 13 case.

Request of  
 tenant for  
 appraisal of  
 improvements,  
 &c.

R. S., c. 145,  
 § 27.  
 1843, c. 6, § 1.

SECT. 25. If the tenant so claiming alleges and proves,  
 2 that he and those under whom he claims have had the premi-  
 3 ses in actual possession for more than twenty years prior to  
 4 the commencement of the action, the jury may find that fact;  
 5 and in estimating the value of the premises, if no buildings

The difference  
 between the  
 appraised value  
 of the land,  
 when tenant  
 entered, &c.



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6 had been erected or improvements made thereon, they shall  
 7 find and state in their verdict, what was the value of the  
 8 premises, when the tenant or those under whom he claims  
 9 first entered thereon. The sum so found shall be deemed  
 10 the estimated value of the premises; and in estimating the  
 11 increased value by reason of the buildings and improvements  
 12 the jury shall find and state in their verdict the value of the  
 13 premises at the time of the trial, above their value when the  
 14 tenant or those under whom he claims first entered thereon;  
 15 and the sum so found and stated shall be taken for the build-  
 16 ings and improvements.

1848, c. 76, § 1.  
 1853, c. 34, § 1.

Demandant may  
 elect to abandon,  
 &c.

SECT. 26. If the demandant after such verdict at the same  
 2 or a subsequent term of the court, if the cause is continued,  
 3 makes his election on record to abandon the premises to the  
 4 tenant at the value estimated by the jury, and files with the  
 5 clerk for the use of the tenant a bond in the penal sum of  
 6 three times the estimated value of the premises with sureties  
 7 approved by the court conditioned to refund the estimated  
 8 value aforesaid with interest to the tenant his heirs or assigns,  
 9 if they shall be evicted from the land within twenty years by  
 10 a title better than that of the demandant, then judgment  
 11 shall be rendered against the tenant for the sum so estimated  
 12 by the jury and costs.

R. S., c. 145,  
 § 26.  
 1853, c. 34, § 2.

Tenant allowed  
 to pay one-third  
 the value of the  
 land, &c.

SECT. 27. At the end of one year execution may issue for  
 2 such sum with one year's interest thereon and costs, unless  
 3 the tenant has then deposited with the clerk of the court or  
 4 in his office for the demandant's use, one year's interest of  
 5 said sum and one third part of said principal sum and all the  
 6 costs if taxed and filed, in which case no execution shall  
 7 issue at the time.

R. S., c. 145,  
 § 29.

At the end of  
 two years, he  
 may pay  
 another third,  
 with interest.

SECT. 28. If within two years after the rendition of judg-  
 2 ment the tenant pays one year's interest on the balance of  
 3 the judgment due and one third part of the original judgment,  
 4 then execution shall be further stayed; otherwise, it may  
 5 issue for two third parts of the original amount of the judg-  
 6 ment and interest thereon.

R. S., c. 145,  
 § 30.

And at the end  
 of three years,  
 he may pay the  
 balance, &c.

SECT. 29. If the tenant within three years after the ren-  
 2 dition of judgment pays into the clerk's office the remaining  
 3 third part and interest thereon having made the payments  
 4 aforesaid execution shall never issue; otherwise it may for  
 5 the third part aforesaid and one year's interest thereon; and  
 6 the premises shall be held as security for the amount of the  
 7 judgment liable to be taken in execution for the amount and  
 8 interest until sixty days after an execution might have issued

9 as aforesaid notwithstanding any intermediate conveyance  
 10 attachment or seizure upon execution; and such execution  
 11 may be extended on said land or any part of it; or it may  
 12 be sold on execution like an equity of redemption, and in  
 13 either case subject to the right of redemption as in those  
 14 cases.

R. S., c. 145,  
 § 31, 32.

SECT. 30. If the tenant or his heirs are evicted from the  
 2 land so abandoned to him by a better title, and he notified  
 3 the demandant or his heirs to aid him in his defense against  
 4 such title, the tenant his executors or administrators may  
 5 recover back the money so paid with lawful interest of said  
 6 demandant or his representatives; but if no notice was given  
 7 the tenant in an action against the original demandant to  
 8 recover the price paid for the premises may show, that he  
 9 was evicted by a title better than that of the demandant.

Tenant's remedy  
 if he is evicted.

R. S., c. 145,  
 § 33.

SECT. 31. When the demandant does not elect so to aban-  
 2 don the premises, no writ of possession shall issue on his  
 3 judgment, nor a new action be sustained for the land, unless  
 4 the demandant within one year from the rendition thereof  
 5 pays into the clerk's office of the same court or to such  
 6 person as the court may appoint for the use of the tenant  
 7 the sum assessed for the buildings and improvements with  
 8 interest thereon.

If demandant  
 does not  
 abandon, &c.

R. S., c. 145,  
 § 34.

SECT. 32. Nothing contained in this chapter concerning  
 2 rents and profits or the estimate and allowance of the value  
 3 of the buildings and improvements shall extend to any action  
 4 between a mortgager and mortgagee their heirs and assigns;  
 5 or to any case where the tenant or the person under whom  
 6 he claims entered into possession of the premises and occu-  
 7 pied under a contract with the owner, which was known to  
 8 the tenant when he entered.

Restriction of  
 the right to  
 betterments.

R. S., c. 145,  
 § 35.

SECT. 33. No tenant, after judgment is entered against  
 2 him for the appraised value of the premises, shall unneces-  
 3 sarily cut wood or take away any timber or make any strip  
 4 or waste on the land, till the amount of such judgment is  
 5 satisfied.

Tenant not to  
 commit waste  
 after judgment  
 against him.  
 R. S., c. 145,  
 § 36.

SECT. 34. When 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  
 4 the record for that purpose, their estimates as reported by  
 5 them and recorded shall be deemed equal in its effect to the  
 6 verdict of a jury.

Parties may  
 agree as to value  
 of improvements.

R. S., c. 145,  
 § 37.

SECT. 35. When the tenant in any stage of such action,  
 2 files a statement in open court consenting to a sum, at which

Tenant may  
 propose a sum  
 &c.

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3 the buildings and improvements and the value of the de-  
 4 manded premises may be estimated, if the demandant con-  
 5 sents thereto judgment shall be rendered accordingly, as if  
 6 such sums had been found by verdict; but if the demandant  
 7 does not consent and the jury does not reduce the value of  
 8 the buildings and improvements below the sum offered nor  
 9 increase the value of the premises above the sum offered, he  
 10 shall recover no costs after such offer, but the tenant shall  
 11 recover his costs after such offer, and have judgment and  
 12 execution therefor subject to the provisions of the following  
 13 section.

R. S., c. 145,  
 § 38.

Set off of costs,  
 &c.

SECT. 36. In all cases where the demandant does not  
 2 abandon the premises to the tenant, the court may, on the  
 3 written application of either party during the term when  
 4 judgment is entered, order the costs recovered by the de-  
 5 mandant to be set off against the appraised value of the  
 6 buildings and improvements on the land; a record of this  
 7 order shall be made, and the court shall thereupon enter  
 8 judgment according as the balance may be in favor of one  
 9 party or the other.

R. S., c. 145,  
 § 39.

Jurors disqual-  
 ified, if interested  
 in similar  
 questions.

SECT. 37. No person shall sit as a juror in the trial of a  
 2 cause, when the value of buildings and improvements made  
 3 on the demanded premises and the value of the premises are  
 4 to be estimated as aforesaid, who as proprietor or occupant  
 5 is interested in a similar question.

R. S., c. 145,  
 § 40.

Execution may  
 issue after a  
 year.

SECT. 38. The expiration of a year after the rendition of  
 2 judgment shall not prevent the issuing of execution or writ  
 3 of possession in the cases mentioned in the twenty-eighth  
 4 twenty-ninth and thirtieth sections; but it may issue at any  
 5 time within three months after any default of payment by the  
 6 tenant.

R. S., c. 145,  
 § 41.

What constitutes  
 a possession and  
 improvement.

SECT. 39. A possession and improvement of land by a ten-  
 2 ant shall be within the provisions of this chapter though not  
 3 wholly surrounded by a fence or rendered inaccessible by  
 4 other obstructions, if such possession and improvement has  
 5 been open notorious and exclusive and comporting with the  
 6 usual management and improvement of a farm by its owner,  
 7 and though a portion of it may be woodland and unculti-  
 8 vated. (a)

R. S., c. 145,  
 § 42.

Proceedings, if  
 either party  
 dies before the  
 cause is disposed  
 of.

SECT. 40. If after judgment has been rendered for the de-  
 2 mandant in a writ of entry, either party dies before a writ  
 3 of possession is executed or the cause otherwise disposed of

4 according to the foregoing provisions, any money payable by  
 5 the tenant may be paid by him his executors or administra-  
 6 tors, or by any person who is entitled to the estate under  
 7 him, to the demandant or his executors or administrators,  
 8 with the like effect as if both parties were living.

R. S., c. 145,  
 § 43.

SECT. 41. The writ of possession shall be issued in the  
 2 name of the original demandant against the original tenant  
 3 though either or both are dead; and when executed it shall  
 4 enure to the use and benefit of the demandant, or whoever  
 5 is then entitled to the premises under him, as if it had been  
 6 executed in the lifetime of the parties.

How writ of  
 possession shall  
 issue in such  
 case.

R. S., c. 145,  
 § 44.

SECT. 42. Either party may have a view by the jury of the  
 2 place in question, if in the opinion of the court such view is  
 3 necessary to a just decision; the party moving for the same  
 4 shall advance to the jury such sum, as the court orders, to  
 5 be taxed against the adverse party, if the cause is decided  
 6 against him on the merits or through his default.

Either party may  
 have a view by  
 the jury.

R. S., c. 145,  
 § 45.

SECT. 43. If the demandant claims an estate for life only  
 2 in the premises, and pays any sum allowed to the tenant for  
 3 improvements, he or his executors or administrators at the  
 4 termination of his estate, shall be entitled to receive of the  
 5 remainder man or reversioner the value of such improve-  
 6 ments, as they then exist; and shall have a lien therefor on  
 7 the premises, as if they had been mortgaged for its payment,  
 8 and he may keep possession till it is paid; and if the parties  
 9 cannot agree on the existing value, it may be settled as in  
 10 case of the redemption of mortgaged real estate.

Proceedings if  
 a life estate is  
 demanded.

R. S., c. 145,  
 § 46.

SECT. 44. When any person makes entry into lands or  
 2 tenements, of which the tenant in possession or those under  
 3 whom he claims, have been in actual possession for six years  
 4 or more before such entry and withholds from such tenant  
 5 the possession thereof, he shall have a right to recover of  
 6 him so entering or of his executors or administrators in an  
 7 action of assumpsit for money laid out and expended, the  
 8 increased value of the premises by reason of the buildings  
 9 and improvements made by the tenant or those under whom  
 10 he claims; and these provisions shall extend to the grantee  
 11 or assignee of the tenant in dower and of any other life  
 12 estate; and a lien is hereby created on the premises in  
 13 favor of such claim to be enforced by an action commenced  
 14 within one year after such entry; and it shall be no bar to  
 15 such action, if the tenant to avoid cost yields to the superior  
 16 title.

If tenant is  
 ousted after six  
 years  
 possession, &c.

R. S., c. 145,  
 § 47.  
 1843, c. 6, § 2.

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The value of improvements in such case to be estimated, &c.  
R. S., c. 145, § 48.

Cases in which defendant may impeach the plaintiff's title deeds.

R. S., c. 145,  
§ 50.

If tenant and those under whom he claims have been in possession 40 years, &c.

1854, c. 90, § 1.  
1852, c. 240, § 2.

Court may appoint and protect surveyors.

R. S., c. 115,  
§ 112.

SECT. 45. Such right and value shall be ascertained by the same principles, as regulate such right and value under the provisions of this chapter.

SECT. 46. In all actions respecting lands or any interest therein, any title deed offered in evidence, may be impeached by the defendant as obtained by fraud, where the grantor if a party could impeach it, if the defendant has been in the open peaceable and adverse possession of the premises for twenty years.

SECT. 47. In all real and mixed actions, in which the tenant proves that he and those under whom he claims have been in the open notorious adverse and exclusive possession of the demanded premises claiming in fee simple for forty years next before the commencement of the action, the jury shall inquire into the fact of possession, and in case they find that the tenant and those under whom he claims have so occupied, the demandant shall recover no costs.

SECT. 48. The court may appoint a surveyor to run lines and make plans of lands demanded in a real or mixed action on motion of either party. If such surveyor is prevented by force menaces or fear from performing the duties assigned him, the court may issue a warrant to the sheriff commanding him with suitable aid to cause such opposition to the surveyor 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 like cases.

## Chapter 105.

### LIMITATION OF REAL ACTIONS, AND RIGHTS OF ENTRY.

- Sect.* 1. Rights of entry and of action barred in twenty years.
2. From what time.
  - 3, 4, 5 When such right shall be deemed to accrue.
  6. When an action may be brought by a minister, or other sole corporation.
  7. Saving in favor of infants, and certain other disabled persons.
  8. Further saving, if the person first entitled dies during such disability.
  9. Consequence, if tenant in tail or remainder man dies before the expiration of the limitation.
  10. What shall constitute such a disseizin as to bar the right of recovery.
  11. Limitation of actions by the state.
  12. Limitation not to take effect in certain cases, where the first suit fails.

*Sect. 13.* Right of way, or other easement, acquired by adverse user; the owner, by notice, may prevent such acquisition. CHAP. 105.

14. How such notice is to be given.

15. No real or mixed action, for the recovery of land, to be maintained, when the tenant and those under whom he claims, have been in possession over forty years.

SECT. 1. No person shall commence any real or mixed  
2 action for the recovery of lands or make an entry thereon,  
3 unless within twenty years after the right to make such entry  
4 or bring such action first accrued; or within twenty years  
5 after he or those under whom he claims were seized or pos-  
6 sessed of the premises; except as hereinafter provided. (a)

Rights of entry  
and action bar-  
red in 20 years.

R. S., c. 147, § 1.

SECT. 2. If such right or title first accrued to an ancestor  
2 predecessor or other person, under whom the demandant  
3 claims, the said twenty years shall be computed from the  
4 time when the right or title so first accrued to such ancestor  
5 predecessor or other person.

From what  
time.

R. S., c. 147, § 2.

SECT. 3. In the construction of this chapter the right of  
2 entry or of action to recover land shall first accrue at the  
3 times hereinafter mentioned.

