

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

FOURTH REVISION.

THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED _____, 1883;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX AND REFERENCE INDEX.

PORTLAND:
PRINTED BY WILLIAM M. MARKS.

TITLE NINE.

Civil Rights and Remedies.

-
- CHAP. 81. Commencement of civil actions; indorsement and service of writs; attachment of property; arrests; limitation of civil actions.
82. Proceedings in civil actions in court.
83. Trial justices, their jurisdiction, and proceedings in civil actions.
84. Levy of executions on personal property.
85. Bail in civil actions.
86. Trustee process.
87. Actions by or against executors and administrators.
88. Partition of real estate by the supreme judicial court.
89. Petitions and actions of review.
90. Mortgages on real estate.
91. Mortgages of personal property, Liens and their enforcement.
92. Right of erecting mills and mill dams; flowing lands; diverting water for supply of mills; and mode of obtaining damages.
93. Inquests of office and informations for intrusion.
94. Forcible entry and detainer, and tenancies.
95. Waste and trespasses on real estate.
96. Replevin of beasts and chattels.
97. Bastard children and their maintenance.
98. Personal property seized, and lost goods, and proceedings thereon.
99. Habeas corpus.
100. Writ of audita querela.
101. Writ for replevying a person.
102. Writs of error and certiorari.
103. Estates in dower and by courtesy, and actions of dower.
104. Real actions.
105. Limitation of real actions.
106. The selection and service of jurors.
107. Depositions.
108. Reference of disputes by consent of parties.
109. Timber and cord wood, and how it may be disposed of in certain cases.
110. Commissioners to take acknowledgment of deeds and other contracts, and depositions in other states.

CHAPTER 81.

COMMENCEMENT OF CIVIL ACTIONS; INDORSEMENT AND SERVICE OF WRITS; ATTACHMENT OF PROPERTY; ARRESTS; AND LIMITATION OF CIVIL ACTIONS.

FORMS AND REQUISITES OF WRITS.

- SEC. 1. Forms of writs to remain as they are, till changed by court.
2. Actions to be commenced by original writs. When to be issued by clerk, and to be *capias* and attachment, or original summons. Issued in one county, and returnable in any other.
3. Justice writs to be signed and sealed.
4. Attachments and arrests on *scire facias* as on other writs.
5. Unknown defendant may be sued by an assumed name, and writ amended.

INDORSEMENT OF WRITS.

- SEC. 6. What writs must be indorsed.
7. Liability of indorser. Suit within a year.
8. When new indorser may be required.

ACTIONS, WHERE TO BE BROUGHT.

- SEC. 9. Personal and transitory actions, where to be commenced. Transfer from one county to another.
10. Actions on sheriff's bonds, where to be brought.
11. Actions on judgment, brought where judgment rendered, or either party lives.
12. Jurisdiction sustained if defendant's property is attached in the state.
13. Local and transitory actions, in which counties, towns and other corporations are parties, where to be brought.
14. Actions for forfeitures, where brought.
15. Certain actions in behalf of the state may be brought in any county.
16. Justice actions against one or several defendants, where brought and how served.

WRITS HOW SERVED ON RESIDENTS.

- SEC. 17. Summons to be left when property is attached, except in trustee writs.
18. Original summons served by reading or copy.
19. Service on county, town or other corporation made by giving copy to clerk, treasurer, agent or member thereof, thirty days before court. Service on foreign or alien corporation, how made.
20. Service on domestic corporation when no officer can be found.

HOW SERVED ON NON-RESIDENTS.

- SEC. 21. Service made on defendant out of state by leaving with agent or attorney, or as ordered by the judge or trial justice.
22. In actions against foreign insurance and express companies, service to be made on agent in the state, thirty days before court.

HOW WANT OR DEFECT OF SERVICE MAY BE CURED.

- SEC. 23. How want or defect of service may be cured.

CHAP. 81.

ATTACHMENT OF PERSONAL PROPERTY.

- SEC. 24. What personal property may be attached.
25. When attachment of hay and animals, though left in hands of debtor, good against other attachments.
26. Attachment of bulky personal property may be recorded in the town clerk's office, and how and when. Clerk's fees.
27. How shares in a corporation may be attached. Officer of corporation to furnish number of defendant's shares; if he refuses, action for damages.
28. The franchise or right to take toll, and other property of corporation may be attached, and how.
29. Attachments on same writ may be made in different counties by different officers.

WHEN PERSONAL PROPERTY ATTACHED MAY BE SOLD ON WRIT.

- SEC. 30. Personal property attached may be sold on writ by consent.
31. Living animals, or goods liable to perish or to be kept at great expense, may be sold, without consent, after appraisal.
32. On request, officer to give notice of time and place of appraisal, and how; and cause appraisers to be chosen, and how.
33. Appraisers to be sworn, and to appraise property at cash value.
34. To be delivered to debtor on his depositing money or giving bond to satisfy judgments. Bond to be returned with officer's doings.
35. Bond may be sued by any creditor. Nature of judgment thereon. Money recovered, how applied.
36. How attaching creditor, not a party to suit on bond, may avail himself thereof, or of the judgment therein.
37. Property not so delivered to debtor, to be sold on writ and proceeds applied to attachments.
38. Proceeds of property sold, may be further attached in hands of officer; but after retaining enough to pay attachments, he is to pay balance to debtor.
39. Right by priority in case of sale, preserved.
40. Property attached and claimed by one not a party to suit, may be replevied in ten days after notice; and if not, to be sold by officer with consent of creditors, unless debtor forbids.

HOW PROPERTY OF PART OWNER ATTACHED MAY BE DISPOSED OF.

- SEC. 41. Property of part owner attached, to be appraised and delivered to other owner on giving bond. Bond to be returned with writ and sued if forfeited.
42. Part owner so paying has a lien on the property, and may sell it; but if the attachment is dissolved, he shall restore it.

ATTACHMENT OF PROPERTY MORTGAGED OR PLEDGED.

- SEC. 43. Personal property mortgaged or pledged, may be attached by creditor redeeming it.
44. When mortgaged property is attached, no action against the officer till forty-eight hours' notice; and officer or creditor may redeem within that time.
45. Mortgagee not rendering account of sum due in ten days after notice, waives his mortgage. If his account is false, action for double the excess.
46. If creditor redeems, that amount to be first repaid on sale of the property, and balance to be applied to the debt.

WHEN ATTACHING OFFICER DIES, OR IS REMOVED, OR PROPERTY IS
REPLEVIED.

CHAP. 81.

- SEC. 47. Goods attached by an officer, and his claim for damages when they are taken from him, on his death, not assets of his estate, but subject to attachments.
48. Such property replevied, liable to further attachments; replevin bond liable for whole value.
49. If officer dies or is removed, property attached liable to further attachments by other officers, and how they are made.
50. Limitation of right to attach goods replevied.

ATTACHMENTS AND ACTIONS WHEN A PARTY DIES.

- SEC. 51. Decree of insolvency upon an estate, before sale on execution, dissolves attachment; and officer to restore property on demand and payment of his fees.
52. If property is sold before demand, officer liable for proceeds. If paid over to creditor, he is liable, and cannot set off his demands against the estate.
53. After decease of debtor and before decree of insolvency, officer to give copy of his return to administrator, and allow view by appraisers. Penalty.
54. Actions by officers for goods attached and taken from them, not to abate by death of parties, but to go on as if alive.
55. If officer dies pending suit, and no administrator is appointed in three months, party in interest may carry it on by giving security for costs.

ATTACHMENTS OF REAL ESTATE.

- SEC. 56. What real estate and interests therein are liable to attachment. Officer need not enter or view the same.
57. Real estate may be attached on municipal or police court writs in certain cases.
58. When right of redemption is attached and incumbrance is removed before sale, attachment holds premises free.
59. No attachment valid unless claim is specified in writ. No attachment or seizure valid unless recorded in registry of deeds within five days. Attachments and seizures to take effect when filed, but recorded deeds take precedence of unrecorded attachments and seizures.
60. When right of redemption, or to a deed by contract, is attached, creditor may redeem or pay; and then title of mortgagee or contractor shall vest in him.
61. Mortgagee or contractor shall furnish the sum due him on demand; and on payment thereof, shall release or be compelled to do so by bill in equity.

PROPERTY EXEMPT FROM ATTACHMENT.

- SEC. 62. What personal property is exempt from attachment.

HOMESTEADS EXEMPT.

- SEC. 63. Homesteads exempt from attachment except for liens.
64. Householder to have his exemption recorded in registry, with description of homestead, and then \$500 worth exempt from subsequent debts.
65. When creditors claim that homestead is worth more than \$500, appraisers first to set off that value, and then to apply residue to the execution.
66. After his death, widow and children to occupy during widowhood and minority.

CHAP. 81.

HOW AND WHEN ATTACHMENTS ARE DISSOLVED.