When such  
right shall be  
deemed to  
accrue.

4 *First*—When a person is disseized, at the time of such  
5 disseizin.

6 *Second*—When he claims as heir or devisee of one who  
7 died seized, at the time of such death, unless there is a  
8 tenancy by the curtesy or other estate intervening after the  
9 death of such ancestor or devisor; in that case his right  
10 shall accrue, when such intermediate estate expires or would  
11 expire by its own limitation.

12 *Third*—When there is such an intermediate estate, and in  
13 all cases when the party claims by force of any remainder  
14 or reversion, his right shall accrue, when the intermediate  
15 estate would expire by its own limitation, notwithstanding  
16 any forfeiture thereof for which he might enter at an earlier  
17 time.

R. S., c. 147, § 3.

SECT. 4. The preceding clause shall not prevent any per-  
2 son from entering, when so entitled by reason of any forfeit-  
3 ure or breach of condition; but if he claims under such a  
4 title, his right shall accrue when the forfeiture was incurred,  
5 or the condition broken.

Preceding clause  
shall not prevent  
any person from  
entering, &c.

R. S., c. 147, § 4.

SECT. 5. In all cases not specially provided for the right  
2 of entry shall accrue, when the claimant or the person under  
3 whom he claims first became entitled to the possession of

In all cases not  
specially pro-  
vided for, the  
right of entry  
shall accrue, &c.

(a) 13, Me. 387. 20, Me. 205. 21, Me. 201, 372. 25, Me. 468.

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R. S., c. 147, § 5.

When an action  
may be brought  
by a minister,  
&c.

R. S., c. 147, § 6.

Saving in favor  
of infants, &c.

R. S., c. 147, § 7.

Further saving,  
if the person  
first entitled dies  
during such  
disability.

R. S., c. 147, § 8.

Consequence, if  
tenant in tail or  
remainder man  
dies before the  
expiration of the  
limitation.

R. S., c. 147, § 9.

What shall  
constitute such  
a disseizin as to  
bar the right of  
recovery.

R. S., c. 147,  
§ 11.

4 the premises under the title, upon which the entry or action  
5 is founded.

SECT. 6. If any minister or other sole corporation is dis-  
2 seized, any of his successors may enter upon the premises  
3 or bring an action for the recovery of them at any time  
4 within five years after the death resignation or removal of  
5 the person disseized, notwithstanding the twenty years after  
6 the disseizin have expired.

SECT. 7. When such right of entry or action first accrues,  
2 if the person thereto entitled is a minor, married woman,  
3 insane, imprisoned, or absent from the United States, he or  
4 any one claiming under him may make the entry or bring  
5 the action at any time within ten years after such disability  
6 is removed, notwithstanding the twenty years have expired.

SECT. 8. If the person first entitled to make the entry or  
2 bring the action dies during the continuance of the disability,  
3 and no determination or judgment has been had on his title  
4 or right of action, the entry may be made or action brought  
5 by his heirs or any other person claiming under him at any  
6 time within ten years after his death, notwithstanding the  
7 twenty years have elapsed; but no such further time for  
8 bringing the action or making the entry, beyond what is  
9 herein before prescribed, shall be allowed by reason of the  
10 disability of any other person.

SECT. 9. When a tenant in tail or a remainder man in  
2 tail dies before the expiration of the period herein before  
3 limited for making any entry or bringing an action for lands,  
4 no person claiming any estate, which such tenant in tail or  
5 remainder man might have barred, shall make an entry or  
6 bring an action to recover such land but within the period,  
7 during which the tenant in tail or remainder man, if he had  
8 so long lived, might have made such entry or brought such  
9 action.

SECT. 10. To constitute a disseizin or such exclusive and  
2 adverse possession of lands as to bar or limit the right of  
3 the true owner thereof to recover the same, it shall not be  
4 necessary for such lands to be surrounded with fences or  
5 rendered inaccessible by water; but it shall be sufficient, if  
6 the possession occupation and improvement are open and  
7 notorious and comporting with the ordinary management of  
8 a farm; although that part of the same which composes the  
9 woodland belonging to such farm and used therewith as a  
10 wood lot, is not enclosed as before mentioned.

## CHAP. 105.

SECT. 11. No real or mixed action for the recovery of any  
2 lands shall be commenced in behalf of the state, unless within  
3 twenty years from and after the time the title accrues to the  
4 state.

Limitation of  
actions by the  
state.  
R. S., c. 147,  
§ 12.

SECT. 12. When any writ in a real or mixed action fails of  
2 sufficient service or return by unavoidable cause, or by the  
3 default or negligence of any officer to whom it was delivered  
4 for service, or the writ is abated, or the action defeated for  
5 any matter of form, or by the death or other disability of  
6 either party, or if the demandant's judgment is reversed on  
7 writ of error, the demandant may commence a new action at  
8 any time within six months after the abatement or determi-  
9 nation of the first suit, or the reversal of the judgment.

Limitation not  
to take effect in  
certain cases,  
&c.

R. S., c. 147,  
§ 13.

SECT. 13. No person shall acquire any right or privilege  
2 of way or any other easement from in upon or over the land  
3 of another by the adverse use and enjoyment thereof; unless  
4 such use is continued uninterrupted for twenty years; and  
5 the owner of such land to prevent such right may give notice  
6 in writing to the person claiming the same of his intention  
7 to contest such right privilege or easement; and such notice  
8 being served and recorded, as hereinafter stated, shall be  
9 deemed an interruption of such use, and prevent the acqui-  
10 sition of a right thereto.

Right of way,  
or other ease-  
ment, &c.

R. S., c. 147,  
§ 14, 15.

SECT. 14. Such notice may be given by an officer by giving  
2 to the claimant his agent or guardian, if in the state an  
3 attested copy thereof or by leaving it at his dwelling house,  
4 or if not resident in the state a copy may be left with the  
5 tenant or occupant if any of the estate; if not, such copy  
6 shall be affixed to the house or a conspicuous part of the  
7 premises; and the officer shall make his return on the orig-  
8 inal notice, and the whole shall be recorded in the registry  
9 of deeds in the registry district where the land lies within  
10 three months from the time of such service; the notice may  
11 be given by the agent or guardian of the owner of the land.

How such notice  
is to be given.

R. S., c. 147,  
§ 16.

SECT. 15. No real or mixed action for the recovery of any  
2 lands shall be commenced or maintained against any person  
3 in possession thereof, when such person or those under whom  
4 he claims have been in actual possession for more than forty  
5 years claiming to hold the same by adverse open peaceable  
6 notorious and exclusive possession in their own right.

No real or  
mixed action,  
for the recovery  
of land, &c.

1848, c. 87, § 1.  
1852, c. 240, § 1.



## THE SELECTION AND SERVICE OF JURORS.

- Sect.* 1. Board for preparing lists of jurors; towns may make alterations.  
 2. How the lists are to be prepared.  
 3. Persons exempted from serving.  
 4. Tickets of names to be kept in jury box; liable to be drawn once in three years.  
 5. Number required to be kept in jury box; names may be withdrawn in certain cases.  
 6. Commissioners to divide the county into jury districts, and furnish copy of division to clerk; how divided and numbered.  
 7. Rule by which the clerk shall issue venire.  
 8. Grand jurors to serve one year; venires for such, to issue forty days before second Monday of September, annually.  
 9. Grand and traverse jurors to attend on the first day of the term, unless, at a previous term, the court designated a different day.  
 10. Distribution of venires, and notice of meetings to draw jurors.  
 11, 12, 13. Mode of drawing jurors; date of draft to be indorsed on the ticket.  
 14. Constables to notify jurors, and return venires.  
 15. Indorsement to be transferred, if ticket is renewed.  
 16. Penalty for neglect of selectmen or clerk.  
 17. Penalty for neglect of constable or town.  
 18. Penalty for neglect of clerk of court or sheriff.  
 19. Penalty for neglect of juror to attend.  
 20, 21. Penalty for fraud by town clerk or selectmen; recovery and appropriation of fines.

Board for  
preparing lists of  
jurors, &c.

R. S., c. 135, § 1.

How the lists  
are to be  
prepared.

R. S., c. 135, § 2.

Persons  
exempted from  
serving.

R. S., c. 135, § 3.

Tickets of names  
to be kept in  
jury box, &c.

SECT. 1. The selectmen treasurer and clerk of each town shall constitute a board for preparing lists of jurors to be laid before the town for their approval; and the town in legal town meeting by a majority of the legal voters assembled may strike out such names as they think proper from such lists, but shall not insert any other names.

SECT. 2. Such board, at least once in every three years, shall prepare a list of such persons of good moral character, and qualified, as the constitution directs to vote for representatives, under the age of seventy years in such town, as they shall judge best qualified to serve as jurors.

SECT. 3. The following persons shall be exempted from serving as jurors, and their names shall not be placed on the lists: the governor, council, judges and clerks of the common law courts, secretary and treasurer of the state, all officers of the United States, judges and registers of probate, registers of deeds, settled ministers of the gospel, officers of any colleges, preceptors of incorporated academies, physicians and surgeons, cashiers of incorporated banks, sheriffs and their deputies, coroners, counselors and attorneys at law, county commissioners, constables, and constant ferrymen.

SECT. 4. After the list of jurors is approved by the town, the said board shall write their names upon tickets and place them in the jury box, which shall be kept by the town clerk;

## CHAP. 106.

4 and the persons whose names are in the box shall be liable  
5 to be drawn and to serve on any jury, at any court for which  
6 they are drawn, once in every three years and not oftener,  
7 except as herein provided.

R. S., c. 135, § 4.

SECT. 5. Each town shall provide and constantly keep in  
2 the box a number of names ready to be drawn when re-  
3 quired, not less than one nor more than two for every hun-  
4 dred persons in the town according to the census taken next  
5 before preparing the box; and the board shall withdraw from  
6 the box the name of any person convicted of any scandalous  
7 crime, or guilty of any gross immorality.

Number re-  
quired to be  
kept in jury  
box, &c.

R. S., c. 135,  
§ 5, 6.

SECT. 6. Within one year after every new census, and  
2 oftener if a considerable change of population renders it  
3 proper, the county commissioners shall divide their county  
4 into not less than four nor more than twelve districts numer-  
5 ically designated; and they shall place as many adjoining  
6 towns in each district, as shall make the number of inhabi-  
7 tants in each according to the last census as nearly equal as  
8 may be without dividing a town; and shall deliver a copy of  
9 such division immediately to the clerk of the courts in their  
10 county.

Commissioners  
to divide the  
county into jury  
districts, &c.

R. S., c. 135,  
§ 7, 8, 9.

SECT. 7. The grand and traverse jurors shall be drawn  
2 from each jury district in such manner as to cause jurors, at  
3 each term of the court, to come from every part of the  
4 county as equally as may be, and as far as is practicable  
5 from every town in rotation having regard to the number of  
6 its inhabitants taking not more than two grand jurors and  
7 two traverse jurors from the same town at the same time,  
8 unless from necessity, or some extraordinary cause, or to  
9 equalize the service; and the clerk of the courts shall issue  
10 venires to the constables accordingly.

Rule by which  
the clerk shall  
issue venires.

R. S., c. 135,  
§ 10, 11.

SECT. 8. Venires for grand jurors to serve at the supreme  
2 judicial court shall be issued at least forty days before the  
3 second Monday of September annually; and such jurors  
4 shall serve at every term of said court for the transaction of  
5 criminal business throughout the year.

Grand jurors to  
serve one year,  
&c.

R. S., c. 135,  
§ 12, 13.  
1852, c. 246, § 17.

SECT. 9. The grand and traverse jurors shall attend on the  
2 first day of the term, for which they are drawn and sum-  
3 moned; unless the court at a previous term has designated  
4 a different day; and in that case the venire shall specify the  
5 the day on which the jurors shall attend.

Grand and trav-  
erse jurors to  
attend on the  
first day of the  
term, &c.

1844, c. 95, § 1.

SECT. 10. The sheriff on receiving venires for jurors shall  
2 immediately send them to the constables of the towns, where  
3 directed; and each constable on receipt thereof shall notify

Distribution of  
venires, &c.

## CHAP. 106.

4 the freeholders and other inhabitants of the town qualified  
 5 to vote for representatives, in the manner annual town meet-  
 6 ings are notified, and especially the selectmen and town  
 7 clerk, unless a different mode has been adopted at a legal  
 8 town meeting, which any town may do in respect to drawing  
 9 jurors only, to assemble and be present at the draft of the  
 10 jurors called for; which meeting shall be six days before the  
 11 sitting of the court, to which the venire is returnable.

R. S., c. 135,  
 § 14.

Mode of drawing  
 jurors, &c.

SECT. 11. The town clerk or in his absence one of the  
 2 selectmen shall carry the jury box into the meeting, which  
 3 shall there be unlocked and the tickets mixed by a major-  
 4 ity of the selectmen present; and one of the selectmen shall  
 5 draw out as many tickets as there are jurors required, and  
 6 the persons whose names are drawn shall be returned as  
 7 jurors, unless they have served on the jury within three  
 8 years, or from sickness, absence beyond sea, without the  
 9 limits, or in distant parts of the state, they are considered  
 10 by the town unable to attend.

R. S., c. 135,  
 § 15.

Same subject.

SECT. 12. In either of said cases, or if a person is drawn  
 2 who has been appointed to an office exempting him from  
 3 serving, others shall be drawn in their stead; but any person  
 4 thus excused, or returned and attending court and there  
 5 excused, shall not be excused on another draft though within  
 6 three years; and when all the persons whose names are in  
 7 the box have served within three years, or are not liable to  
 8 serve, the selectmen shall draw out the required number of  
 9 those who have not served for eighteen months; and the  
 10 clerk shall certify on the venire, that all persons whose  
 11 names are in the box have served within three years, or are  
 12 not liable to serve.

R. S., c. 135,  
 § 16.

Date of draft to  
 be endorsed on  
 the ticket.

R. S., c. 135,  
 § 17.

Constables to  
 notify jurors,  
 and return  
 venires.

SECT. 13. When a juror is drawn and not excused by the  
 2 town, the selectmen who drew his ticket shall indorse  
 3 thereon the date of the draft and return it into the box.