- SEC. 67. Attachments of real and personal estate continue thirty days after judgment and no more, except in certain cases.
68. Attachments dissolved by judgment for defendant; insolvency of estate before levy or sale on execution; reference of all demands, and by increasing ad damnum, and by insolvency proceedings under chapter seventy.
69. Clerk of court to give owner certificate of dissolution of attachment, to be recorded in registry of deeds. Creditor may release attachment on record, or by certificate recorded.
70. Debtor whose real estate is attached, may petition judge of court for a valuation and release. Judge to issue notice, to be served ten days before hearing.
71. Judge to fix value of such real estate, and release same on bond of debtor. Conditions of bond.
72. Proceedings and bond to be filed in the clerk's office.
73. Certificate of proceedings from clerk, recorded in registry of deeds, vacates the attachment.
74. Same proceedings to vacate attachment of personal property; also of stocks; only certificate to be recorded where attachment is.
75. Foreign attachments vacated in same way, only bonds to be given to trustees also, and certificate filed with them.
76. Fees of clerk and register of deeds; and all costs of proceedings to be recovered by prevailing party.

CROSS ACTIONS AGAINST NON-RESIDENTS.

- SEC. 77. In cross actions and set-off against parties out of state, service made on their attorneys, sufficient.
78. Court may order continuances to enable absent party to defend, or for either party to set off his judgment or execution.

DAYS ON WHICH NO ARRESTS CAN BE MADE OR PROCESS SERVED.

- SEC. 79. Holidays on which arrests cannot be made or process served.
80. Voters not to be arrested on election days.
81. Civil process served on Lord's day void; and officer liable.

LIMITATION OF PERSONAL ACTIONS.

- SEC. 82. What actions must be commenced within six years.
83. Actions against an officer for escape of prisoner, in one year; for any other misfeasance, in four years.
84. Assault and battery, false imprisonment, slander and libel, in two years.
85. Scire facias against bail, sureties in criminal recognizances, and trustees, in one year.
86. These limitations not to apply to witnessed notes, bank bills or cases limited by other statutes.
87. When the cause of action accrues in mutual and open accounts current.
88. Minors and others under disability, may bring suits after the disability is removed within the times herein limited.
89. Actions on certain bonds and coupons must be sued within eighteen months after maturity. Exception.
90. General limitation of twenty years.
91. When writ fails of service, or is defeated for any cause, or judgment is reversed, new suit may be commenced within six months; and cause of action survives.
92. Provision in case of death of either party before suit is commenced.

- SEC. 93. Saving of the rights of alien enemies during a war.
94. Limitation of suits by individuals for penalties, and of suits and indictments by the state on penal statutes.
95. The making of a writ with intention of service, is the commencement of an action.
96. Limitation extended in cases of fraud.
97. Renewal of promise must be in writing; such renewal by a joint contractor cannot affect the liability of the other contractors.
98. If the action is barred as to one defendant and not as to the others, what judgment is to be rendered.
99. Non-joinder of defendants shall not abate the suit, if the action is barred against the one not sued.
100. Effect of indorsement of partial payments. No promisor affected, except those making the payments.
101. Presumption of payment after twenty years.
102. Application of the statute of limitations to set-offs.
103. Provision if defendant is out of the state.

FORMS AND REQUISITES OF WRITS.

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

SEC. 2. All civil actions, except scire facias and other special writs, shall be commenced by original writs; which, in the supreme judicial court, may be issued by the clerk in term time or vacation, and [may] be framed to attach the goods and estate of the defendant, and for want thereof to take the body, or as an original summons, with or without an order to attach goods and estate; and 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. A writ issued by the clerk of any county, may be made returnable in any other county in which the action might be legally brought. (a)

SEC. 3. Writs issued by a trial justice, or judge of municipal or police court, shall be signed by him and sealed.

SEC. 4. All writs of scire facias may contain a direction to the officer serving them, to attach the property of the defendants and to arrest their bodies when liable to be arrested, the same as in case of writs of attachment.

SEC. 5. When the name of a defendant is not known to the plaintiff, the writ may issue against him by an assumed name; and if duly served, it shall not be abated for that cause, but may be amended on such terms as the court orders.

INDORSEMENT OF WRITS.

SEC. 6. Every writ original, of scire facias, of error, of audita querela, petition for writ of certiorari, for review, or for partition,

Forms of writs remain as they are, till changed by court.
R.S., c. 81, § 1.
62 Me., 165.

Actions commenced by original writs, issued by clerk, and to be capias and attachment, or original summons. Issued in one county and returnable in any other.
R.S., c. 81, § 2.
See c. 77, § 4.

Justice writs.
R.S., c. 81, § 3.

Attachment and arrest on scire facias, as on other writs.
R.S., c. 81, § 4.
71 Me., 406.

Unknown defendant may be sued by assumed name and writ amended.
R.S., c. 81, § 5.

When writ must be indorsed.

(a) 12 Me., 197; 34 Me., 10; 39 Me., 142, 503; 60 Me., 352-5; 63 Me., 30; 66 Me., 251; 71 Me., 28, 406.

CHAP. 81.

R.S., c. 81, § 6.

1 Me., 405.

3 Me., 28,

217.

10 Me., 46.

38 Me., 460.

39 Me., 132.

43 Me., 178.

51 Me., 479.

56 Me., 147.

72 Me., 374.

Liability of

indorser.

Must be sued

within year.

R.S., c. 81, § 7.

11 Me., 445,

467, 492.

15 Me., 67.

16 Me., 20.

20 Me., 388.

24 Me., 228,

241, 355.

26 Me., 43.

39 Me., 132.

When new

indorser may

be required.

R.S., c. 81, § 8.

47 Me., 341.

and bill in equity, shall, before entry in court, be indorsed by some sufficient inhabitant of the state, when the plaintiff or petitioner is not an inhabitant thereof; and if pending such suit the plaintiff or petitioner removes from the state, such indorser shall be procured on motion of the defendant or other party to the suit; but if one of such plaintiffs or petitioners is an inhabitant of the state, no indorser shall be required except by special order of the court.

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

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

ACTIONS, WHEN TO BE BROUGHT.

Personal and
transitory
actions,
where to be
commenced.

Transfer
from one
county to
another.

R.S., c. 81, § 9.

12 Me., 19.

46 Me., 507.

54 Me., 315.

63 Me., 335.

65 Me., 169.

SEC. 9. Personal and transitory actions, except process of foreign attachment, and except as provided in the seven following sections, shall be brought, when the parties live in the state, in the county where any plaintiff or defendant lives; and when the plaintiff does not live in the state, in the county where any defendant lives; and when not so brought, on motion, or inspection by the court, they shall be abated and the defendant allowed double cost. When the plaintiff and defendant live in different counties at the commencement of any such action, except process of foreign attachment, and during its pendency one party moves into the same county with the other, on motion of either it may be transferred to the county where both then live, if the court thinks justice will thereby be promoted; and tried as if originally commenced and entered therein.

Suits on
sheriff's
bonds, where
brought.

R.S., c. 81, § 10.

Judgments

to be sued

SEC. 10. Actions on bonds given by sheriffs and coroners to the treasurer of the state, shall be brought in the county in which such sheriff or coroner is commissioned to act.

SEC. 11. All actions of debt, founded on judgment rendered by any court of record in *this* [the] state, may be brought in the

county where it was rendered, or in the county in which either party thereto, or his executor or administrator, resides at the time of bringing the action.

SEC. 12. In all actions commenced in any court proper to try them, jurisdiction shall be sustained, if goods, estate, effects or credits of any defendant are found within *this* [the] state and attached on the original writ; and service shall be made as provided in section twenty-one. (a)

SEC. 13. Local and transitory actions shall be commenced and tried as follows: When both parties are counties, in any county adjoining either; when a county is plaintiff, if the defendant lives therein, in an adjoining county; if he does not live therein, in the county in which he does live; when a county is defendant, if the plaintiff lives therein, in that county or in any adjoining county; if he does not live therein, in that county or in that in which he does live; when a corporation is one party and a county the other, in any adjoining county; when both parties are towns, parishes or school districts, in the county in which either is situated; when one party is a town, parish, or school district, and the other some corporation or natural person, in the county in which either of the parties is situated or lives; but all actions against towns, for damages by reason of defects in highways, shall be brought and tried in the county in which the town is situated. All other corporations may sue and be sued in the county in which they have any established place of business, or *in that* in which the plaintiff or defendant, being a natural person, lives.

SEC. 14. When a forfeiture is recoverable in a civil action, it shall be brought in the county in which the offence was committed, unless a different provision is made in the statute imposing it; and if on trial it does not appear that it was committed in the county where the action was brought, the verdict shall be in favor of the defendant.

SEC. 15. In addition to the remedies now provided by law, any action in behalf of the state to enforce the collection of any state taxes upon any corporation, or to recover of any person or corporation any moneys due the state, public funds or property belonging to the state, or the value thereof, may be brought in any county *within the state*; *provided*, however, on motion of the defendant, [that] any *judge* [justice] of the supreme judicial court for the state, holding the term at which any such action is returnable, may upon good and sufficient reasons shown, remove the same to the docket of said court in any other county *in the state* for trial, and may award costs to the defendant for one term, upon such removal, to be paid by the treasurer of state on presentation

CHAP. 81.

where rendered, or either party lives. R.S., c. 81, § 11. Jurisdiction, if defendant's property is attached in state. R.S., c. 81, § 12.

Local and transitory actions, in which counties, towns and other corporations are parties, where to be brought. R.S., c. 81, § 13. 53 Me., 420. 53 Me., 536.

Actions for forfeitures, where to be brought. R.S., c. 81, § 14.

Certain actions in behalf of the state, may be brought in any county. 1881, c. 22.

—proviso.

(a) 58 Me., 301; 65 Me., 254; 68 Me., 272.

CHAP. 81. of the certificate of the amount thereof, *of* [from] the clerk of the court of the county from which said action is transferred.

Justice actions against one or several defendants, where to be brought and how served. R.S., c. 81, § 15. 12 Me., 18. 15 Me., 189.

SEC. 16. Any action against two or more defendants residing in different counties, to be tried before a trial justice or municipal or police court, may be brought in the county where either resides; and the writ and execution shall be directed to and executed by the proper officers in each of such counties; but if there is but one defendant, such action shall be commenced in the county where he resides.

WRITS, HOW SERVED ON RESIDENTS.

Summons to be left in case of attachment, except in trustee's writs. R.S., c. 81, § 16. See c. 80, § 3.

SEC. 17. When goods or estate are attached on either of said writs, except in trustee 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. (*a*)

Original summons served by reading or copy. R.S., c. 81, § 17. 45 Me., 402. 47 Me., 304.

SEC. 18. 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.

Service on county, town or other corporation made by giving copy to clerk, treasurer, agent or member thereof, thirty days before court. 1877, c. 155. 16 Me., 372. 47 Me., 304. 67 Me., 496. 71 Me., 360.

SEC. 19. In suits against a county, the summons shall be served by leaving an attested copy thereof with one of the county commissioners or their clerk; against a town, parish, religious society, or school district, with the clerk, or one of the selectmen, or assessors, if there is any such officer; if not, with a member of such corporation; and against any other corporation, however created, with its president, clerk, cashier, treasurer, general agent, or director; if there is no such officer or agent found within the county where such corporation is established, or where its records or papers are by law required to be kept, with any member thereof; and in all suits and proceedings at law or in equity against any foreign or alien company or corporation established by the laws of any other state or country, and having a place of business within this state or doing business therein, service of the writ, bill, petition, or other process shall be sufficient, if made by leaving an attested copy thereof with the president, clerk, cashier, treasurer, agent, director, or attorney of such company or corporation, or by leaving such copy at the office or place of business of such company or corporation within this state; and in each case, it shall be so served thirty days before the return day thereof.

Service against any foreign or alien corporation, how made.

—time of service.

Service on

SEC. 20. When no officer, general agent, or member of a

(*a*) 31 Me., 495; 37 Me., 51; 43 Me., 402; 59 Me., 291.

domestic corporation, can be found in the county in which the same is located, nor in the county in which its last certificate of election of clerk has been filed, the officer having in his hands any process for service on such corporation, may file a copy thereof, in the registry of deeds of the county in which such corporation was located, or in which its last certificate of election of clerk was filed, and make return of his doings, which service shall be sufficient to hold said corporation to answer to such process.

CHAP. 81.

domestic corporation when no officer can be found. 1880, c. 192, § 1. See c. 7, § 17.

HOW SERVED ON NON-RESIDENTS.

SEC. 21. If any *one* defendant is not an inhabitant of the state, the writ may be served on him by leaving a summons or copy, as the case may be, with his tenant, agent or attorney in the state, fourteen days before the sitting of the court; and if his goods or estate are attached, and he has no such tenant, agent or attorney, after entry, the court in the county where the process is returnable, or before entry, the court in any county, may order notice to the defendant, or a justice thereof in vacation may make such order signed by him on the back of the process; and if it is complied with and proved, he shall be held to answer to the suit. A trial justice or judge of a municipal or police court, may in like cases, order like notice on any process returnable or pending before him. (*a*)

Service made on defendant out of state, by leaving with agent or attorney, or as ordered by the judge or trial justice. R.S., c. 81, § 19.

SEC. 22. In actions by inhabitants of this state against insurance companies established by any other state or country, on policies of insurance, signed or countersigned by agents in this state, on property or lives or against accidents in this state; and in such actions against express companies so established, service shall be sufficient if made on the person who signed or countersigned such policies, or on any agent or attorney of either such company, or [if] left at his last and usual place of abode thirty days before the return day of the suit; but the court may, in any case, order further notice.

In actions against foreign insurance and express companies, service to be made on agent in the state thirty days before court. R.S., c. 81, § 20. See c. 49, §§ 89, 90.

HOW WANT OR DEFECT OF SERVICE MAY BE CURED.

SEC. 23. When the property of a defendant is attached on a writ, and no service is made on him before entry, or if service in any case is defective for any cause, without the fault of the plaintiff or his attorney, the court may order a new service, which, when made, shall be as effectual as if proper service had been made in the first instance.

How want or defect of service may be cured. R.S., c. 81, § 21. 58 Me., 301.

ATTACHMENT OF PERSONAL PROPERTY.

SEC. 24. All goods and chattels may be attached and held as

What per-

(*a*) 6 Me., 219; 19 Me., 108; 36 Me., 303; 51 Me., 588; 54 Me., 330; 55 Me., 552; 56 Me., 341; 58 Me., 301; 65 Me., 253-4; 68 Me., 272.

CHAP. 81. security to satisfy the judgment for damages and costs which the plaintiff may recover, except such as, from their nature and situation, have been considered as exempted from attachment according to the principles of the common law as adopted and practiced in *this* [the] state, and such as are hereafter mentioned. Such personal property may be attached on writs issued by a trial justice, or judge of a police or municipal court in any county in the state, when directed to the proper officer.

Attachment of hay and animals, left in hands of debtor.
R.S., c. 81, § 22.

SEC. 25. When hay in a barn, horses or neat cattle are attached, and are suffered to remain, by the permission of the officer, in the defendant's possession on security given for their safe keeping and delivery to the officer, they shall not be subject to a second attachment to the prejudice of the first. (*a*)

Attachment of bulky personal property may be recorded in town clerk's office, and how and where.
Clerk's fees.
R.S., c. 81, § 24.
18 Me., 126.
19 Me., 94,
439.
45 Me., 62.

SEC. 26. When any personal property is attached, which by reason of its bulk or other special cause cannot be immediately removed, the officer may, within five days thereafter, file in the office of the clerk of the town, in which the attachment is made, an attested copy of so much of his return on the writ, as relates to the attachment, with the value of the defendant's property which he is thereby commanded to attach, the names of the parties, the date of the writ, and the court to which it is returnable; and such attachment shall be as effectual and valid, as if the property had remained in his possession and custody. The clerk shall receive the copy, *and* note thereon the time of his receiving it, *and* enter it in a book kept for that purpose, and keep it on file for the inspection of those interested therein, for which he shall be entitled to ten cents. When such an attachment is made in an unincorporated place, such copy shall be filed and recorded in the office of the clerk of the oldest adjoining town in the county.

How shares in a corporation may be attached.
Officer of corporation to furnish number of defendant's shares; if he refuses, action for damages.
R.S., c. 81, § 25.
63 Me., 514.

SEC. 27. When the share or interest of any person in any incorporated company is attached on mesne process, an attested copy of the writ with a notice thereon of the attachment, signed by the officer, shall be left with the clerk, cashier or treasurer of the company; and such attachment shall be a lien on such share or interest, and on all accruing dividends; and if the officer having the writ *of attachment* exhibits it to the officer of the company having custody of the account of shares or interest of the stockholders, and requests a certificate of the number held by the defendant, and such [company] officer unreasonably refuses to give it, or willfully gives him a false certificate thereof, he shall pay double the damages occasioned by such refusal or neglect; to be recovered against him in an action on the case by the creditor.

How franchise and

SEC. 28. The franchise and all right to demand and take toll,

(*a*) 7 Me., 179; 18 Me., 126, 276; 19 Me., 94; 37 Me., 328; 62 Me., 82; 65 Me., 491.

and all other property of a corporation, may be attached on mesne process, and the attaching officer shall leave an attested copy of the writ with a notice of the attachment thereon, signed by him, with the clerk, treasurer, or some officer or member of the corporation, as provided in section nineteen.