SECT. 14. The constables shall notify the persons thus  
 2 drawn four days at least before the sitting of the court by  
 3 reading the venire and indorsement thereon to them, or  
 4 leaving at their usual place of abode a written notice that  
 5 they have been drawn and of the time and place of the sit-  
 6 ting of the court, where they are to attend; and make a  
 7 seasonable return of the venire with his doings thereon. (a)

R. S., c. 135,  
 § 18, 19.

Indorsement to  
 be transferred,  
 &c.

SECT. 15. When a new list of jurors is made, the selectmen  
 2 shall transfer from the back of the old tickets to the new

3 ones of the same persons the minutes of such drafts, as had  
4 been made within the three preceding years.

SECT. 16. If the selectmen or town clerk neglect to per-  
2 form their duties, as herein required, so that the jurors  
3 called for from their town are not returned, they shall be  
4 fined not less than ten nor more than fifty dollars each.

SECT. 17. Any constable neglecting to perform his duties  
2 herein required shall be fined not exceeding twenty dollars;  
3 and any town for a like neglect of its duties shall be fined  
4 not exceeding one hundred dollars.

SECT. 18. If the clerk of the court or sheriff neglects to  
2 perform his duties so as to prevent a compliance with any  
3 of the provisions of this chapter, he shall be fined not  
4 exceeding fifty dollars.

SECT. 19. Any juror, who after being notified and returned,  
2 unnecessarily fails in his attendance shall be fined, as for  
3 contempt, not exceeding twenty dollars, unless he resides in  
4 Portland, and then not exceeding forty dollars.

SECT. 20. Any town clerk or selectman, who commits a  
2 fraud in any manner on the box previous to the draft in  
3 drawing a juror or in returning a name into the box, which  
4 had been fairly drawn and drawing another in its stead, or  
5 in any other mode, shall be fined not exceeding two hundred  
6 dollars to be recovered by indictment one half to the use of  
7 the state and the other half to the prosecutor.

SECT. 21. All fines imposed by the sixteenth, seventeenth,  
2 eighteenth and nineteenth, sections shall be recovered by  
3 indictment information or action by the county treasurer to  
4 the use of the county, where the offense was committed.

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R. S., c. 135,  
§ 20.

Penalty for  
neglect of  
selectmen or  
clerk.  
R. S., c. 135,  
§ 21.

Penalty for  
neglect of con-  
stable or town.  
R. S., c. 135,  
§ 22, 23.

Penalty for  
neglect of clerk  
of court or  
sheriff.  
R. S., c. 135,  
§ 24.

Penalty for  
neglect of juror  
to attend.  
R. S., c. 135,  
§ 25, 26.

Penalty for  
fraud by town  
clerk or  
selectmen.

R. S., c. 135,  
§ 27, 29.

Recovery and  
appropriation of  
fines.  
R. S., c. 135,  
§ 28.

## Chapter 107.

## DEPOSITIONS.

## DEPOSITIONS IN GENERAL.

Sect. 1. In what cases depositions may be used.

2. Before whom they may be taken.

3. When a cause is deemed pending, for the purpose of taking depositions.

4. Reasons for which they be taken and used.

5. On application of the party, a justice or notary may issue summons to depo-  
nent, and notice to adverse party.

6. Service of such notice, how made.

7. Who is to be considered attorney of the adverse party.

8. Notice to one of the adverse party sufficient; time of notice; verbal notice by  
the justice or notary; due notice to be given when deposition is taken out  
of the state.

**CHAP. 107.** *Sect. 9. Form of notice to adverse party.*

10. Form of summons to deponent.
11. Witness may be compelled to give his deposition.
12. Deponent to be sworn before examination.
13. Who may write the deposition.
14. If deception is used in giving notice, deposition may be rejected.
15. Form of caption.
16. Depositions to be delivered in court, or sealed up.
17. Not to be used if the reason for taking no longer exists.
18. Objections to competency of witness or questions must be seasonably made.
19. When depositions may be used in a second suit.
20. The court may admit or reject depositions taken out of the state.
21. The court may issue commissions to take depositions out of the state.

**DEPOSITIONS IN PERPETUAM.**

22. Application for taking a deposition in perpetuum, and notice to persons interested.
23. How such depositions are to be taken and certified.
24. To be recorded.
25. When it may be used in evidence. Never against the deponent or his interest.
26. Such depositions may be taken out of the state, upon a commission issued from the supreme judicial court.
27. The court to order notice, and on hearing may issue a commission to take such depositions.
28. Such deposition to be taken upon interrogations; application may be filed in vacation, and notice given.
29. Proceedings to compel a deponent to appear to give his deposition.
30. Punishment if he refuses to depose.

*Depositions in general.*

In what cases  
depositions may  
be used.

**SECT. 1.** Depositions taken for any of the causes and in  
2 the manner hereinafter mentioned may be used in all civil  
3 suits or causes, petitions for partition of land, libels for di-  
4 vorce, prosecutions for the maintenance of bastard children,  
5 petitions for review, and in trials before arbitrators, referees  
6 and county commissioners; and in cases of the contested  
7 election of a person returned as a member of the house of  
8 representatives.

R. S., c. 133,  
§ 1, 24.

Before whom  
they may be  
taken.

**SECT. 2.** Any justice of the peace or notary public may  
2 take depositions to be used in any pending cause, in which  
3 he is not interested nor then nor previously counsel or at-  
4 torney. (a)

R. S., c. 133, § 2.

When a cause is  
deemed pending,  
&c.

**SECT. 3.** No suit, petition, libel or prosecution, for the pur-  
2 poses of this chapter, shall be considered pending, till the  
3 process therein has been duly served on the respondent, or  
4 such notice as is required by law, or ordered by the court,  
5 has been duly given; and no such deposition shall be used  
6 in the trial of any cause except by consent of parties, unless  
7 the notice hereinafter mentioned is duly given to the adverse  
8 party.

R. S., c. 133,  
§ 3.

SECT. 4. Depositions may be taken for either of the following causes.

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Reasons for which they may be taken and used.  
R. S., c. 133, § 4.

*First*—When the deponent is so aged infirm or sick as not to be able to attend at the place of trial.

*Second*—When the deponent resides out of or is absent from the state.

1842, c. 31, § 16.

*Third*—When the deponent, before the session of the court where the deposition is to be used, is bound to sea on a voyage, is about to go out of the state, or more than sixty miles from the place of trial, and not expected to return in season to attend the trial.

1842, c. 1, § 1.

*Fourth*—When the deponent is judge of the supreme judicial court, or court of probate, and is prevented by his official duty from attending the trial.

1844, c. 103, § 1.

*Fifth*—When the deponent resides in a town other than that in which the trial is to be had.

1849, c. 123, § 1.

*Sixth*—When the deponent is confined in prison, and such imprisonment is continued until after the trial.

R. S., c. 133, § 4.

SECT. 5. On application of either party to a justice of the peace or notary public he may issue a summons to the deponent to appear at a designated time and place to give his deposition, and a notice to the adverse party to be present at such time and place; and the deposition may then and there be taken by him or any other justice or notary.

On application of the party, &c.

R. S., c. 133, § 5.  
1849, c. 119, § 1.

SECT. 6. The notice to the adverse party shall be served on him or his attorney by reading it in his presence and hearing, or 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.

Service of such notice, how made.

R. S., c. 133, § 6.

SECT. 7. No person for the purposes of this chapter shall be considered such attorney, unless his name is indorsed upon the writ or the summons left with the defendant, or he has appeared for his principal in the cause, or given notice in writing that he is attorney of such adverse party. (a)

Who is to be considered attorney of the adverse party.

R. S., c. 133, § 7.

SECT. 8. Where there are several plaintiffs or defendants, the notice shall be sufficient if given by the justice or notary to one or more of them; the adverse party shall be allowed not less than at the rate of one day, Sundays excepted, for every twenty miles travel from his usual place of abode to the place of caption between the service of notice and time appointed for taking the deposition: verbal notice to the

Notice to one of the adverse party sufficient, &c.

(a) 29, Me. 69. 33, Me. 420. 36, Me. 278, 350.

## CHAP. 107.

R. S., c. 133,  
§ 8, 9, 10, 14,  
1842, c. 31, § 17.

Form of notice  
to adverse party.

8 adverse party by any justice or notary shall be sufficient, and  
9 when a deposition is taken, not under a commission and out  
10 of the state, the adverse party or his attorney shall have due  
11 notice thereof.

SECT. 9. 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  
6 of C. D. of ——— may be taken to be used in an action  
7 of ——— pending between you and the said A. B., and the  
8 ——— of ——— in ——— and the ——— day of ——— at  
9 ——— of the clock in ——— ——— noon are the place and time  
10 appointed therefor; you are hereby notified to be present  
11 and put such questions as you think fit. Dated this ———  
12 day of ———, 18—.

R. S., c. 133,  
§ 11.

13 ——— ———, Justice of the Peace. (a)

Form of  
summons to  
deponent.

SECT. 10. The justice or notary, when requested, shall  
2 issue a summons to the deponent in substance as follows,  
3 viz:—

4 ———, ss. To C. D. of ———, in the county of ———.  
5 Greeting.

6 Whereas A. B. of ——— in the county of ——— has re-  
7 quested that your deposition be taken to be used in an action  
8 now pending between him and E. F. of ——— in the county  
9 of ———, and the ——— of ——— in the town of ———,  
10 and the ——— day of ——— at ——— of the clock in the  
11 ——— noon are the place and time appointed therefor; you  
12 are therefore required in the name of the State of Maine  
13 there and then to appear and testify, what you know relat-  
14 ing to said action. Dated this ——— ——— of ———, in the  
15 year ———.

16 ——— ———, Justice of the Peace.

17 The summons may be served and the service thereof proved,  
18 as in section six.

R. S., c. 133,  
§ 12.

Witness may be  
compelled to  
give his  
deposition.

SECT. 11. A witness may be compelled to attend and give  
2 his deposition in like manner and under the same penalties,  
3 as a witness is compelled to attend and testify in court; but  
4 not to travel more than thirty miles to give his deposition;  
5 and such deposition shall not be used in any trial, except for  
6 the causes mentioned in the fourth section, unless the adverse  
7 party uses the witness at such trial.

R. S., c. 133,  
§ 13.

## CHAP. 107.

SECT. 12. The deponent shall be first sworn to testify the  
 2 truth, the whole truth, and nothing but the truth, relating to  
 3 the cause or matter for which the deposition is to be taken;  
 4 and he shall then be examined, first by the party producing  
 5 him on verbal or written interrogatories and then by the  
 6 adverse party, and by the justice or the parties afterwards,  
 7 if they see cause. (a)

Deponent to be  
 sworn before  
 examination.

R. S., c. 133,  
 § 15.

SECT. 13. The deposition shall be written by the justice  
 2 or notary, or by the deponent or some disinterested person  
 3 in the presence and under the direction of such justice or  
 4 notary; and after it has been carefully read to or by the  
 5 deponent, it shall be subscribed by him.

Who may write  
 the deposition.

R. S., c. 133,  
 § 16.

SECT. 14. *If the adverse party is notified to take deposi-*  
 2 *tions in the same case at two places at the same time, or*  
 3 *any deceptive means are used to prevent his attendance at*  
 4 *the taking of any depositions, the court for such reason may*  
 5 *reject them.*

If deception is  
 used in giving  
 notice, &c.

R. 1. New.

SECT. 15. The justice or notary shall make out a certificate  
 2 and annex it to the deposition therein stating the following  
 3 facts: (b)

Form of caption.  
 R. S., c. 133,  
 § 17.

4 *First*—That the deponent was first sworn according to  
 5 law, and when.

R. S., c. 133,  
 § 17.

6 *Second*—By whom the deposition was written; if by the  
 7 deponent or some disinterested person, he must name him  
 8 and that it was written in his presence and under his direc-  
 9 tion.

10 *Third*—Whether the adverse party was notified to attend,  
 11 and did or did not attend;

12 *Fourth*—The cause in which the deposition is to be used  
 13 and the names of the parties thereto;

14 *Fifth*—The court or tribunal in which it is to be tried,  
 15 and the time and place of trial;

16 *Sixth*—The cause of taking the deposition.

R. S., c. 133,  
 § 17.

SECT. 16. The deposition shall be delivered by the justice  
 2 to the court or referees before whom the cause is to be tried,  
 3 or inclosed and sealed up by him and directed to such court  
 4 or referees and kept sealed till opened by their order.

Depositions to be  
 delivered in  
 court, &c.  
 R. S., c. 133,  
 § 18.

SECT. 17. When a deposition is so taken, it shall not be  
 2 used on trial, if the adverse party shows that the cause for  
 3 taking it no longer exists. (c)

Not to be used,  
 &c.  
 R. S., c. 133,  
 § 19.

(a) 24, Me. 171. 34, Me. 69. 35, Me. 132, 368, 511. 38, Me. 137.

(b) 5, Me. 9. 31, Me. 583. 28, Me. 22. 34, Me. 208. 33, Me. 376. 36, Me. 71, 466.

(c) 20, Me. 257. 28, Me. 583.



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Objections to competency of witness, &c.

R. S., c. 133,  
§ 20.

When depositions may be used in a second suit.

R. S., c. 133,  
§ 21.

The court may admit or reject depositions, &c.  
R. S., c. 133,  
§ 22.

The court may issue commissions to take depositions out of the state.  
R. S., c. 133,  
§ 23.

Application for taking a deposition in perpetuam, &c.

R. S., c. 133,  
§ 25, 26.

How such depositions are to be taken and certified.

SECT. 18. Objections to the competency of a deponent or to the questions or answers may be made when the deposition is produced in the same manner as if the witness testified on the trial; but if a deposition is taken on written interrogatories, all objections to an interrogatory shall be made before it is answered; and if it is not withdrawn the objection shall be noted thereon, otherwise the objection shall not afterwards be allowed. (a)

SECT. 19. When a plaintiff becomes nonsuit or discontinues his suit and commences another for the same cause between the same parties or their representatives, all depositions lawfully taken for the first may be used in the second suit, if they were duly filed in the court where the first suit was pending and remained on file till the commencement of the second.

SECT. 20. The court may admit or reject depositions taken out of the state by a justice or notary or other person lawfully empowered to take them. (b)

SECT. 21. The justices of the supreme judicial court may issue commissions to take depositions without the state to be used in pending suits in the state on such terms and conditions, as they think proper.

*Depositions in perpetuam.*

SECT. 22. When any person wishes to perpetuate the testimony of any witness, he shall make a statement in writing under oath briefly setting forth in substance his title interest or claim in the subject, to which the desired testimony relates, and the names of all persons supposed to be interested therein, and 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 him to take the deposition of such witness; and he thereupon shall cause notice to be given of the time and place for taking such depositions to all persons so named in the statement, which may be given and proved as in case of other depositions.

SECT. 23. The deponent shall be sworn and examined and the deposition written read and subscribed as other depositions; and the person taking it shall annex to it a like cer-

## CHAP. 107.

4 tificate, as near as the case will admit, and also state therein  
5 that it was taken in perpetual remembrance of the thing, and  
6 the name of the person at whose request it was taken, and  
7 of all who were notified, and all who attended.

R. S., c. 134,  
§ 27.

SECT. 24. The statement deposition and certificate within  
2 ninety days after the taking shall be recorded in the registry  
3 of deeds in the county where the land or any part of it lies,  
4 if the deposition relates to real estate; if not in the county  
5 where the parties or some of them reside.

To be recorded.

R. S., c. 133,  
§ 28.

SECT. 25. All such depositions recorded as aforesaid, or a  
2 copy thereof attested by the register of deeds, may be used  
3 in the trial of any cause pending, when the deposition was  
4 taken, or commenced afterwards between the person at whose  
5 request it was taken, and either of the persons named in the  
6 statement and duly notified, or those claiming under either  
7 concerning the title claim or interest set forth in the state-  
8 ment, subject, to the same objections as if originally taken  
9 for the suit; but no statement or testimony in any such dep-  
10 osition shall be received as evidence in any case against the  
11 deponent or his interest or any one claiming under him.

When it may be  
used in  
evidence, &c.

R. S., c. 133,  
§ 29.  
1852, c. 242, § 1.

SECT. 26. Depositions to perpetuate the testimony of wit-  
2 nesses living out of the state may be taken in any other state  
3 or foreign country upon a commission issued by the supreme  
4 judicial court; and the persons desirous to procure such dep-  
5 ositions may apply to said court and file a statement as afore-  
6 said; and if it relates to real estates in this state, the state-  
7 ment shall be filed in the county where it lies; if not in the  
8 county where some of the parties reside.

Such depositions  
may be taken  
out of the state,  
&c.

R. S., c. 133,  
§ 30, 31.

SECT. 27. The court shall order notice to be served on each  
2 of the persons named in the statement living in the state four-  
3 teen days before the time appointed for hearing the parties,  
4 and on hearing the parties, or the applicant if no adverse  
5 party appears, may issue a commission for taking such depo-  
6 sition as in a cause pending.

The court to  
order notice, &c.

R. S., c. 133,  
§ 32, 33.

SECT. 28. The deposition shall be taken upon interrogato-  
2 ries filed by the applicant and cross interrogatories by any  
3 party adversely interested, substantially as when taken to be  
4 used in pending causes. Or the person wishing to take the  
5 deposition may file his statement in the clerk's office in  
6 vacation, and cause notice to be given to the persons named  
7 therein as interested fourteen days at least before the next  
8 term of the court, at which time the parties may be heard.

Such deposition  
to be taken upon  
interrogations,  
&c.

R. S., c. 133,  
§ 34, 35.

SECT. 29. When any magistrate duly authorized has sum-  
2 moned any person to appear before him to give his deposi-

Proceedings to  
compel a depo-  
nent to appear,  
&c.

CHAP. 108.

tion to be used in any cause pending in any court in this or any other state or to perpetuate the testimony of any witness, and the summons has been served and returned by a proper officer or other person, and proof of such service is entered on the summons, and legal fees have been tendered such witness a reasonable time before the day appointed for taking the deposition, and such witness refuses to attend, he may adjourn the time of taking his deposition and issue a capias directed to a proper officer to apprehend and bring such witness before him at the time and place of the adjournment.

R. S., c. 133,  
§ 36.

Punishment if  
he refuses to  
depose.

SECT. 30. If such witness on being brought before the person, who is to take his deposition, refuses to depose and answer such questions as are propounded to him by either of the parties or persons interested under his direction, he may commit him to the prison of the county for contempt, as the supreme judicial court may commit a witness for refusing to testify.

R. S., c. 133,  
§ 37.

## Chapter 108.

### REFERENCE OF DISPUTES BY CONSENT OF PARTIES.

- Sect. 1.* What controversies may be submitted; manner and form of submission; not to be revoked but by consent.
2. Submission of all demands, and of a specific demand.
  3. Parties may agree upon the time of reporting.
  4. Report, how returned into court.
  5. Power of referees same as if appointed under rule of court.
  6. Proceedings of court thereon; recommitment.
  7. All the referees must hear, but a majority may decide.
  8. Costs; compensation of referees.
  9. Report to be made to the supreme judicial court; either party may bring writ of error or file exceptions.
  10. A referee may take acknowledgment, or administer oaths.

What contro-  
versies may be  
submitted, &c.

SECT. 1. All controversies, which may be the subject of a personal action, may be submitted to one or more referees; and the parties personally or by attorney may sign and acknowledge an agreement before any justice of the peace, 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 said ———, against 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

12 the major part of whom) being made within one year from  
 13 this day to the supreme judicial court for the said county of  
 14 —, the judgment thereon shall be final. And if either of  
 15 the parties neglects to appear before the referees, after  
 16 proper notice given to them of the time and place appointed  
 17 by the referees for hearing the parties, the referees may  
 18 proceed in his absence.

19 Dated this — day of —, in the year —.

20 Such agreement subscribed by the parties shall be acknowl-  
 21 edged by them or their attorneys as their voluntary act  
 22 before the same or any other justice, and shall not be  
 23 revoked without the mutual consent of the parties. (a)

R. S., c. 138,  
 § 1, 2, 5.

SECT. 2. If all demands between the parties are so submit-  
 2 ted, no specific demand need be annexed to the agreement;  
 3 but if a specific demand only is submitted, it shall be  
 4 annexed to the agreement and signed by the party making  
 5 it; and so stated as to be readily understood and as certain  
 6 in substance as the case admits. (b)

Submission of  
 all demands,  
 and of a specific  
 demand.

R. S., c. 138,  
 § 3, 4.

SECT. 3. The parties may agree when the report shall be  
 2 made, and in that respect vary from the form aforesaid with-  
 3 out being confined to one year.

Parties may  
 agree upon time  
 of reporting.  
 R. S., c. 138, § 6.

SECT. 4. One of the referees shall deliver the report to  
 2 the court to which by the agreement it is to be returned, or  
 3 it shall be sealed up and transmitted sealed to the court and  
 4 opened by the clerk.

Report, how  
 returned into  
 court.  
 R. S., c. 138, § 7.

SECT. 5. Such referees shall have the same authority as  
 2 those appointed by a rule of court.

Power of  
 referees, &c.  
 R. S., c. 138, § 8.

SECT. 6. The court may accept, reject, or recommit it for  
 2 further consideration; and the referees shall notify the par-  
 3 ties of the time and place of a new hearing; and when the  
 4 report is accepted, judgment shall be entered thereon as in  
 5 cases of submission by rule of court. (c)

Proceedings of  
 court thereon;  
 recommitment.

R. S., c. 138, § 9.

SECT. 7. All the referees must meet and hear the parties,  
 2 but a majority may make the report, which shall be valid as  
 3 if signed by all of them; but it must appear by the report or  
 4 certificate of the dissenting referee, that all attended and  
 5 heard the parties.

All the referees  
 must hear, but a  
 majority may  
 decide.

R. S., c. 138,  
 § 10.

SECT. 8. The referees may allow costs or not to either  
 2 party, as they judge reasonable, unless special provision is  
 3 made in the submission on the subject; but the court may  
 4 reduce the compensation of referees.

Costs;  
 compensation  
 of referees.  
 R. S., c. 138,  
 § 11.

(a) 18, Me. 251, 255. (b) 9, Me. 15. 22, Me. 240. 30, Me. 113. 35, Me. 357.  
 (c) 23, Me. 435. 29, Me. 70. 31, Me. 39, 112. 32, Me. 78.

CHAP. 109.

Report to be made to S. J. Court, &c.

R. S., c. 138, § 12, 13, 1845, c. 168.

A referee may take acknowledgment, &c. R. S., c. 138, § 14.

SECT. 9. The report shall be made to the supreme judicial court within the time limited in the submission, unless varied by the parties; and either party may bring a writ of error to reverse any judgment, or file exceptions to any decision of the court accepting rejecting or recommitting a report and carry the same to the law court.

SECT. 10. Any one of the referees, who is a justice of the peace, may take the acknowledgments of the parties to the submission, and any referee may swear witnesses.

Chapter 109.

TIMBER AND CORD WOOD; HOW IT MAY BE DISPOSED OF IN CERTAIN CASES.

- Sect. 1.* On application of the owners of certain interests in wood lands, the supreme judicial court, after notice and hearing, may grant leave to sell the wood.
2. Commissioners to be appointed therefor, and to give bond.
  3. Proceeds; how invested. Appropriation of income.
  4. Court to appoint trustees of such proceeds, who shall give bond.

On application of the owners of certain interests in wood lands, &c.

SECT. 1. Any person seized of a freehold estate, fee simple, fee tail, remainder or reversion in a lot or tract of wood land or timber land, on which the trees are of a growth and age fit to be cut, may apply to the supreme judicial court in any county for leave to dispose of such trees and invest the proceeds for the use of the persons interested therein; and the court after due notice to all persons interested and a hearing of the parties, if any appear, may appoint one or more persons to examine the land and report to the court, and the court may thereupon order the whole or a part of such trees to be felled and sold, and the proceeds brought into court subject to further orders.

R. S., c. 139, § 1.

Commissioners to be appointed therefor, &c.

R. S., c. 139, § 2.

Proceeds, how invested, &c.

SECT. 2. The court shall appoint one or more commissioners to superintend the felling and sale of such trees and account for the proceeds to the court, who shall be under bond to the clerk for the faithful performance of their trust.

SECT. 3. The court may cause the net proceeds of sale to be invested in other real estate in this state or in public stocks to the same uses and under the same limitations as the land; and the income thereof to be paid to the persons entitled to the income of the land or apportioned among the persons interested in the estate according to their interest.

R. S., c. 139, § 3.

SECT. 4. The court may appoint one or more trustees re-  
 2 movable at their pleasure to hold such estates or stocks for  
 3 said uses, who shall give bond with sufficient sureties to said  
 4 clerk for the faithful discharge of their duty.

CHAP. 110.

Court to appoint  
 trustees of such  
 proceeds, &c.  
 R. S., c. 139, § 4.

## Chapter 110.

### COMMISSIONERS TO TAKE ACKNOWLEDGMENT OF DEEDS OR OTHER CONTRACTS AND DEPOSITIONS IN OTHER STATES.

*Sect.* 1. Appointment; power to authenticate deeds.  
 2. Legal effect of their official acts and certificates.  
 3. May administer oaths, and take depositions.  
 4. Qualification and seal.

SECT. 1. The governor may appoint one or more commis-  
 2 sioners in any other of the United States, and in any foreign  
 3 country, to continue in office during the pleasure of the gov-  
 4 ernor; and have authority to take the acknowledgement and  
 5 proof of the execution of any deed or other conveyance or  
 6 lease of any lands lying in this state; and of any contract  
 7 letter of attorney or any other writing under seal or not  
 8 to be used or recorded in this state.

Appointment;  
 power to  
 authenticate  
 deeds.

R. S., c. 134, § 1.  
 1856, c. 222.

SECT. 2. Such acknowledgment or proof taken according  
 2 to the laws of this state and certified by any such commis-  
 3 sioner under his seal of office annexed to or indorsed on  
 4 such instrument shall have the same force and effect, as if  
 5 done by an officer authorized to perform such acts in this  
 6 state.

Legal effects of  
 their official acts  
 and certificates.

R. S., c. 134, § 2.

SECT. 3. Every commissioner thus appointed may admin-  
 2 ister any oath lawfully required in this state to any person  
 3 willing to take it; and take and duly certify all depositions  
 4 to be used in any of the courts in this state in conformity  
 5 to the laws thereof on interrogatories proposed under com-  
 6 mission from a court of this state, by consent of parties, or  
 7 on legal notice given to the opposite party; and all such  
 8 acts shall be as valid as if done and certified according to  
 9 law by a magistrate in this state.

May administer  
 oaths, and take  
 depositions.

R. S., c. 134, § 3.

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  
 4 judge or clerk of one of the superior courts of the state or

Qualification  
 and seal.

CHAP. 111. 5 country, in which he resides, well and faithfully to execute  
6 and perform all his official duties under the laws of Maine;  
7 which oath and a description of his seal of office shall be  
R. S., c. 134, § 4. 8 filed in the office of the secretary of this state.

## Chapter 11.

### PREVENTION OF FRAUDS AND PERJURIES IN CONTRACTS, AND ACTIONS FOUNDED THEREON.

- Sect.* 1. Cases in which promises must be in writing.  
2. The consideration need not be expressed therein.  
3. No action to be maintained on a contract made by a minor, unless ratified, after becoming of age.  
4. Representation of another's ability or character, to be in writing.  
5. What contracts for sale of goods must be in writing.  
6. When specific performance of a contract may be enforced by a bill in equity.  
7. What decree to be made; the conveyance to be good.  
8, 9. Enforcement of the decree; provision in case of the death of the obligor before conveyance.  
10. Administrator of the contractor may petition for authority to make conveyance.

Cases in which  
promises must  
be in writing.

SECT. 1. No action shall be maintained in any 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. (*a*)  
5 *Second*—To charge any person upon any special promise  
6 to answer for the debt default or misdoings of another. (*b*)  
7 *Third*—To charge any person, upon an agreement made in  
8 consideration of marriage.

9 *Fourth*—Upon any contract for the sale of lands, tene-  
10 ments, or hereditaments, or of any interest in or concerning  
11 them. (*c*)

12 *Fifth*—Upon any agreement that is not to be performed  
13 within one year from the making thereof. (*d*)

14 *Sixth*—Upon any contract to pay a debt after a discharge  
15 therefrom under the bankrupt laws of the United States or  
16 assignment laws of this state.

1848, c. 52, § 1.