SEC. 29. Different attachments in one or more counties may be made successively upon the same writ, and by different officers, before the service of the summons upon the person whose property is attached; but none after such service. And personal property attached by a coroner may be again attached by a sheriff, deputy sheriff, or constable, subject to the former attachment, by giving notice thereof to the coroner and furnishing him with a copy of the precept within a reasonable time thereafter, and so property attached by the last named officers may be again attached by a coroner in like manner; and personal property attached by a constable may be again attached by a coroner or by a deputy in the same manner.

WHEN PERSONAL PROPERTY ATTACHED MAY BE SOLD ON WRIT.

SEC. 30. When personal property is attached, by consent of the debtor and creditor, the officer may sell it on the writ before or after entry, observing the directions for selling on execution; and if it is attached by different officers, it may be so sold by the first attaching officer; or in case of his death, if he was a deputy sheriff, by the sheriff or another deputy by the written consent of the debtor and all attaching creditors; and the proceeds of sale, after deducting necessary expenses, shall be held by the first attaching officer or the sheriff, subject to the successive attachments as if sold on execution.

SEC. 31. When any personal property liable to perish, be wasted, greatly reduced in value by keeping, or kept at great expense, is attached, and the parties do not consent to a sale thereof, the same may be examined and appraised before or after the entry of the action, as follows. (a)

SEC. 32. At the request of either party interested, the officer shall give notice of the time and place of the appraisal, with the names of the parties to the action, and of the supposed owner of the property, by posting notices thereof in two or more public places in the town where it was attached, or by giving personal notice thereof to all parties to the suit in which it is attached, four days at least before the appraisal. He shall prepare a schedule of the property, and cause three disinterested appraisers, acquainted with the nature and value of such goods, to be appointed, one by

CHAP. 81.

other property of corporation may be attached. R.S., c. 81, §26, 42 Me., 425.

Attachments on same writ may be made in different counties and by different officers. R.S., c. 81, §27.

Personal property attached may be sold on writ by consent. R.S., c. 81, §28. 18 Me., 302. 30 Me., 32, 387. 48 Me., 535. 54 Me., 169.

Animals or perishable goods may be sold without consent, after appraisal. 1871, c. 184.

On request, officer to give notice of time and place of appraisal, and how; and cause appraisers to be chosen, and how. R.S., c. 81, §30. 36 Me., 166. 61 Me., 531.

(a) 31 Me., 155; 39 Me., 32; 49 Me., 62.

CHAP. 81. the creditor, one by the debtor, and one by himself; and if the creditor or debtor neglects to appoint one, he shall appoint one in his behalf.

Appraisers to be sworn, and appraise the property at its cash value.
R.S., c. 81, § 31, 36 Me., 166.

To be delivered to debtor on depositing money or giving bond to satisfy judgments. Bond to be returned with officer's doings.
R.S., c. 81, § 32, 31 Me., 155, 36 Me., 166, 68 Me., 432.

Bond may be sued by any creditor. Nature of judgment thereon. Money recovered, how applied.
R.S., c. 81, § 33.

How an attaching creditor, not a party to the suit on bond, may avail himself thereof, or of the judgment therein.
R.S., c. 81, § 34.

Property not delivered to debtor, how disposed of.
R.S., c. 81, § 35, 48 Me., 535, 61 Me., 531.
Proceeds

SEC. 33. The appraisers shall be sworn by the officer without fee, or by a justice of the peace or trial justice, and examine such property; and if in their opinion, any part of it is liable to perish, be wasted, be greatly reduced in value by keeping, or kept at great expense, they shall appraise it at its value in money.

SEC. 34. Thereupon, at the request of the debtor, the property shall be delivered to him, on his depositing with the officer the appraised value thereof in money, or giving bond to him with two sufficient sureties, conditioned to pay him said value, or satisfy all judgments recovered in the suits in which the property is attached, if demanded before the attachments expire, or within thirty days after the time when the creditors might demand payment out of the proceeds of the property if sold as hereinafter provided; and he shall return such bond with the writ on which the first attachment is made, with a return of his doings in relation thereto.

SEC. 35. If the bond is forfeited any one or more of the creditors may bring an action of debt thereon in the name of the officer, and shall indorse their names on the writ. If judgment is for the defendants, execution for cost[s] shall be issued against them jointly, or one against each for his proportion, as the court thinks just. If judgment is for the plaintiffs, the money recovered shall be applied to pay their necessary expenses in prosecuting the suit, not re-imbursed by costs recovered of the defendants; and the residue belongs to the attaching creditors according to their priorities; but no execution shall be awarded for the use of any creditor, without reserving what may be due on any prior attachment, whether the creditor therein is a party to the suit on the bond or not.

SEC. 36. An attaching creditor not a party to such suit, on his motion before final judgment therein, may become a party on such terms as the court orders, the same as if he had been a party originally; and his name shall then be indorsed on the writ; or he may bring scire facias on the judgment and recover the sum due him on the bond. But no creditor whose cause of action on the bond accrued more than a year prior to the suit thereon, shall have judgment or execution therein; nor bring such scire facias unless within a year after the cause of action accrued.

SEC. 37. If such property, after its appraisal, is not delivered to the debtor as aforesaid, the officer shall sell it, make return of all his doings relating thereto, and hold and dispose of the proceeds as in a sale by consent.

SEC. 38. The proceeds of such property sold by consent or

after an appraisal, may be further attached by the officer as the property of the defendant while remaining in his hands, and held and disposed of as if the property itself had been attached; but after retaining enough to satisfy all attachments existing thereon at any time, nothing herein shall prevent his paying the surplus to the debtor.

SEC. 39. When goods, which are sold, or appraised and delivered to the debtor in the manner before provided, have been attached by several creditors, any one of them may demand and receive satisfaction of his judgment, notwithstanding any prior attachments, if he is otherwise entitled to demand the money, and a sufficient sum is left, of the proceeds of the goods, or of their appraised value, to satisfy all prior attachments.

SEC. 40. When personal property, attached on mesne process, is claimed by a person not a party to the suit, he may replevy it in ten days after notice given him therefor by the attaching creditor, and not afterwards; and after that the attaching officer, without impairing the rights of such person, at the request and on the responsibility of the plaintiff, and with the consent of other attaching creditors, if any, may sell it at auction as on execution, unless the debtor claims it as his, and forbids the sale.

HOW PROPERTY OF PART OWNERS, WHEN ATTACHED, MAY
BE DISPOSED OF.

SEC. 41. When personal property is attached in a suit against one or more part owners thereof, at the request of another part owner, it shall be appraised as hereinbefore provided, one appraiser chosen by the creditor, one by the officer and the other by the requesting part owner; and thereupon it shall be delivered to such part owner on his giving bond to the officer with two sufficient sureties, conditioned to restore it in like good order, or pay the appraised value of the defendant's share therein, or satisfy all judgments recovered in the attaching suits, if demanded within the time it would be held by the attachments. Such bond shall be returned with the writ with the doings of the officer thereon, and if forfeited, the like proceedings may be had as are provided in section thirty-five.

SEC. 42. If any part of such appraised value is so paid, the defendant's share of the property shall thereby be pledged to the party paying; and if not redeemed, he may sell it, and account to the defendant for the balance, if any; but if the attachment is dissolved, he shall restore such share to the defendant or to the attaching officer for him.

CHAP. 81.

may be further attached in hands of officer;
R.S., c. 81, § 36.
48 Me., 538.

Right by priority in case of sale, preserved.
R.S., c. 81, § 37.

Property attached and claimed by one not a party to suit, may be replevied in ten days after notice; if not, how disposed of.
R.S., c. 81, § 38.

Property of part owner attached, to be appraised and delivered to other owner, on giving a bond. Bond returned with writ, and sued, if forfeited.
R.S., c. 81, § 39.
50 Me., 397.

Part owner so paying, has lien on property and may sell; but if attachment is dissolved, must restore it.
R.S., c. 81, § 40.

CHAP. 81.

ATTACHMENT OF PROPERTY MORTGAGED OR PLEDGED.

Personal property mortgaged, &c., may be attached by creditor redeeming it. R.S., c. 81, § 41.

SEC. 43. Personal property not exempt from attachment, mortgaged, pledged, or subject to any lien created by law, and of which the debtor has the right of redemption, may be attached, held, and sold as if it was unincumbered, if the attaching creditor first tenders or pays the mortgagee, pledgee, or holder, the full amount unpaid on the demand so secured thereon. (a)

When mortgaged property is attached, no action against officer till after 48 hours notice; officer or creditor may redeem in that time. R.S., c. 81, § 42. 60 Me., 378.

SEC. 44. When personal property, attached on a writ or seized on execution, is claimed by virtue of such mortgage, pledge or lien, the claimant shall not bring an action against the attaching officer therefor, until he has given him at least forty-eight hours' written notice of his claim and the true amount thereof; and the officer or creditor may, within that time, discharge the claim by paying or tendering the amount due thereon, or [he may] restore the property. (b)

If mortgagee does not account in ten days after notice, he waives mortgage. Penalty. R.S., c. 81, § 43. 58 Me., 419. 59 Me., 114. 60 Me., 378. If creditor redeems, and officer sells, proceedings. R.S., c. 81, § 44.

SEC. 45. The officer may give the claimant written notice of his attachment; and if he does not, within ten days thereafter, deliver to the officer a true account of the amount due on his claim, he thereby waives the right to hold the property thereon; and if his account is false, he forfeits to the creditor double the amount of the excess, to be recovered in an action on the case.

SEC. 46. If the creditor redeems such property, and it is subsequently sold by the officer, he shall, from the proceeds, first pay to the creditor the amount with interest paid by him to redeem, and apply the balance, if any, to the debt on which it was attached or seized on execution.

WHEN ATTACHING OFFICER DIES, OR IS REMOVED, OR PROPERTY IS REPLEVIED.

Goods attached by an officer, not assets of his estate, but subject to the attachment. R.S., c. 81, § 45.

SEC. 47. Personal property attached by an officer and in his possession, and his claim for damages when [it is] taken from him, shall remain subject to such attachment in case of his death as if he was alive, and shall not be assets belonging to his estate.

If replevied, liable to further attachments; replevin bond liable for whole value. R.S., c. 81, § 46. If officer dies or is removed, property attached by him liable to further attachments by other officers, and

SEC. 48. Such property replevied from the officer, shall be liable to further attachments as if in his possession; and if there is judgment for a return in the replevin suit, the plaintiff and his sureties shall be liable for the whole property or its value, though some attachments were made after the replevin.

SEC. 49. If an attaching officer dies or is removed from office while the attachment is in force, whether the property was in his possession or not, it and its proceeds may be further attached by any other officer, the same as it might have been by the first officer. Such further attachments shall be made by a return setting forth an attachment in common form and by whom the property was

(a) 50 Me., 128, 307; 58 Me., 419; 60 Me., 378.

(b) 59 Me., 114; 60 Me., 378; 63 Me., 465; 72 Me., 71.

previously attached; and if the goods have not been replevied, by leaving a certified copy of the writ, omitting the declaration, and of the return of that attachment, with the former officer, if living, or if dead, with his executor or administrator, or if none are appointed, with the person having possession of the goods; or if the goods have been replevied, and the officer who made the original attachment is dead, such copy shall be left with the plaintiff in replevin, or his executors or administrators; and the attachment shall be considered as made, when such copy is delivered in either of the modes before described.

CHAP. 81.
how to be
made.
R.S., c. 81, § 47.

SEC. 50. Goods, that have been taken by replevin from an attaching officer, shall not be further attached as the property of the original defendant in any other manner, than that provided in the *four* [two] 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.

Limitation
of right to
attach goods
replevied.
R.S., c. 81, § 48.

ATTACHMENTS AND ACTIONS WHERE A PARTY DIES.

SEC. 51. The attachment of personal property continues in force after the death of the debtor as if living, unless before a sale thereof on execution, his estate is decreed insolvent; but it is dissolved by such decree, and the officer, on demand thereafter, shall restore such property to the executor or administrator on payment of his legal fees and charges of keeping. (*a*)

Attach-
ments, when
dissolved by
death of in-
solvent.
Duty of
officer.
R.S., c. 81, § 49.
See §§ 67, 68.

SEC. 52. If, after such decree and before such demand, the officer has sold the property on execution, he shall be liable to the executor or administrator in an action, not of trespass, but for money had and received, for the proceeds if in his hands; but if paid over to the judgment creditor, such creditor shall be so liable; and shall not set off any demand [which] he has against the executor or the administrator on the estate of the deceased.

If property
is sold be-
fore demand,
officer liable
for proceeds.
If paid over,
creditor is
liable, and
cannot set off
his demands
v. estate.
R.S., c. 81, § 50.

SEC. 53. After the death of a defendant and before a decree of insolvency on his estate, the executor or administrator may demand of the attaching officer a certified copy of his return on the writ with a description of the property attached, so that it may be described in the inventory of the estate subject to the attachment, and the appraisers may demand a view thereof so as to appraise it; and if the officer fails to comply with either demand, he forfeits to the executor or administrator not less than ten nor more than thirty dollars.

After debt-
or's death
and before
decree of in-
solvency, of-
ficer to give
copy of his
return to
adm'r, and
allow view
by apprais-
ers.
Penalty.
R.S., c. 81, § 51.

SEC. 54. An action, brought by an officer for taking from him personal property attached by him, shall not abate by the death of either party; but may be prosecuted by or against his executor or administrator. If the officer is dead and his representative recovers the property or money, it shall be held and applied as if he was

Actions by
officers for
goods at-
tached and
taken from
them, not to
abate by par-
ty's death,

(a) 1 Me., 333; 46 Me., 353.

CHAP. 81. alive; but if he fails to recover, he shall return the property or pay the damages awarded in full, though the estate of the deceased is insolvent.

but to go on, as if alive.
R.S., c. 81, § 52.

If officer dies pending suit, and no adm'r is appointed, party in interest may carry on suit.
R.S., c. 81, § 53.

SEC. 55. If any officer authorized to serve precepts, dies pending a suit for or against him for official neglect or misconduct, and no administration is granted on his estate within three months thereafter, the party for whose benefit the suit is so prosecuted or defended, may carry it on in his own name by entering his appearance and giving security for costs, as the court directs.

ATTACHMENT OF REAL ESTATE.

What real estate and interests are attachable. Officer need not view it.
R.S., c. 81, § 54.
See c. 54, § 6, c. 76, §§ 1, 42.

SEC. 56. All real estate liable to be taken in execution as provided in chapter seventy-six; *the right to cut and carry away grass and timber from land sold by this state or Massachusetts, the soil of which is not sold,** and all other rights and interests in real estate, may be attached on mesne process, and held to satisfy the judgment recovered by the plaintiff; but the officers need not enter on or view the estate to make such attachment. (a)

Real estate may be attached on writs from municipal or police courts in certain cases.
1877, c. 179.

SEC. 57. Where [If] a municipal or police court has a regular seal of court, and a recorder, and has jurisdiction in any action where the amount of damage claimed exceeds twenty dollars, real estate and interests in real estate attachable on writs from the supreme judicial court, may be attached on writs, or taken on executions from such municipal or police court, where the amount of the debt or damage, exclusive of costs, exceeds twenty dollars.

Attachment of right of redemption holds premises free, if incumbrance is removed before sale.
R.S., c. 81, § 55.

SEC. 58. When a right of redeeming real estate mortgaged or taken on execution, is attached; and such estate is redeemed or the incumbrance removed before the levy of the execution, the attachment shall hold the premises discharged of the mortgage or levy, as if they had not existed.

R.S., c. 81, § 55.
39 Me., 24.
43 Me., 249.

No attachment of real estate valid, unless recorded in registry of deeds in five days, and claim specified in writ.
1880, c. 241, § 1.
18 Me., 302.
29 Me., 271.
39 Me., 344.
42 Me., 341.
48 Me., 413,
567.

SEC. 59. No attachment of real estate on mesne process shall create any lien thereon, unless the nature and amount of plaintiff's demand is set forth in proper counts, or a specification thereof is annexed to the writ, nor unless the officer making it within five days thereafter files in the office of register of deeds in the county or district in which all or any part of said estate is situated, an attested copy of so much of his return on the writ, as relates to the attachment with the value of the defendant's property which he is thereby commanded to attach, the names of the parties, the date of the writ, and the court to which it is returnable. If the copy is not so filed within five days, the attachment shall take effect from the time it is filed, if before the entry of the action, although

* [QUERY. Is not this clause obsolete?]

(a) 10 Me., 119; 14 Me., 35; 15 Me., 158; 19 Me., 52; 23 Me., 160, 172; 27 Me., 451; 28 Me., 414; 35 Me., 524; 39 Me., 344; 42 Me., 286, 325; 46 Me., 437, 481; 52 Me., 357; 55 Me., 571.

it is after service on the defendant. No seizure on execution of real estate where there is no subsisting attachment thereof made in the suit in which such execution issues, shall create any lien on such real estate, unless the officer making it within five days thereafter files in the office of the register of deeds in the county or district in which all or any part of said estate is situated, an attested copy of so much of his return on said execution as relates to the seizure, with the names of the parties, the date of the execution, the amount of the debt and costs named therein, and the court by which it was issued. If the copy is not so filed the seizure shall take effect from the time it is filed. And such proceedings shall be had in such office, by the register of deeds, as are prescribed in the chapter respecting the registry of deeds. *Provided*, however, that all recorded deeds shall take precedence over unrecorded attachments and seizures. (a)

SEC. 60. When a right to redeem real estate under a mortgage, levy, sale on execution or for taxes, or a right to a conveyance by contract, is attached, the plaintiff in the suit, before or after a sale on execution, may pay or tender to the person entitled thereto, the amount required to discharge such incumbrance or fulfil such contract; and thereby the title and interest of such person shall vest in the plaintiff, subject to the defendant's right to redeem as he might from such person; but such redemption by the defendant or any person claiming under him by a title subsequent to the attachment, shall not affect such attachment, but it shall continue in force, and the prior incumbrance as against it, shall be deemed discharged.