17 Unless the promise contract or agreement, upon which such  
18 action is brought, or some memorandum or note thereof is  
19 in writing and signed by the party to be charged therewith  
20 or by some person thereunto lawfully authorized. (*e*)

R. S., c. 136, § 1.

(*a*) 20, Me. 21. (*b*) 7, Me. 350. 21, Me. 410, 545. 23, Me. 395. 26, Me. 341. 31, Me. 555.  
36, Me. 113. (*c*) 12, Me. 24, 506. 15, Me. 14, 61, 201. 16, Me. 212. 18, Me. 16. 22, Me. 360.  
23, Me. 131. (*d*) 10, Me. 31. 15, Me. 201. 20, Me. 119. (*e*) 3, Me. 409. 4, Me. 1, 258.

- SECT. 2. The consideration of any such promise contract  
 2 or agreement need not be expressed in said writing; but  
 3 may be proved by any other legal evidence. CHAP. 111.  
The consideration need not be expressed, &c.  
R. S., c. 136, § 2.
- SECT. 3. No action shall be maintained on any contract  
 2 made by a minor, unless he or some person lawfully author-  
 3 ized ratified it in writing, after he arrived at the age of  
 4 twenty-one years, except for necessities or real estate of  
 5 which he has received the title and retains the benefit thereof. No action to be maintained on a contract made by a minor, &c.  
1845, c. 166, § 1.
- SECT. 4. No action shall be maintained to charge any per-  
 2 son by reason of any representation or assurance concerning  
 3 the character, conduct, credit, ability, trade or dealings of  
 4 another, unless made in writing and signed by the party to  
 5 be charged thereby or by some person by him legally author-  
 6 ized. Representation of another's ability or character, to be in writing.  
R. S., c. 136, § 3.
- SECT. 5. No contract for the sale of any goods wares or  
 2 merchandize for thirty dollars or more shall be valid, unless  
 3 the purchaser accepts and receives part of the goods, or gives  
 4 something in earnest to bind the bargain or in part payment  
 5 thereof, or some note or memorandum thereof is made and  
 6 signed by the party to be charged thereby or by his agent. (a) What contracts for sale of goods must be in writing.  
R. S., c. 136, § 4.
- SECT. 6. If a person, who has contracted in writing to  
 2 convey real estate dies before making the conveyance, the  
 3 other party may have a bill in equity, if filed within one  
 4 year after the grant of administration, in the supreme judi-  
 5 cial court to be heard and decided according to the proceed-  
 6 ings in chancery to enforce specific performance of the con-  
 7 tract by his heirs devisees executor or administrator. When specific performance of a contract may be enforced, &c.  
R. S., c. 136, § 5, 6.
- SECT. 7. If it appears that the plaintiff is entitled to a con-  
 2 veyance, the court may authorize and require the executor  
 3 or administrator to convey the estate, as the deceased ought  
 4 to have done; and if any of the heirs or devisees are in the  
 5 state and competent to act, the court may direct them, instead  
 6 of the executor or administrator, to convey the estate or  
 7 join with either in such conveyance; which shall pass the  
 8 estate as fully as if made by the contractor. What decree to be made, &c.  
R. S., c. 136, § 7, 8.
- SECT. 8. If the defendant neglects or refuses to convey  
 2 according to the decree, the court may render judgment for  
 3 the plaintiff for possession of the land to hold according to  
 4 the terms of the intended conveyance, and issue a writ of  
 5 seizin as in a real action, under which the plaintiff having  
 6 obtained possession shall hold the premises as effectually as  
 7 if conveyed in pursuance of the decree; or the court may Enforcement of the decree, &c.  
R. S., c. 136, § 9, 10.



CHAP. 112.

Provision in case  
of the death of  
the obligor before  
conveyance.

R. S., c. 136,  
§ 11.

Administrator of  
the contractor  
may petition for  
authority to  
make  
conveyance.

R. S., c. 136,  
§ 12.

8 enforce their decree by any other process according to  
9 chancery proceedings.

SECT. 9. If the person entitled to such conveyance dies  
2 before bringing his suit, or the conveyance is completed, or  
3 such seizin and possession are obtained, his heir devisee or  
4 other person entitled to the estate under him may bring and  
5 prosecute such suits, and shall be entitled to the conveyance,  
6 or seizin and possession in like manner as the obligee.

SECT. 10. If the party, to whom any such conveyance was  
2 to be made or those claiming under him do not commence a  
3 suit as before provided, and 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 circumstances of the case; whereupon  
8 the court by their decree may authorize such executor or  
9 administrator to convey the estate in the manner the  
10 deceased, should have done; and such conveyance shall be  
11 deemed a performance of the contract, on the part of the  
12 deceased, so as to entitle his heirs executors or administra-  
13 tors to demand a performance thereof on his part.

## Chapter 112.

### RECOGNIZANCES FOR DEBTS.

- Sect.* 1. Who may enter into recognizance.  
2. Form of recognizance.  
3. The justice after recording it, to deliver it to the creditor.  
4. May be filed and recorded with clerk of the courts; who may issue and re-  
new execution thereon, to be executed by all proper officers.  
5. When not to run against the lands or body of the debtor.  
6. Administrator of creditor may take out execution; if debtor dies, or after  
three years, action of debt may be brought as on a judgment.  
7. Consequence, if one of several debtors or creditors die.  
8. Remedy, if execution is wrongfully issued.

Who may enter  
into recogni-  
zance.

R. S., c. 137, § 1.

Form of  
recognizance.

SECT. 1. Any person legally capable may enter into recog-  
2 nizance to pay a debt, as herein provided; and thereby  
3 subject his goods and estate or his person to be taken in  
4 execution.

SECT. 2. Such recognizance may be taken before any jus-  
2 tice of the peace, and shall be in substance as follows:  
3 I, A. B., of —, in the county of —, do owe unto C. D.,  
4 of —, in the county of —, the sum of —, to be paid to  
5 the said C. D., on the — day of —; and if I fail to pay

6 said debt at the time aforesaid, I will and grant, that the CHAP. 112.  
 7 said debt be levied of my goods and chattels lands and ten-  
 8 ements and in want thereof upon my body.

9 In testimony whereof, I have hereto set my hand and seal R. S., c. 137, § 2.  
 10 this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_

SECT. 3. After such recognizance is signed sealed and ac- The justice after  
recording it, to  
deliver it to the  
creditor.  
R. S., c. 137, § 3.  
 2 knowledged before said justice and his certificate thereof is  
 3 annexed, it shall be delivered to the creditor; and the jus-  
 4 ice shall keep a record of all recognizances taken by him.

SECT. 4. If the debt is not paid at the time appointed, the May be filed and  
recorded with  
clerk of the  
courts, &c.  
 2 creditor may deliver the recognizance to the clerk of the court  
 3 of the county where taken, who shall record it in a book kept  
 4 for that purpose and place it on the files of the court; and  
 5 at any time within three years after the debt becomes due,  
 6 without any order of court he may issue an execution thereon  
 7 including all interest due by the terms of the recognizance  
 8 varying the form of the execution accordingly, to be renewed R. S., c. 137,  
§ 4, 5, 6, 7.  
 9 by the clerk served and executed by all proper officers as any  
 10 other execution.

SECT. 5. If the sum originally due on such recognizance When not to run  
against the lands  
or body of the  
debtor.  
R. S., c. 137, § 8.  
 2 does not exceed twenty dollars, execution shall not be issued  
 3 against the lands of the debtor; and if the sum is less than  
 4 ten dollars, it shall not be issued against his body.

SECT. 6. If the creditor dies before the debt is fully paid, Administrator of  
creditor may  
take out  
execution, &c.  
 2 his executor or administrator may renew such execution in  
 3 his own name; and if the debtor dies, no execution shall  
 4 issue of course, but the creditor in that case, and also after  
 5 the expiration of three years from the time of payment in the  
 6 recognizance, may have an action of debt as in case of judg- R. S., c. 137,  
§ 9, 10, 11.  
 7 ment.

SECT. 7. Where there are several debtors or creditors, and Consequence, if  
one of several  
debtors or  
creditors die.  
R. S., c. 137,  
§ 12.  
 2 one or more of them dies before the debt is paid, the rights  
 3 of the surviving creditors and the obligations of the surviv-  
 4 ing debtors shall be the same as in case of a judgment.

SECT. 8. Any person injured by the suing out or service of Remedy, if  
execution is  
wrongfully  
issued.  
R. S., c. 137,  
§ 13.  
 2 any such execution shall have his remedy by writ of audita  
 3 querela or otherwise, as in case the execution had been sued  
 4 out upon a judgment.

## Chapter 113.

## RELIEF OF POOR DEBTORS.

## ARRESTS AND DISCLOSURES ON MESNE PROCESS.

- Sect. 1.* No arrest on mesne process, on contract, except where specially provided.
2. Debtor about to leave the state may be arrested in certain cases.
  3. Disclosure on such arrest.
  4. Notice thereof to be given to the plaintiff.
  5. Mode of making disclosure.
  6. Justices may adjourn.
  7. Adjudication of justices; effect of discharge.
  8. Lien on property disclosed, how preserved.
  9. Arrests allowed in actions not founded on contracts.
  10. Defendant may in all cases disclose on return of writ.
  11. Effect thereof; lien on property disclosed.
  12. Certificate of real estate disclosed to be filed in registry of deeds.
  13. How to preserve lien on personal estate.
  14. Disclosure on mesne process by consent of parties.
  15. Execution to issue against the body, unless there is a disclosure and discharge.
  16. Certain property, which cannot be come at to be attached, to be delivered up on disclosure.
  17. Persons arrested may give bond to disclose in a certain time after judgment.

## ARRESTS AND IMPRISONMENT ON EXECUTION, AND DISCLOSURES THEREON; OR AFTER JUDGMENT.

18. No arrest on execution if debt is less than ten dollars.
19. Arrests in other cases, and mode of release.
20. Bond may be given on such arrest; condition and effect thereof.
21. Application by a debtor under bond or imprisoned, to a justice for privilege of poor debtor's oath.
22. Justice to appoint the time and place and cite the creditor.
23. Citation, how served.
24. Examination before two justices of the quorum.
- 25, 26. Mode of examination.
27. When the justices may administer the oath.
28. Form of the poor debtor's oath.
29. Certain property disclosed, which cannot be come at to be attached, may be appraised off to the creditor.
30. Creditor may accept it within thirty days.
31. Form of justice's certificate of administration of oath.
32. Effect of such certificate.
33. Preservation of creditor's lien on real estate disclosed.
34. Lieu on personal estate disclosed; consequences if debtor or any person transfers or conceals it.
35. Proceedings if debtor has given bond on mesne process.
36. Debtor in such case may go at large thirty days during the lien on the property disclosed.
37. Effect of creditor's election to arrest on execution or otherwise.
38. Bond taken on execution to be returned therewith, for benefit of creditor.
39. Amount recoverable thereon, if forfeited.
40. In all actions upon a debtor's bond, if it appears that such debtor has disclosed, and taken poor debtor's oath, the plaintiff to recover only actual damage.
41. The new judgment on any such bond to operate as discharge of the old judgment as far as it goes.
42. Persons incompetent as witnesses may take the poor debtor's oath.
43. Costs for creditor if debtor is not discharged.
44. Discharge of debtor's body, no discharge of debt.

## GENERAL PROVISIONS APPLICABLE TO CERTAIN CASES OF ARREST AND IMPRISONMENT.

45. Bond to be valid, though not taken for the exact amount.
46. Right to bail not impaired.
47. Limitation of suits on bond.

- Sect.* 48. Manner of selecting the justices to take the disclosure; if two do not agree, they may select a third, and majority decide. CHAP. 113.
49. When the creditor delays to select a justice, the justice selected by debtor may adjourn.
- 50, 51. Liability of a debtor if he discloses falsely.
52. Liability of persons aiding in fraudulent concealment or transfer of property.
53. Persons arrested for taxes, entitled to the privileges of this chapter.
54. Variation in the form of the oath and certificate in such case.
55. Privileges extended to collectors and other officers, arrested for taxes committed to them.
56. Disability of persons committed for willful trespass.
57. Service of a citation on a corporation creditor.
58. Prison keeper may require the creditor to support the debtor. Special provision, if committed on several precepts.
59. Adjustment of price of articles furnished to prisoner.
60. Citation to one of several joint creditors sufficient.
61. Effect of voluntary release by creditor, from arrest on execution.
62. Officer may indorse such release on the execution, and then levy the execution on property.
63. How judgment may be kept in force, after such release.
64. Judges of municipal and police courts may act as justices of the quorum.

## PROVISIONS RELATING TO DEBTORS TO THE STATE.

65. Such debtor may apply to a justice of the supreme court.
66. Notice to be given to county attorney, or attorney general.
67. Proceedings and power to release the debtor.
68. Justice may discharge him or the debt, on payment or security for a part.
69. Jailer to comply with decision of judge.
70. Adjudication to be entered on the record.
71. Same power vested in the county commissioners.
72. Application by such debtor to take the poor debtor's oath, and citation to the county attorney. County attorney to attend.
73. Oaths and certificates in such cases.

*Arrests and disclosures on mesne process.*

SECT. 1. No person shall be arrested on mesne process in  
 2 a suit on contract express or implied, or on any judgment  
 3 founded on such contract, except as provided in the follow-  
 4 ing section; and the writ or process shall be so varied, as  
 5 not to require the arrest of the defendant.

No arrest on  
 mesne process,  
 on contract, &c.

R. S., c. 148, § 1.

SECT. 2. Any person, a resident within this state or not,  
 2 may be arrested and held to bail or committed to prison on  
 3 mesne process on a contract express or implied, when the  
 4 sum demanded amounts to ten dollars, or on a judgment  
 5 founded on contract, when the debt originally recovered and  
 6 remaining due is ten dollars or more exclusive of interest on  
 7 such judgment, when he is about to depart and reside beyond  
 8 the limits of this state with property or means of his own  
 9 exceeding the amount required for his immediate support, if  
 10 the creditor his agent or attorney makes oath before a jus-  
 11 tice of the peace to be certified by such justice on said pro-  
 12 cess, that he has reason to believe and does believe, that  
 13 such debtor is about so to depart and reside and to take

Debtor about to  
 leave the state  
 may be arrested  
 in certain cases.

## CHAP. 113.

R. S., c. 148, § 2.

Disclosure on  
such arrest.

R. S., c. 148, § 3.

Notice thereof to  
be given to the  
plaintiff.

R. S., c. 148, § 4.

Mode of making  
disclosure.

R. S., c. 148, § 5.

Justices may  
adjourn.

R. S., c. 148, § 6.

Adjudication of  
justices ; effect  
of discharge.