SEC. 61. Such person, on written demand, shall give the plaintiff a true written statement of the amount due him; and on payment or tender thereof, shall release all his interest in the premises; and if he refuses, he may be compelled to do so by a bill in equity. But such release shall recite that under the authority of this and the preceding section, the plaintiff had attached the premises and paid or tendered the amount due the grantor; the plaintiff shall thereupon hold such title in trust for the defendant, and subject to his right of redemption, without power of alienation *till* [until] after one year from the termination of said suit, or from the sale of the equity on any execution recovered therein.

PROPERTY EXEMPT FROM ATTACHMENT.

SEC. 62. The following personal property is exempt from attachment and execution:

First.—The debtor's wearing apparel; household furniture necessary for himself, wife and children, not exceeding ¹⁰⁰ fifty dollars

(a) 51 Me., 168, 322; 52 Me., 410; 54 Me., 420; 55 Me., 451, 571; 59 Me., 438; 60 Me., 249; 69 Me., 502, 537; 72 Me., 222.

CHAP. 81.

Seizure on execution creates no lien on real estate unless filed in five days. 1880, c. 241, § 3.

Seizure to take effect from time it is filed. Recorded deeds take precedence over unrecorded attachments and seizures.

When right of redemption or to a deed by contract, is attached, the creditor may redeem or pay, then the title of mortgagee or contractor shall vest in him. R.S., c. 81, § 57.

The mortgagee or contractor shall furnish, on demand, the sum due him; and on payment, shall release or be compelled to do so in bill in equity. R.S., c. 81, § 58.

Personal property. R.S., c. 81, § 59. See c. 47, § 117. See c. 84, § 48. See c. 75, § 10. Apparel, furniture, beds.

CHAP. 81.
16 Me., 265.

Portraits,
bibles,
school
books, stat-
utes and
library.
One pew.

Cooking and
warming
stoves, wood,
coal, bark
and lumber.

Produce
growing,
flour, corn,
grain, pota-
toes, flax.
41 Me., 80.

Tools of
trade and
sewing
machine.
10 Me., 136.
28 Me., 178.
Oxen, mules,
horses, har-
nesses, horse-
sled and hay.
45 Me., 72.
46 Me., 360.
55 Me., 107.

Fowl, swine,
cows, sheep,
lambs, wool
and hay.
1879, c. 99.
R.S., c. 81, § 59.
14 Me., 315.
17 Me., 70.
38 Me., 136.

Plow, cart
or wagon,
harrow,
yoke, chains,
ox-sled and
mower.
71 Me., 164.
Boat.

in value, and one bed, bedstead and necessary bedding for every two such persons.

Second.—All family portraits, all bibles and school books in actual use in the family; one copy of the statutes of the state, and a library not exceeding a [one] hundred and fifty dollars in value.

Third.—All his interest in one pew in a meeting-house where he and his family stately worship.

Fourth.—One cooking stove; all iron stoves used exclusively for warming buildings; charcoal, and not exceeding twelve cords of wood conveyed to his house for the use of himself and family; all anthracite coal not exceeding five tons; all bituminous coal not exceeding fifty bushels; and ten dollar's worth of lumber, wood or bark.

Fifth.—All produce of farms until harvested; one barrel of flour; corn and grain necessary for himself and family, not exceeding thirty bushels; all potatoes raised or purchased for himself and family; and all flax raised on a half acre of land, and all articles manufactured therefrom for the use of himself and family.

Sixth.—The tools necessary ^{materials and stocks not to exceed \$50.00} for his trade or occupation, and one sewing machine not exceeding one hundred dollars in value for actual use by himself or family.

Seventh.—One pair of working cattle, or instead thereof one pair of mules or one or two horses not exceeding in value three hundred dollars, and a sufficient quantity of hay to keep them through the winter season. If he has more than one pair of working cattle, or more than one pair of mules, or if the two horses exceed in value three hundred dollars, he may elect which pair of cattle or mules or which horse shall be exempted. If he has a pair of mules or one or two horses so exempt, he may also have exempt for each of said horses or mules, one harness not exceeding twenty dollars in value; and one horse sled not exceeding the same value; but if he has at the same time an ox sled, he may elect which sled shall be exempt.

Eighth.—Domestic fowl, not exceeding fifty dollars in value, two swine, one cow, and one heifer under three years old, or if he has no oxen, horse or mule, two cows, and he may elect the cow or cows and heifer, if he has more than is exempt, ten sheep and the wool from them, and the lambs raised from them until they are one year old, and a sufficient quantity of hay to keep said cattle, sheep and lambs through the winter season.

Ninth.—One plow, one cart or truck ^{one express wagon} wagon, one harrow, one yoke with bows, ring and staple, two chains, one ox sled, and one mowing machine.

Tenth.—One boat not exceeding two tons burthen, usually employed in fishing business, belonging wholly to an inhabitant of this [the] state.

HOMESTEADS EXEMPT.

CHAP. 81.

SEC. 63. A lot of land and dwelling house and out buildings thereon, the property of a householder in actual possession thereof and not the owner of an exempted lot purchased of the state, is exempt from attachment and levy on execution as provided in the following sections.

Homestead exempt.
R.S., c. 81, § 60.
See c. 5, §§ 38, 39.
See c. 15, §§ 6, 7.
72 Me., 515.

SEC. 64. Such person may file in the registry of deeds in the county or district where the land lies, a certificate signed by him, declaring his wish to have such exemption and describing the land and buildings; and the register, for the fees for recording deeds, shall record it in a book by him kept for that purpose; and so much of such property as does not exceed five hundred dollars in value, shall be forever exempt from attachment or levy on execution issued on a judgment recovered for any debt, contracted jointly or severally by such person after the date of the recording thereof; and the record in the register's office shall be prima facie evidence that the certificate purporting to be there recorded, was made, signed, and filed as there appears.

Householder to have his claim for exemption recorded in the registry, with description of homestead; and then \$500 worth exempt from debts subsequently contracted.
R.S., c. 81, § 61.
72 Me., 515.

SEC. 65. When such property is claimed by a creditor to be of greater value than five hundred dollars, it may be seized on execution, and the appraisers shall first set off such part of the property as the debtor may select, and if he neglects so to do, as the officer may select for him, to such value, by metes and bounds; and shall then appraise and set off to the creditor, so much of the remainder as may be necessary to satisfy the execution; and the appraisers shall be sworn accordingly and the officer shall make return of his doings thereon.

When creditor claims that homestead is worth more than \$500, appraisers first to set off that value, and apply residue to execution.
R.S., c. 81, § 62.

SEC. 66. After his death, the exempted premises shall not be sold for the payment of his debts during the widowhood of his widow, or the minority of any of his children; but may be occupied by his widow during her widowhood and by his children during minority, free from any claim by any creditor of his estate. But this and the three preceding sections shall not exempt such property from the lien of mechanics or material men.

After death of householder, widow and children to occupy during widowhood and minority.
Homestead not exempt from mechanic's liens.
R.S., c. 81, § 63.

HOW AND WHEN ATTACHMENTS ARE DISSOLVED.

SEC. 67. An attachment of real or personal estates continues thirty days and no more after final judgment in the original suit and not in review or error, except attachments of equities of redeeming real estate mortgaged or taken in execution; or equities of redemption sold on execution; or an obligee's conditional right to a conveyance of real estate on execution; or property attached and replevied; or property attached belonging to a person dying thereafter, or specially provided for in any other case.

Attachment of real or personal estate continues thirty days after judgment and no more, except in certain cases.
R.S., c. 81, § 64.
12 Me., 242.
22 Me., 382.

SEC. 68. All attachments of real or personal estate are dis-

Dissolved by judgment for

CHAP. 81.

defendant;
insolvency
of estate be-
fore sale or
levy on ex'on
by proceed-
ings under
the insolvent
law; refer-
ence of all
demands,
and by
increasing
ad damnum.
R.S., c. 81, § 65.

Clerk of
court to give
owner a cer-
tificate of
dissolution
of attach-
ment, to be
recorded in
registry.
Creditor may
release at-
tachment on
record or by
a certificate
to be re-
corded.
R.S., c. 81, § 66.

Debtor,
whose real
estate is at-
tached, may
petition
judge of
court for a
valuation
and release.
Judge to is-
sue notice to
be served ten
days before
hearing.
R.S., c. 81, § 67.