R. S., c. 148, § 7.

Lien on property  
disclosed, how  
preserved.

14 with him property or means as aforesaid, and that the de-  
15 mand or principal part thereof amounting to at least ten  
16 dollars is due to him. (a)

SECT. 3. On the arrest or imprisonment of any debtor by  
2 virtue of the preceding section, on request to the officer or  
3 jailer who has him in custody, he may be taken before two  
4 disinterested justices of the peace and quorum to be selected  
5 as provided in the forty-eighth section to disclose the actual  
6 state of his affairs.

SECT. 4. Previous to the disclosure he shall give due notice  
2 to the creditor his agent or attorney of his intention and of  
3 the time and place for said disclosure, that the creditor agent  
4 or attorney may be present and select one of the justices  
5 and be heard thereon ; such notice shall not be less than one  
6 day for every twenty miles travel exclusive of Sundays.

SECT. 5. If the debtor makes a full disclosure at the ap-  
2 pointed time and place to the satisfaction of said justices of  
3 the actual state of his affairs and of all of his estate property  
4 rights and credits in possession expectation or reversion,  
5 and answers all proper interrogatories in regard to the same,  
6 and signs and offers to make oath to the truth of his said  
7 disclosure and answers before the justices, they shall admin-  
8 ister to him such oath and may hear such further and proper  
9 evidence, as may be offered upon either side.

SECT. 6. The justices may adjourn from time to time if  
2 they see cause ; and if either of the justices is not present  
3 at the adjournment, the other may adjourn to another time,  
4 but no such adjournment or adjournments shall exceed three  
5 days in the whole exclusive of Sundays.

SECT. 7. On such examination the justices may discharge  
2 the debtor from arrest and imprisonment, or remand him  
3 into the custody of the jailer or other officer, as the case  
4 requires ; and in case of such discharge no execution issuing  
5 on the judgment in the suit or process shall run against the  
6 body of the debtor.

SECT. 8. All attachable property disclosed by the exami-  
2 nation, or so much as the creditor designates to satisfy his  
3 demand, shall be held as attached from the time of the dis-  
4 closure until thirty days after final judgment, as in other  
5 cases of attachment ; and the officer shall make return thereof  
6 on the writ or process certifying the fact that the property  
7 was so disclosed ; and if it is real estate, shall certify the

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8 same to the register of deeds as provided in section thirty  
 9 of chapter eighty-one; and if the creditor requires it, at any  
 10 time before final judgment the officers shall take into his cus-  
 11 tody any part of the personal property so disclosed sufficient  
 12 to secure the demand and hold it as in other cases.

R. S., c. 148, § 8.

SECT. 9. In all actions not founded on contract or on a  
 2 judgment on such contract the original writ or process shall  
 3 run against the body of the defendant, and he may be thereon  
 4 arrested and imprisoned, or give bail as provided in chapter  
 5 eighty-five.

Arrests allowed  
 in actions not  
 founded on  
 contracts.

R. S., c. 148, § 9.

SECT. 10. When any person is served with an original  
 2 writ or other mesne process founded on such contract or  
 3 judgment in any other manner than by arrest of the body, at  
 4 any time before final judgment he may appear before the  
 5 court or justice, before whom such writ or process is pend-  
 6 ing, or before a disinterested commissioner or commission-  
 7 ers, appointed by said court or justice, and submit himself  
 8 to examination; and such court justice or commissioner after  
 9 giving like notice of the time and place of hearing, as pro-  
 10 vided in the fourth section shall take the disclosure of such  
 11 person; and the like proceedings shall be had before such  
 12 court justice or commissioner as is provided in the fifth and  
 13 sixth sections and with like effect.

Defendant may  
 in all cases  
 disclose on  
 return of writ.

R. S., c. 148,  
 § 10.

SECT. 11. On such examination the court justice or com-  
 2 missioner except as is provided in the sixteenth section may  
 3 determine, that the execution on the judgment recovered in  
 4 the suit shall run against the property only of the defend-  
 5 ant, or otherwise as justice may require on the facts so dis-  
 6 closed or proved; and all attachable property so disclosed  
 7 from the time of the disclosure shall be held attached as pro-  
 8 vided in the eighth section, and subject to the provisions of  
 9 the two following sections.

Effect thereof;  
 lien on property  
 disclosed.

R. S., c. 148,  
 § 11.

SECT. 12. If the disclosed property is real estate, the court  
 2 justice or commissioner shall deliver to the plaintiff a certif-  
 3 icate thereof stating the names of the parties and the amount  
 4 of the claim in the writ, which the plaintiff shall file with the  
 5 register of deeds for the county or district where the estate  
 6 is situated within five days after the date thereof; and the  
 7 register shall enter and file the same as returns of officers  
 8 making attachments on real estate, and be entitled to the  
 9 same fees from the plaintiff.

Certificate of  
 real estate  
 disclosed to be  
 filed in registry  
 of deeds.

R. S., c. 148,  
 § 12.

SECT. 13. If personal estate liable to attachment is dis-  
 2 closed, and the plaintiff makes application and states that  
 3 he is apprehensive that said property may be removed or

How to preserve  
 lien on personal  
 estate.

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R. S., c. 148,  
§ 13.

Disclosure on  
mesne process  
by consent of  
parties.

R. S., c. 148,  
§ 14.

Execution to  
issue against the  
body, &c.

R. S., c. 148,  
§ 15.

Certain property,  
which cannot be  
come at to be  
attached, &c.

R. S., c. 148,  
§ 16.

Persons arrested  
may give bond  
to disclose in a  
certain time  
after judgment.

4 concealed, so that it cannot be taken on execution, the court  
5 in term time, or any justice thereof in vacation, or the justice  
6 of the peace before whom the suit is pending, may issue an  
7 order duly signed directing any officer authorized to serve  
8 processes in the suit to take such property into his custody  
9 and hold it as if originally attached; and such officer shall  
10 execute the same accordingly.

SECT. 14. At any time before or after the return day of any  
2 such writ or process the parties to, the suit by a written  
3 agreement may appear before any justice of the peace and  
4 quorum in the county where the suit is pending; and the de-  
5 fendant shall make the disclosures and submit to the exami-  
6 nation and proceedings required in the tenth section, and  
7 the record thereof shall be returned to the court or justice  
8 before which the suit is pending before final judgment; where  
9 the proceedings shall be the same, as if the disclosure had  
10 been before a commissioner appointed for the purpose.

SECT. 15. If no such disclosure and examination are made  
2 before final judgment, or if the result of such disclosure and  
3 examination is adverse to the defendant's right to exemption  
4 from arrest, the execution shall run against his body.

SECT. 16. If on the disclosure and examination of any  
2 debtor pursuant to the fifth and tenth sections before final  
3 judgment it appears, that he possesses or has in his power,  
4 or with intent to protect the same from his creditors has  
5 assigned secreted or otherwise disposed of any bank bills,  
6 notes, accounts, bonds, other contracts, or property not ex-  
7 empted from attachment, but which cannot be come at to be  
8 attached from its nature or otherwise, the debtor if under  
9 arrest shall not be released, nor shall his person be exempted  
10 from arrest on execution issued on the judgment recovered  
11 in such suit, unless he assigns and delivers to such person, as  
12 the examining magistrate court or commissioners appoint,  
13 all such property, or so much of it as they adjudge sufficient  
14 security for the creditor, to be held by him under the direc-  
15 tion of the court or justice before which the suit is pending  
16 in trust for the parties, that it may be applied and appropri-  
17 ated as provided in sections twenty-nine and thirty.

SECT. 17. When any person is arrested or imprisoned on  
2 mesne process in a civil action, he may be released, by giv-  
3 ing bond in double the sum for which he is arrested or  
4 imprisoned to the plaintiff with surety, or sureties to his  
5 acceptance, or approved by two justices of the peace and  
6 quorum of the county where the arrest or imprisonment is

7 made; said justices to be selected in the manner prescribed  
 8 in the forty-eighth section; and, if they disagree, the same  
 9 proceedings shall be had as are there directed, and a majority  
 10 shall decide on the sufficiency of the surety or sureties; the  
 11 bond to be conditioned that within fifteen days after rendi-  
 12 tion of judgment, or after the adjournment of the court in  
 13 which the judgment is rendered, he will notify the creditor  
 14 his agent or attorney to attend at a certain place in the  
 15 county at a time not more than thirty nor less than fifteen  
 16 days after such notice for the purpose of disclosure and ex-  
 17 amination and that he will then and there submit himself to  
 18 examination, and make true disclosure of his business affairs  
 19 and property on oath, and abide the order of the justices  
 20 thereon, and if the officer serving the writ takes such bond,  
 21 he shall return it to the court or justice where the suit is  
 22 pending.

R. S., c. 148,  
 § 17,  
 1848, c. 85, § 6.

ARTICLE II. *Arrests and imprisonment on execution, and dis-  
 closures thereon, or after judgment and effect thereof.*

SECT. 18. No person shall be arrested on an execution  
 2 issued on a judgment in any suit founded on a contract  
 3 express or implied, where the debt is less than ten dollars  
 4 exclusive of costs; or in any suit founded on any prior judg-  
 5 ment on contract, where the amount of the original debt  
 6 remaining due is less than ten dollars exclusive of costs;  
 7 and the form of the process shall be varied accordingly.

No arrest on  
 execution if  
 debt is less than  
 \$10.

R. S., c. 148,  
 § 18.

SECT. 19. In all other cases, except where express pro-  
 2 vision is by law made to the contrary, executions shall run  
 3 against the body of the judgment debtor; and he may be ar-  
 4 rested and imprisoned thereon for the purpose of obtaining  
 5 a discovery of his property wherewith to satisfy the same  
 6 as hereinafter stated; and he may on request to the officer  
 7 having him in custody be taken before two disinterested jus-  
 8 tices of the peace and quorum to disclose the actual state of  
 9 his affairs. The said justices shall be selected in the man-  
 10 ner provided by law, and the proceedings before them in mak-  
 11 ing such disclosure and determining the result thereof shall  
 12 be subject to the provisions and regulations contained in  
 13 the fourth, fifth, sixth, seventh and eighth sections and also  
 14 to the provisions contained in the twenty-ninth and thirtieth  
 15 sections. Such debtor shall not be required to give any  
 16 bonds for his release from arrest, and if the creditor his  
 17 agent or attorney lives in the same town or city in which he

Arrests in other  
 cases, and mode  
 of release.



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R. S., c. 148,  
§ 19,  
1856, c. 256.

Bond may be  
given on such  
arrest, &c.

R. S., c. 148,  
§ 20,  
1848, c. 85, § 6.

Application by a  
debtor under  
bond or  
imprisoned, &c.

R. S., c. 148,  
§ 21.

Justice to  
appoint the  
time and place  
and cite the  
creditor.

R. S., c. 148,  
§ 22.

Citation, how  
served.

18 is arrested, it shall not be necessary to give more than  
19 twenty-four hours personal notice of the time and place for  
20 attending to such disclosure.

SECT. 20. When a debtor arrested or imprisoned on exe-  
2 cution issued on a judgment on a civil suit gives bond to the  
3 creditor with sufficient surety or sureties approved in writ-  
4 ing by the creditor, or by two justices of the peace and quo-  
5 rum of the county where the arrest is made, selected in the  
6 manner prescribed in the forty-eighth section, and if they  
7 disagree, the same proceedings shall be had as there directed  
8 and a majority shall decide on the sufficiency of the surety  
9 or sureties, in double the sum for which he is so arrested or  
10 imprisoned, conditioned, that he will within six months  
11 thereafter cite the creditor before two justices of the peace  
12 and of the quorum and submit himself to examination and  
13 take the oath prescribed in the twenty-eighth section of this  
14 chapter, pay the debt interest costs and fees arising in said  
15 execution, or deliver himself into the custody of the keeper  
16 of the jail into which he is liable to be committed under the  
17 said execution, he shall be released from his said arrest or  
18 imprisonment. (a)

SECT. 21. Any debtor, who has given bond pursuant to  
2 the provisions of the seventeenth and twentieth sections  
3 within the time limited by his bond, and any person in prison  
4 by force of an execution in a civil suit, may apply in writ-  
5 ing to any justice of the peace of the county in which he is  
6 arrested or imprisoned claiming to have the privilege and  
7 benefit of the oath authorized by the twenty-eighth section;  
8 or if the debtor is imprisoned the keeper of the jail if the  
9 debtor requests him shall make such application in his  
10 behalf.

SECT. 22. The justice shall thereupon appoint a time and  
2 place for the examination of the debtor, and give notice to  
3 the creditor by a citation under his hand and seal to be  
4 served and returned by any officer qualified to serve any  
5 civil process between the same parties. (b)

SECT. 23. The citation shall be served on the creditor by  
2 reading it to him, or by leaving an attested copy thereof at  
3 his last and usual place of abode, or by giving him an at-  
4 tested copy thereof in hand, fifteen days at least before the  
5 time appointed for the examination, if the creditor is alive

(a) 20, Me. 465. 21, Me. 385, 430. 24, Me. 451, 546, 551. 36, Me. 419.

(b) 10, Me. 334. 17, Me. 96, 398. 18, Me. 120. 32, Me. 27. 35, Me. 153.

6 and within the state; otherwise it shall be served in like  
 7 manner on the person who was his attorney in the suit, the  
 8 executor or administrator of a deceased creditor, or some  
 9 known authorized agent; and if no such representative can  
 10 be found in the state, a copy of the citation shall be left in  
 11 like time with the clerk of the court or magistrate, from  
 12 whom the execution issued.

R. S., c. 148,  
 § 23.  
 1842, c. 31, § 19.

SECT. 24. The examination shall be before two disin-  
 2 terested justices of the peace and quorum for the county,  
 3 who shall have power to adjourn as provided in section six.

Examination  
 before two  
 justices of the  
 quorum.  
 R. S., c. 148,  
 § 24.

SECT. 25. The justices shall examine the citation and re-  
 2 turn, and if found correct shall examine the debtor on his  
 3 oath concerning his estate and effects and the disposal  
 4 thereof, and his ability to pay the debt for which he is com-  
 5 mitted; and hear any other legal and pertinent evidence ad-  
 6 duced by the debtor or creditor. (a)

Mode of  
 examination.

R. S., c. 148,  
 § 25.

SECT. 26. The creditor may propose to the debtor any  
 2 interrogatories pertinent to the inquiry, and if the creditor  
 3 requires it they shall be answered in writing and the answers  
 4 signed and sworn to by the debtor; and the creditor may  
 5 have a copy of the interrogatories and answers certified by  
 6 the justices on paying therefor twelve cents a page.

Same subject.

R. S., c. 148,  
 § 26.

SECT. 27. If upon such examination and the hearing of  
 2 such evidence the justices are satisfied that the debtor's dis-  
 3 closure is true, and they do not discover any thing therein  
 4 inconsistent with his taking the oath set forth in the next  
 5 section, they may administer it to him.

When the  
 justices may  
 administer the  
 oath.  
 R. S., c. 148,  
 § 27.

SECT. 28. The oath shall be in the form following:

2 I, ——— do solemnly swear, (or affirm) that I have not  
 3 any estate real or personal, in possession, reversion or remain-  
 4 der, except the goods and estate expressly exempted by stat-  
 5 ute from attachment and execution and the property I have  
 6 now disclosed; and that I have not since the commencement  
 7 of this suit, or the time when the debt or cause of action or  
 8 any part thereof on which this suit was brought was con-  
 9 tracted by me, directly or indirectly sold, loaned, leased, or  
 10 otherwise disposed of, or conveyed or entrusted to any per-  
 11 son or persons whomsoever, all or any part of the estate real  
 12 or personal, whereof I have been the lawful owner or pos-  
 13 sessor, with any intent or design to secure the same, or to re-  
 14 ceive or expect any profit advantage or benefit therefrom to  
 15 myself or others, with an intent or design to defraud any of

Form of the  
 poor debtor's  
 oath.

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R. S., c. 148,  
§ 28.

Certain property  
disclosed, which  
cannot be come  
at to be  
attached, may  
be appraised off  
to the creditor.

R. S., c. 148,  
§ 29.  
1843, c. 85, § 5.

Creditor may  
accept it within  
thirty days

R. S., c. 148,  
§ 30.

Form of justice's  
certificate of  
administration  
of oath.

16 my creditors. So help me God; (or this I do under the  
17 pains and penalties of perjury, if the debtor affirms.) (a)

SECT. 29. When from the disclosure of any debtor arrested  
2 or imprisoned on execution it appears, that he possesses or  
3 has under his control any bank bills, notes, accounts, bonds,  
4 or other contracts, or property, not expressly exempted by  
5 statute from attachment, which cannot be come at to be at-  
6 tached, and if the creditor and debtor cannot agree to apply  
7 the same in part or full discharge of the debt, the justices  
8 before whom the disclosure is made shall appraise and set  
9 off such property or enough of it to satisfy the debt cost and  
10 charges; and the creditor or his attorney if present may se-  
11 lect the property to be appraised. If the creditor accepts  
12 thereof it may be assigned and delivered by the debtor to  
13 the creditor and applied in satisfaction of his demand in  
14 whole or in part. If any particular article of property thus  
15 appraised and set off and necessary and convenient to be  
16 applied in satisfaction of the execution exceeds the amount  
17 or balance due thereon, and is not divisible in its nature, the  
18 creditor may take it on advancing to the debtor the overplus  
19 or securing the same to the satisfaction of the justices. (b)

SECT. 30. If the creditor is absent, or does not accept the  
2 same as aforesaid, the debtor shall deposit with the justices  
3 an assignment in writing, to the creditor of all the property  
4 thus appraised and set off; and the justices shall make a  
5 record of such proceedings and cause the property so dis-  
6 closed to be safely kept and secured for the term of thirty  
7 days thereafter, to be delivered to the creditor with the  
8 assignment on demand within that time. If not so demanded,  
9 they shall be returned to the debtor.

SECT. 31. After administering the oath to the debtor and  
2 the property so disclosed is duly secured, the justices shall  
3 make out and deliver to the debtor a certificate under their  
4 hands and seals in the form following:

## STATE OF MAINE.

6 ———, ss. To the sheriff of the county of ———, or his  
7 deputy, and to the keeper of the jail at——, (or to any cor-  
8 oner or constable.)

9 [L. s.] We, the subscribers two disinterested justices of  
10 [L. s.] the peace and quorum in and for said county of  
11 ———, hereby certify, that —— a poor debtor arrested on  
12 a certain execution issued by (here insert the name and style

(a) 25, Me. 423. 26, Me. 200. 27, Me. 49. (b) 24, Me. 123. 28, Me. 310. 29, Me. 368.  
32, Me. 458. 36, Me. 494, 589. 38, Me. 122, 215.

13 of the court, or of the justice of the peace, and the amount  
 14 of the judgment, and date of the judgment and execution,) R. S., c. 148,  
 15 and committed to the jail at — aforesaid (or enlarged on  
 16 giving bonds to the creditor as the case may be,) hath caused  
 17 —, the creditor to be notified according to law of his the  
 18 said debtor's desire of taking the benefit of the one hundred  
 19 thirteenth chapter of the revised statutes; that in our opin-  
 20 ion he is clearly entitled to have the oath prescribed in the  
 21 twenty-eighth section of said chapter administered by us, § 31.  
 22 and that we have, after due caution to him administered said  
 23 oath to him.

24 Witness our hands and seals, this — day of —, in  
 25 the year —.

26 — —, } Justices of the peace and  
 27 — —, } of the quorum. (a)

SECT. 32. The debtor on delivering the certificate to the  
 2 prison keeper or filing it in his office if imprisoned shall be  
 3 set at liberty so far as relates to the execution; and his body  
 4 forever after shall be free from arrest thereon, and on every  
 5 subsequent execution issued on the judgment or on any other  
 6 judgment founded thereon, except as provided in sections R. S., c. 148,  
 7 thirty-four, fifty, and fifty-one. § 32.

SECT. 33. When a debtor in execution discloses before  
 2 two justices of the peace and quorum as herein provided  
 3 any real estate liable to be seized on execution, the justices  
 4 shall give the creditor a certificate thereof therein stating  
 5 the names of the parties and the amount of the execution;  
 6 and the creditor shall have a lien thereon for thirty days  
 7 thereafter, if he files the certificate with the register of  
 8 deeds of the county or district where the real estate lies  
 9 within five days from the date of the disclosure; and the R. S., c. 148,  
 10 register shall enter and file the same as mentioned in section § 33.  
 11 twelve.

SECT. 34. If the debtor discloses any personal estate liable  
 2 to be seized on execution, the creditor shall have a lien for  
 3 thirty days thereon, or so much thereof as the justices in  
 4 their record judge necessary; and if the debtor transfers  
 5 conceals or otherwise disposes thereof within said time, or  
 6 suffers it to be done, or refuses to surrender it on demand  
 7 of any proper officer having an execution on the same judg-  
 8 ment, the debtor shall receive no benefit from the certificate

Effect of such  
certificate.

Preservation of  
creditor's lien  
on real estate  
disclosed.

Lien on personal  
estate disclosed,  
&c.

(a) 18, Me. 340. 19, Me. 265, 452. 26, Me. 444. 27, Me. 153, 174. 30, Me. 347. 31, Me. 50.  
 33, Me. 500. 34, Me. 230.

CHAP. 113. 9 described in section thirty-one; and the creditor may recover  
 10 against him or any person fraudulently aiding or abetting in  
 11 such transfer concealment, or disposal double the amount  
 12 due on said execution in an action on the case; and any  
 13 execution on a judgment in such action shall run against  
 14 the body of the debtor and other persons so aiding and abet-  
 15 ting; but the payment of such judgment shall be a satisfac-  
 16 tion of the original debt.

R. S., c. 148,  
 § 34.

Proceedings if  
 debtor has given  
 bond on mesne  
 process.

SECT. 35. Any debtor, who has given bond as provided in  
 2 section seventeen, after judgment may apply to a justice of  
 3 the peace of the county where he was arrested, and the jus-  
 4 tice shall issue a citation to the creditor his agent or at-  
 5 torney; and an examination and disclosure may be had  
 6 before two justices of the peace and quorum within the time  
 7 specified in the bond; and the same proceedings shall be  
 8 had, and the same results follow, as in case of a debtor dis-  
 9 closing after arrest or imprisonment on execution, except as  
 10 mentioned in the following section.

R. S., c. 148,  
 § 35.

Debtor in such  
 case may go at  
 large 30 days  
 during the lien  
 on the property  
 disclosed.

SECT. 36. If the debtor on such examination does not en-  
 2 title himself in the opinion of the justices to the benefit of  
 3 the oath provided in section twenty-eight, and it appears that  
 4 the debtor at the time of the examination has any real or  
 5 personal estate liable to attachment, or has other property  
 6 such as is described in section twenty-nine, the justices shall  
 7 permit him to go at large upon the bond so given during the  
 8 thirty days the creditor's lien exists on the property dis-  
 9 closed; and during that time the creditor may arrest the  
 10 debtor on execution, or enforce his lien on the property, at  
 11 his election.

R. S., c. 148,  
 § 36.

Effect of credit-  
 or's election to  
 arrest on execu-  
 tion or  
 otherwise.

SECT. 37. If the creditor elects to arrest the debtor within  
 2 the thirty days, and the officer having the execution returns  
 3 that the debtor is not found, his bond shall be forfeited, and,  
 4 on judgment thereon execution shall issue for the amount of  
 5 judgment in the original suit and interest thereon. If the  
 6 debtor is not arrested within that time and does not avoid  
 7 arrest, his person shall be forever discharged from arrest on  
 8 any execution issued or founded on such judgment.

R. S., c. 148,  
 § 37.

Bond taken on  
 execution to be  
 returned  
 therewith, &c.

SECT. 38. Every officer serving an execution and taking a  
 2 bond as provided in the twentieth section shall return the  
 3 bond therewith for the benefit of the creditor, who may  
 4 receive the same on filing a copy thereof with the clerk of  
 5 the court judge, or justice to whom such execution and bond  
 6 is returned. He may also receive from the prison keeper  
 7 any such bond in his hands on the like terms.

R. S., c. 148,  
 § 38.

SECT. 39. If the debtor fails to fulfill the condition of any  
 2 such bond, it shall be forfeited, and judgment in any suit  
 3 thereon shall be rendered for the amount of the execution  
 4 and costs and fees of service with interest on the same  
 5 against all the obligors; and a special judgment also ren-  
 6 dered against the said principal debtor for a further sum  
 7 equal to the interest on the same at the rate of twenty per  
 8 cent. by the year after the breach of the bond.

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Amount recov-  
erable thereon,  
if forfeited.R. S., c. 148,  
§ 39.

SECT. 40. In all actions commenced, or which shall here-  
 2 after be commenced in any court upon any bond given by a  
 3 debtor to obtain his release from arrest on mesne process  
 4 or on execution or warrant of distress for taxes, if it shall  
 5 appear that prior to the breach of any of the conditions of  
 6 such bond, the principal therein if arrested on mesne process  
 7 or execution had legally notified the creditor, and if arrested  
 8 on warrant of distress for taxes had legally notified the  
 9 assessors of the town plantation or parish by whom such  
 10 warrant was issued, and had been allowed by two justices  
 11 of the peace and of the quorum of the county where the ar-  
 12 rest was made, having jurisdiction and legally competent to  
 13 act in the matter, to take and had taken in the case or upon  
 14 the precept upon which he was arrested before such justices  
 15 the oath prescribed in the twenty-eighth section, the dam-  
 16 ages shall be assessed by the jury, if such be the request of  
 17 either party; but if no such request be made, then by the  
 18 court. The amount assessed shall be the real and actual  
 19 damage, and any legal evidence upon that point may be in-  
 20 troduced by either party. In any such action the court be-  
 21 fore which the same may be tried may receive evidence to  
 22 show that no service of the citation provided for by law was  
 23 made upon the creditor or assessors, notwithstanding such  
 24 evidence may contradict the record and certificate of the  
 25 magistrate before whom such oath was taken. (a)

In all actions  
upon a debtor's  
bond, &c.1848, c. 85,  
§ 2, 4.  
1856, c. 263.

SECT. 41. If in any such action the whole amount due upon  
 2 the execution or warrant of distress is recovered, the new  
 3 judgment shall operate as a discharge of said execution or  
 4 warrant of distress; if only a part is recovered, it shall op-  
 5 erate as a discharge of such part. If the amount of damage  
 6 is not more than twenty dollars, the plaintiff's costs shall not  
 7 exceed a quarter part of the damage, notwithstanding the  
 8 penal sum of the bond is more than twenty dollars. If the

The new  
judgment on  
any such bond  
to operate as  
discharge of the  
old judgment as  
far as it goes.

(a) 27, Me. 97. 30, Me. 457. 33, Me. 358. 36, Me. 240.

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1848, c. 85, § 3.

Persons incompetent as witnesses may take the poor debtor's oath.

R. S., c. 148, § 40.

Costs for creditor if debtor is not discharged.

R. S., c. 148, § 41.

Discharge of debtor's body, no discharge of debt.

R. S., c. 148, § 42.

Bond to be valid, though not taken for the exact amount.

R. S., c. 148, § 43.

Right to bail not impaired.  
R. S., c. 148, § 44.

Limitation of suits on bond.

R. S., c. 148, § 45.

Manner of selecting the justices to take the disclosure, &c.

R. S., c. 148, § 46.  
1844, c. 88, § 1.  
1848, c. 65, § 1.  
1856, c. 213, § 1.

9 verdict or judgment is, that the creditor has sustained no  
10 damage, no cost shall be allowed to either party.

SECT. 42. No debtor shall be precluded from taking any  
2 oath, prescribed in this chapter for his relief on account of  
3 having been convicted of any crime or being otherwise dis-  
4 qualified to testify as a witness in judicial proceedings; and  
5 nothing herein contained, except as provided in the thirty-  
6 fourth, fiftieth and fifty-first sections, shall prevent any  
7 debtor, who fails to obtain his discharge, from obtaining a  
8 certificate for that reason at a future examination for the  
9 same debt.

SECT. 43. If any debtor fails in his application for a dis-  
2 charge from arrest or imprisonment, the creditor shall re-  
3 cover his costs to be taxed as in actions before justices of  
4 the peace; and the justices shall issue execution therefor.

SECT. 44. No release of any debtor or prisoner under the  
2 provisions of this chapter shall affect or impair the right of  
3 the creditor to his debt or demand; but the same shall re-  
4 main in full force against the property of the debtor as if  
5 such release had not been given.