Judge to fix
value of
such real
estate, and
release same,
on bond of
debtor.
Conditions
of bond.
R.S., c. 81, § 68.

solved by final judgment for the defendant; by a decree of insolvency on his estate before a levy or sale on execution; [by insolvency proceedings commenced within four months as provided in section forty-seven of chapter seventy;] by a reference of the suit and all demands between the parties thereto, by a rule of court, and judgment on the report of the referees; and by an amendment of the declaration, by consent of parties, so as to embrace a larger demand than it originally did, and judgment for the plaintiff thereon, unless the record shows that no claims were allowed the plaintiff not originally stated in the writ. (a)

SEC. 69. When an attachment is dissolved by judgment for the defendant, the clerk of the court, on payment of twenty-five cents, shall give any person applying therefor a certificate of that fact, which the register of deeds shall note on the margin of the record of the attachment; and before or after judgment, the plaintiff, in such suit may cause a discharge of such attachment, signed by him, to be entered on the margin of the record thereof; or he may give a certificate, signed, sealed and acknowledged by him, that such attachment is, in whole or in part, discharged; which the register of deeds shall record, with a reference thereto on the margin of the record of the attachment, for which he shall be entitled to twenty-five cents, and for entering such discharges, twelve cents each.

SEC. 70. Any defendant, whose interest in real estate is attached on mesne process, may petition in writing to a justice of the supreme judicial court, in term time or vacation, setting forth the names of the parties to the suit, the court and county in which it is returnable or pending, the fact of the attachment, the particular real estate, and his interest therein, its value, and his desire to have it released from the attachment. Such justice shall issue a written notice, which shall be served on all parties to the suit living in the state, including trustees mentioned in section seventy-five, and on the plaintiff's attorney, ten days at least before the time fixed therein for a hearing.

SEC. 71. If at the hearing, such justice finds that such interest is worth as much as the amount ordered in the writ to be attached, he shall order such defendant to give bonds to the plaintiff, with sufficient sureties, conditioned to pay the judgment recovered by the plaintiff, with his costs on the petition, within thirty days after judgment. If he finds it is worth less, the bond shall be conditioned to pay the value of such interest so found and costs on the petition, within said time.

(a) See c. 76, § 44; 4 Me., 278; 7 Me., 351; 14 Me., 431; 19 Me., 422; 43 Me., 472; 49 Me., 241, 310; 53 Me., 415; 55 Me., 527; 57 Me., 88, 89; 59 Me., 101; 65 Me., 120.

SEC. 72. The petition and proceedings thereon shall be filed in the clerk's office in the county where the action is pending or returnable, and recorded as a part of the case; and the bond, when approved by such justice, shall also be filed therein for the use of the plaintiff.

CHAP. 78.
Proceedings and bond to be filed in clerk's office. R.S., c. 81, § 69.

SEC. 73. The clerk shall give the petitioner an attested copy of the petition and proceedings, with a certificate, under seal of the court, attached thereto, that such bond has been duly filed in his office; and the recording of such copy and certificate in the registry of deeds in the county where such real estate or interest therein lies, shall vacate the attachment.

Certificate of proceedings from clerk recorded in registry of deeds, vacates attachment. R.S., c. 81, § 70.

SEC. 74. When personal property is attached and actual possession is taken by the attaching officer, the same proceedings may be had, as provided in the four preceding sections, and the officer shall also be notified of the hearing; and the delivery to him of the copy and certificate mentioned in the preceding section, shall vacate the attachment, and he shall return the property to the petitioner on demand. When the property attached is stock in a banking or other corporation, or is such that the attachment is required to be recorded in the town clerk's office, such copy and certificate shall be filed with the officer of such corporation or the town clerk with whom the attachment is filed; and thereby the attachment is vacated.

Same proceedings to vacate attachment of personal property; also, of stocks, only certificate to be recorded where attachment is. R.S., c. 81, § 71.

SEC. 75. In cases of foreign attachment the same proceedings originated by any principal defendant may be had, except that the bond to the plaintiff shall be conditioned to pay the amount, if any, which he may finally recover against the trustees, with costs on the petition, within thirty days after judgment, not exceeding the amount of the judgment against the principal defendant. The justice shall also require the petitioner to give bond to each trustee named in the petition, with sureties, in a sum sufficient to protect him against any judgment recovered by the plaintiff and paid by him, and his legal costs in the suit, and the costs allowed him by such justice at the hearing on the petition if he appears. Such bonds, when approved by such justice, shall be filed in the clerk's office for the use of the trustees. The delivery of the copy and certificate, hereinbefore mentioned, to the trustees, shall vacate the attachment of any goods, effects or credits in their hands belonging to the petitioner.

Foreign attachments vacated by same proceedings; only bonds to be given to trustees also, and certificate filed with them. R.S., c. 81, § 72.

SEC. 76. The clerk shall be entitled to two dollars for recording the petition and proceedings, and making the copy and certificate; the register of deeds, seventy-five cents for recording the same; and the officer or clerk, twenty cents for each filing and necessary certificate thereof; and the party finally prevailing in

Fees of clerk and register; all costs of proceedings to be recovered by prevailing party. R.S., c. 81, § 73.

CHAP. 81. the suit shall recover the costs of these proceedings, taxed as costs of court in other cases, and certified by such justice, and execution shall issue therefor.

CROSS ACTIONS AGAINST NON-RESIDENTS.

In cross actions and set off against parties out of state, service may be made on their attorneys.
R.S., c. 81, § 74.
46 Me., 420.
62 Me., 496.

SEC. 77. When an action is brought by a person not an inhabitant of *this* [the] state, nor to be found therein to be served with process, he shall be held to answer to any action brought against him here by the defendant in the first action, if the demands in the two cases are of such a nature that the judgment or execution in the one can be set off against the judgment or execution in the other; and if there are several defendants, each may bring such cross action, and set off his judgment against the judgment recovered against him and his co-defendants as if against him alone; and the service of the writs in such cross actions, made on the attorney of the plaintiff in the original suit, shall be as valid as if made on the party himself in *this* [the] state.

Court may continue actions for absent party to defend, or either party to set off judgment or execution.
R.S., c. 81, § 75.
46 Me., 421.
62 Me., 496.

SEC. 78. The court in which either of such actions is pending, may grant continuance, to enable the absent party to defend, or either party to set off his judgment or execution against the other; but they shall not be delayed by the neglect or default of either party.

DAYS ON WHICH NO ARRESTS CAN BE MADE OR PROCESS SERVED.

Exemption from arrest on certain holidays.
1874, c. 202, § 3.
16 Me., 136.

SEC. 79. No person shall be arrested in a civil action, or [on] mesne process, or execution, or on a warrant for taxes, on the fourth day of July, Christmas day, or the day of annual fast, thanksgiving, or thirtieth day of May; and no officer or soldier who is required by law to attend a military training, inspection, review or election, shall be arrested on any such process on such days.

Voters not to be arrested on election days.
R.S., c. 81, § 77.

SEC. 80. No elector shall be arrested, except for treason, felony, or breach of the peace, on the days of election of United States, state, or town officers.

Civil process served on Lord's day, void; officer liable.
R.S., c. 81, § 78.

SEC. 81. No person shall serve or execute any civil process on the Lord's day; but such service shall be void, and the person executing such process shall be liable in damages to the party aggrieved, as if he had no process.

LIMITATION OF PERSONAL ACTIONS.

What actions must commence within six years.
R.S., c. 81, § 79.

SEC. 82. The following actions shall be commenced within six years next after the cause of action accrues and not afterwards.

First.—All actions of debt founded upon any contract or liability not under seal, except such as are brought upon the judgment or decree of some court of record of the United States or [of]

a state, or of some municipal or police court, trial justice, or justice of the peace in this state. (a) CHAP. 81.

Second.—All actions upon judgments of any court not a court of record, except municipal and police courts, trial justices, and justices of the peace in this state.

Third.—All actions for arrears of rent.

Fourth.—All actions of assumpsit or upon the case founded on any contract or liability, express or implied. 63 Me., 79, 81.

Fifth.—All actions for waste, of trespass on land, and of trespass, except those for assault and battery and false imprisonment.

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

Seventh.—All other actions on the case, except actions for slanderous words and for libels. 61 Me., 236.

SEC. 83. All actions for the escape of prisoners committed on execution, shall be actions on the case, and commenced within one year after the cause of action accrues; but all actions against a sheriff, for the negligence or misconduct of himself or his deputies, shall be commenced within four years next after the cause of action accrues. Against sheriff for escape, in one year; for misconduct, in four years. R.S., c. 81, § 80.

SEC. 84. 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. Assault, &c., libel, &c., in two years. R.S., c. 81, § 81.

SEC. 85. No scire facias shall be served on bail unless within one year next after judgment rendered against the principal; nor on sureties in recognizances in criminal cases unless within one year next after the default of the principal; nor against any person adjudged trustee, unless within one year from the expiration of the first execution against the principal and his goods, effects and credits in the hands of the trustee. Scire facias against bail, sureties in criminal recognizances and trustees, in one year. R.S., c. 81, § 82. See § 7.

SEC. 86. The foregoing limitations do not apply to actions on promissory notes signed in the presence of an attesting witness, or on the bills, notes or other evidences of debt issued by any bank; nor to any case or suit limited to be commenced within a different time by any statute. (b) Not applicable to witnessed notes, bank bills or cases otherwise limited. R.S., c. 81, § 83.

SEC. 87. In all actions of debt or assumpsit to recover the balance due, in cases where there have been mutual dealings between the parties, the items of which are unsettled, whether kept or proved by one party or both, the cause of action shall be deemed to accrue at the time of the last item proved in such account. (c) Mutual and open accounts current. R.S., c. 81, § 84.

(a) 9 Me., 75; 15 Me., 168; 17 Me., 299; 23 Me., 562; 36 Me., 364; 37 Me., 392; 38 Me., 151; 53 Me., 207; 58 Me., 281; 63 Me., 11; 66 Me., 444; 70 Me., 20.

(b) 7 Me., 25; 16 Me., 474; 19 Me., 73; 21 Me., 178; 23 Me., 497; 26 Me., 332; 30 Me., 120; 31 Me., 161; 38 Me., 182, 352; 49 Me., 334; 51 Me., 303; 60 Me., 408; 63 Me., 79, 81; 64 Me., 225; 66 Me., 444-5.

(c) 4 Me., 339; 38 Me., 151; 51 Me., 106; 59 Me., 224; 63 Me., 507; 65 Me., 171; 72 Me., 35, 39.

CHAP. 81.

Minors, &c., may sue after disability is removed, within what times.

R.S., c. 81, § 85.
Actions to recover stolen bonds, when to be commenced. 1875, c. 5.

Exception.

General limitation of twenty years.

R.S., c. 81, § 86.

When writ fails of service, or is defeated for any cause, or judgment is reversed, new suit in six months, and cause of action survives.

R.S., c. 81, § 87.
8 Me., 450.
10 Me., 402.
38 Me., 218.

Provision in case of death of either party before suit is commenced.

R.S., c. 81, § 88.

68 Me., 30-2, 418.

Saving of rights of alien enemies in time of war.

R.S., c. 81, § 89.

Limitation of suits for penalties.

R.S., c. 81, § 90.

SEC. 88. If a person entitled to bring any of the aforesaid actions is a minor [or] married woman, insane, imprisoned, or without the limits of the United States when the cause of action accrues, he may bring his action within the times limited herein, after the disability is removed. (a)

SEC. 89. All actions to recover bonds, obligations or coupons of the same, issued by any city or town in the state, and stolen or obtained by robbery from the owner thereof, prior to February twelve, eighteen hundred and seventy-five, shall be commenced within eighteen months from the time they become due or payable, and not afterwards; but this limitation shall not apply to any action commenced by the person from whom such bonds, obligations or coupons were stolen or obtained by robbery.

SEC. 90. 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. (b)

SEC. 91. When a writ fails of a sufficient service or return by unavoidable accident, or default, or negligence of the officer to whom it was delivered or directed, or is abated, or the action [is] 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 he dies and the cause of action survives, his executor or administrator may commence such new action within said six months.

SEC. 92. If any person entitled to bring or liable to any action before mentioned, dies before, or within thirty days after the expiration of the time herein limited therefor, and the cause of action survives, the action may be commenced by or against the executor or administrator at any time within two years after his appointment, and not afterwards if barred by the other provision hereof.

SEC. 93. If any person is disabled to prosecute an action in *this* [the] state by reason of his being an alien subject or citizen of a country at war with the United States, the time such war continues shall not be a part of the period herein limited for the commencement of any of said actions.

SEC. 94. All actions and suits for any penalty or forfeiture on any penal statute, brought by a person to whom the penalty or forfeiture is given in whole or in part, shall be commenced within one year after the offence was committed; and if no individual so prosecutes, it may be recovered by suit, indictment, or information,

(a) 13 Me., 401; 29 Me., 218; 37 Me., 307; 54 Me., 92; 66 Me., 444.

(b) 23 Me., 83; 30 Me., 164; 38 Me., 218; 66 Me., 444; 70 Me., 20.

in the name and for the use of the state, at any time within two years after the offence was committed, and not afterwards. (a)

SEC. 95. The time when a writ is actually made, with an intention of service, shall be deemed the commencement of the suit.

SEC. 96. If a person liable to any action mentioned herein, fraudulently conceals the cause thereof from the person entitled thereto, or if a fraud is committed which entitles any person to an action, the action may be commenced at any time within six years after the person entitled thereto discovers that he has just cause of action. (b)

SEC. 97. In actions of debt or on the case founded on any contract, no acknowledgment or promise shall be allowed to take the case out of the operation of the provisions hereof, unless the acknowledgment or promise is an express one, in writing, signed by the party chargeable thereby. No such acknowledgment or promise made by a joint contractor shall affect the liability of the other. (c)

SEC. 98. In actions against two or more joint contractors, if it appears on trial or otherwise, that the plaintiff is barred by the provisions hereof as to one or more of the defendants, but entitled to recover against any other by virtue of a new acknowledgment, promise, or otherwise, judgment shall be rendered for the plaintiff as to such others, and for the other defendants against the plaintiff.

SEC. 99. In an action on contract, if the defendant pleads in abatement that any other person ought to have been jointly sued, and issue is joined thereon, and it appears on the trial, that the action was barred by the provisions hereof against such person, the issue shall be found for the plaintiff.

SEC. 100. Nothing herein contained shall alter, take away, or lessen the effect of payment of any principal or interest made by any person; but no indorsement or memorandum of such payment made on a promissory note, bill of exchange, or other writing, by or on behalf of the party to whom such payment is made or purports to be made, shall be deemed sufficient proof of payment to take the case out of the statute of limitations; and no such payment made by one joint contractor, or his executor or administrator, shall affect the liability of another. (d)

(a) 5 Me., 495; 31 Me., 532; 39 Me., 214, 353; 57 Me., 147, 338; 59 Me., 209; 63 Me., 12; 69 Me., 121; 70 Me., 496.

(b) 3 Me., 407; 7 Me., 374; 9 Me., 132; 31 Me., 450; 37 Me., 319; 39 Me., 406; 40 Me., 203; 57 Me., 338; 58 Me., 439; 65 Me., 568.

(c) 15 Me., 362, 446; 17 Me., 146, 186; 21 Me., 435; 22 Me., 103; 23 Me., 457; 24 Me., 535; 29 Me., 49; 35 Me., 367; 38 Me., 351; 60 Me., 440; 71 Me., 314.

(d) 20 Me., 347; 21 Me., 178, 435; 22 Me., 499; 23 Me., 163; 28 Me., 423; 30 Me., 255, 427; 32 Me., 173, 268; 33 Me., 185; 35 Me., 184, 367; 38 Me., 182; 51 Me., 35, 202; 53 Me., 392; 54 Me., 22; 65 Me., 172, 513; 66 Me., 444.

CHAP. 81.

Making of writ, commencement of suit.
R.S., c. 81, §91.
38 Me., 585.
69 Me., 338.
Limitation extended in cases of fraud.
R.S., c. 81, §92.

Renewal of promise must be in writing.
R.S., c. 81, §93.

If action is barred v. some and not others, pl'ff may recover v. the others.
R.S., c. 81, §94.
7 Me., 27.
15 Me., 393.

Non-joinder of def'd'ts not to abate writ, if action was barred v. those not joined.
R.S., c. 81, §95.
Effect of partial payment and of indorsement thereof.
R.S., c. 81, §96.

CHAP. 82.

Presumption
of payment
after twenty
years.

R.S., c. 81, §97.

28 Me., 83.

55 Me., 134.

66 Me., 444-5.

Application
of the stat-
utes of limi-
tation to
set-offs.

R.S., c. 81, §98.

SEC. 101. Every judgment and decree of any court of record of the United States, or [of] any state, or of a trial justice or justice of the peace in this state, shall be presumed to be paid and satisfied at the expiration of twenty years after any duty or obligations accrued by virtue of such judgment or decree.

SEC. 102. All the provisions hereof respecting limitations, shall apply to any debt or contract filed by way of set-off on the part of the defendant; and the time of such limitation of such debt or contract shall be computed, as if an action had been commenced therefor at the time when the plaintiff's action was commenced, unless the defendant is deprived of the benefit of the set-off by the non-suit or other act of the plaintiff; and when he is thus defeated of a judgment on the merits of such debt or contract, he may commence an action thereon within six months after the final determination of the suit aforesaid.

If defendant
is out of
state.

R.S., c. 81, §99.

SEC. 103. If any person is out of the state when a cause of action accrues against him, the action may be commenced within the time limited therefor after he comes into the state; and if any person is absent from and resides out of the state after a cause of action has accrued against him, the time of his absence shall not be taken as a part of the time limited for the commencement of the action. (a)

(a) 20 Me., 273; 23 Me., 164, 415; 37 Me., 307, 392; 38 Me., 172; 48 