ARTICLE III. *General provisions and rules, applicable to cer-  
tain specific cases of arrest and imprisonment.*

SECT. 45. When any officer holding a debtor under arrest  
2 or imprisonment is required to take from him any bond  
3 herein described, and from mistake accident or misappre-  
4 hension in fixing the penalty thereof it exceeds or falls short  
5 of the sum required by law, the bond notwithstanding shall  
6 be valid, and the officer shall not be responsible to either  
7 party beyond the actual damage.

SECT. 46. Nothing herein contained shall impair the right  
2 of any person to bail on mesne process.

SECT. 47. No suit for the breach of any bond herein author-  
2 ized to be given shall be sustained, unless commenced within  
3 one year after the forfeiture; except that the provisions of  
4 sections one hundred and two and one hundred and three of  
5 chapter eighty-one shall be applicable to such suits.

SECT. 48. One of the justices to hear a disclosure may be  
2 selected by the debtor, and the other by the creditor his  
3 agent or attorney, and if at the time appointed he neglects  
4 or refuses or does not procure his attendance, the other may  
5 be selected by an officer having the debtor in charge, if not  
6 in charge, by an officer who might serve the precept on which  
7 he was arrested. If the justices do not agree, they may

8 select a third, and if they cannot agree on a third, he may  
9 be selected by an officer as aforesaid; and a majority may  
10 decide. (a)

SECT. 49. When the creditor neglects refuses or unreason-  
2 ably delays to select a justice, the justice selected by the  
3 debtor may adjourn once, if he deems it necessary, not ex-  
4 ceeding twenty-four hours, Sundays excluded, to enable the  
5 debtor to procure the attendance of another justice.

When the  
creditor delays  
to select a  
justice, &c.

1846, c. 215, § 1

SECT. 50. When a debtor herein authorized or required  
2 to disclose on oath willfully discloses falsely, withholds or  
3 suppresses the truth, the creditor may bring a special action  
4 on the case against him, whether he is criminally prosecuted  
5 or not, particularly alleging the false oath and fraudulent  
6 concealment of his estate or property, and on oath before  
7 some justice of the peace may declare his belief of the truth  
8 of the allegations in the writ and declaration, and the justice  
9 administering the oath shall certify the same on the writ;  
10 and thereupon the debtor shall be held to bail, or in default  
11 thereof committed to jail to abide the judgment in the suit.

Liability of a  
debtor if he  
discloses  
falsely.

R. S., c. 148,  
§ 47.

SECT. 51. If the creditor prevails in the suit, judgment  
2 shall be rendered against the debtor for double the amount  
3 of the debt and charges on the former judgment; and the  
4 debtor may be arrested and committed to prison on any exe-  
5 cution issued on the judgment last recovered without any  
6 privilege of release or discharge, except by payment or the  
7 consent of the creditor.

Same subject.

R. S., c. 148,  
§ 48.

SECT. 52. Any person, who knowingly aids or assists a  
2 debtor or prisoner in a fraudulent concealment or transfer  
3 of his property to secure it from creditors and prevent its  
4 seizure by attachment or levy on execution, shall be liable  
5 in a special action on the case, to any creditor who sues  
6 therefor, in double the amount of property so fraudulently  
7 concealed or transferred, but not to exceed double the amount  
8 of such creditor's demand.

Liability of  
persons aiding  
in fraudulent  
concealment or  
transfer of  
property.

R. S., c. 148,  
§ 49.

SECT. 53. Any person arrested or imprisoned by virtue of  
2 a warrant for the collection of a public tax shall be entitled  
3 to the privileges and subject to the obligations under the pro-  
4 visions of this chapter in all respects, as if arrested or com-  
5 mitted on execution for debt, and for all the purposes of  
6 notice and other proceedings relating to the discharge from  
7 arrest or imprisonment of the person taxed, the assessors

Persons arrested  
for taxes,  
entitled to the  
privileges of this  
chapter.

R. S., c. 148,  
§ 50.

(a) 19, Me. 454. 23, Me. 144, 489. 24, Me. 166, 196, 451. 27, Me. 458. 28, Me. 453. 30, Me. 155. 30, Me. 155. 32, Me. 335. 33, Me. 382. 36, Me. 110. 27, Me. 551.



## CHAP. 113.

Variation in the form of the oath and certificate in such case.

R. S., c. 148, § 51, 52.

Privileges extended to collectors and other officers, &c.

R. S., c. 148, § 53.

Disability of persons committed for willful trespass.

R. S., c. 148, § 54.

Service of a citation on a corporation creditor.

R. S., c. 148, § 55.

Prison keeper may require the creditor to support the debtor, &c.

8 by whom such warrant was issued shall be regarded as the  
9 creditors.

SECT. 54. In case of taking the oath set forth in the  
2 twenty-eighth section of this chapter, it may be varied by  
3 substituting for the words, "commencement of the suit," or,  
4 "the time when the debt or cause of action or any part  
5 thereof, on which this suit was brought, was contracted by  
6 me," the following, "assessment of the tax for which I have  
7 been arrested;" and for the words, "any of my creditors,"  
8 the following, "any town plantation, or parish;" and the cer-  
9 tificate of discharge shall be varied, by substituting the words,  
10 "a warrant for taxes," for "execution," and "assessors" for  
11 "creditors."

SECT. 55. When a constable collector or deputy sheriff is  
2 arrested or committed to jail for default on account of any  
3 taxes committed to him to collect, he shall be subject to the  
4 provisions and have the privileges of this chapter; and in  
5 all proceedings under it the assessors assessing the taxes  
6 shall be deemed the creditors, and corresponding verbal  
7 alterations shall be made in the oath and certificate of dis-  
8 charge.

SECT. 56. When in the trial of an action of trespass upon  
2 property the court jury or magistrate determines that such  
3 trespass was committed willfully, and record is made of the  
4 fact, and the same is noted on the margin of the execution on  
5 such judgment, if the debtor is thereon arrested and com-  
6 mitted to prison, he shall not be entitled to give any bond  
7 provided in this chapter for his liberation; and if he applies  
8 to take the oath described in section twenty-eight, no notice  
9 shall be issued to the creditor till at least thirty days after  
10 his commitment.

SECT. 57. When in any proceeding for the relief of a debtor  
2 under this chapter the creditor is a corporation, the citation  
3 may be served on any individual on whom the service of a  
4 writ could be legally made, or on the attorney of the corpo-  
5 ration in the suit; but it shall not be necessary to extend the  
6 time of notice beyond the times herein mentioned.

SECT. 58. When any person is committed to prison on  
2 mesne process or execution, or having given bond on execu-  
3 tion to be discharged from arrest or imprisonment delivers  
4 himself into the custody of the jailer to save the condition of  
5 his bond shall make a written complaint by him signed and  
6 sworn to stating, that he is unable to support himself in  
7 prison and has not sufficient property to enable him to fur-

8 nish security for his support, the keeper of the prison may  
 9 require of the creditor his agent or attorney security for his  
 10 support, in case he claims relief as a pauper; and unless the  
 11 security is furnished within eight days after the request sat-  
 12 isfactory to the keeper, or money paid in advance from time  
 13 to time as needed for the debtor's support, the keeper may  
 14 release him; but when any debtor is committed on more than  
 15 one execution at the same time, the keeper shall be entitled  
 16 to pay for board only on the first execution, and such board  
 17 shall be paid for equally by all the creditors, on whose exe-  
 18 cutions the debtor is committed; and the creditor first com-  
 19 mitting shall have a right of action against the other com-  
 20 mitting creditors for their proportion of such board; and if  
 21 the debtor committed on several executions is discharged on  
 22 the first, the jailer shall give a new notice to the creditor, on  
 23 whose execution the debtor was next committed, of his lia-  
 24 bility to pay for the support of such debtor as on the first  
 25 execution. (a)

R. S., c. 148,  
 § 56,  
 1842, c. 23, § 1, 2.

SECT. 59. In case of dispute about the price of any articles  
 2 furnished a prisoner confined for debt, the county commis-  
 3 sioners may determine the same not in any case exceeding  
 4 the amount specified in section nine chapter one hundred and  
 5 sixteen.

Adjustment of  
 price of articles  
 furnished to  
 prisoner.

R. S., c. 148,  
 § 57.

SECT. 60. When notice is given by any jailer under the  
 2 fifty-eighth section to the creditors, or by any debtor to his  
 3 creditors of an intended disclosure under the provisions of  
 4 this chapter, and there is more than one creditor in the same  
 5 suit, such notice given to one of them, who is in the state,  
 6 shall be deemed sufficient for all.

Citation to one  
 of several joint  
 creditors  
 sufficient.

R. S., c. 148,  
 § 58.

SECT. 61. Any creditor, who has caused his debtor to be  
 2 arrested or imprisoned on execution, may discharge him  
 3 therefrom by giving to the officer making the arrest or leav-  
 4 ing with the prison keeper a written permission for the  
 5 debtor to go at large; and such discharge shall not release  
 6 the goods and estate of the debtor from the debt and costs;  
 7 but his body shall be forever exempted from arrest or im-  
 8 prisonment on such execution or any process founded on the  
 9 same judgment.

Effect of  
 voluntary  
 release by  
 creditor, from  
 arrest on  
 execution.

R. S., c. 148,  
 § 59.

SECT. 62. If the body of any debtor arrested or imprisoned  
 2 on execution is released in any of the modes hereby author-  
 3 ized, the officer having such debtor in custody at any time  
 4 after such release on the creditor's request shall indorse on

Officer may  
 indorse such  
 release on the  
 execution, &c.

CHAP. 113.

R. S., c. 148,  
§ 60.

How judgment  
may be kept in  
force, after such  
release.

R. S., c. 148,  
§ 61.

Judges of munic-  
ipal and police  
courts may act  
as justices of the  
quorum.  
R. S., c. 148,  
§ 62.

5 the execution a certificate of the fact and cause of such re-  
6 lease; and if it is before the return day of the execution, not-  
7 withstanding the release it may be levied on the debtor's  
8 goods and estate; and, if the return day is passed, it may be  
9 renewed like other executions, except that it shall not run  
10 against the debtor's body.

SECT. 63. Whether such indorsement is made on the exe-  
2 cutious or not, the judgment on which it was issued may be  
3 revived or continued in force with the said exception by an  
4 action of debt or scire facias to be brought as in other cases  
5 of judgment.

SECT. 64. The judge of any municipal or police court  
2 within his county shall have the same powers, and be sub-  
3 ject to the like duties and obligations under this chapter, as  
4 any justice of the peace and quorum in the same county.

#### ARTICLE IV. *Special provisions relating to debtors to the state.*

Such debtor may  
apply to a justice  
of the supreme  
court.

R. S., c. 148,  
§ 63.

Notice to be  
given to county  
attorney, &c.

R. S., c. 148,  
§ 64.

Proceedings and  
power to release  
the debtor.

R. S., c. 148,  
§ 65.

Judge may  
discharge him or  
the debt, &c.

R. S., c. 148,  
§ 66.

SECT. 65. Any person committed to jail in any county on  
2 execution warrant of distress or other final civil process for  
3 debt penalty or costs due to the state may make application  
4 in writing to a justice of the supreme judicial court for  
5 relief, whether the court is in session or not; and on such  
6 application he shall appoint a convenient time and place to  
7 inquire into the circumstances of the petitioner.

SECT. 66. Before a hearing thereon the justice shall give  
2 such notice as he thinks proper of the pendency thereof to  
3 the county attorney for the county where the commitment is  
4 made or to the attorney general; and he shall attend the  
5 hearing in behalf of the state.

SECT. 67. The justice shall consider all proper evidence  
2 offered on either side, and may require the oath of the peti-  
3 tioner to all or any of the facts by him stated; and if satis-  
4 fied that the prisoner is unable to pay any part of the amount  
5 due on the process, on which he is committed, may order his  
6 discharge from imprisonment having first administered to  
7 him, if he thinks proper, an oath substantially in the form of  
8 the oath prescribed by the twenty-eighth section.

SECT. 68. If on examination it appears to the justice, that  
2 the prisoner is able to pay only a part of the amount due,  
3 he shall order his release from imprisonment and if he  
4 thinks it more for the interest of the state may order the  
5 whole debt to be discharged upon his paying or securing  
6 such sum of money, or assigning to the state such securities

7 or other property, at such time and in such manner, to be  
8 deposited with such public officer, as he directs.

SECT. 69. The prison keeper having charge of the debtor  
2 shall thereupon release him from confinement, or give him a  
3 full discharge from the demand on the terms prescribed.

Jailer to comply  
with decision of  
judge.  
R. S., c. 148,  
§ 67.

SECT. 70. If such proceedings are had when the supreme  
2 judicial court is not in session for the county, the justice  
3 shall cause his adjudication and discharge to be entered of  
4 record as of the last preceding term of the court in the  
5 county.

Adjudication to  
be entered on  
the record.  
R. S., c. 148,  
§ 68.

SECT. 71. The courts of county commissioners in their  
2 counties at a regular session, or a majority thereof in vaca-  
3 tion, 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.

Same powers  
vested in the  
county  
commissioners.  
R. S., c. 148,  
§ 69.

SECT. 72. Any person committed on execution as men-  
2 tioned in section sixty-five, who is desirous of taking the oath  
3 prescribed in section twenty-eight, may make application to  
4 the jailer having him in custody, and the jailer shall apply in  
5 writing, in his behalf to a justice of the peace, and the said  
6 justice shall thereupon issue a citation as prescribed in the  
7 twenty-second section directed to the county attorney of the  
8 county for which the commitment is made; and the said cita-  
9 tion shall be served and returned, and proceedings thereupon  
10 may be had in the same manner and with the like effect, as  
11 in cases where notice is served on individual creditors or  
12 their attorneys; and the county attorney on such notice  
13 shall attend by himself or some competent substitute at the  
14 time and place as attorney for the state.

Application by  
such debtor to  
take the poor  
debtor's oath,  
&c.

R. S., c. 148,  
§ 70, 71.

SECT. 73. Upon such examination the justices of the peace  
2 and quorum, before whom the debtor appears, may, if they  
3 see cause, administer to him an oath substantially like that  
4 prescribed in the twenty-eighth section with proper verbal  
5 alterations to conform to the case, and may grant a similar  
6 certificate of discharge, which shall have a like effect as in  
7 the cases before mentioned.

Oaths and  
certificates in  
such cases.

R. S., c. 148,  
§ 72.

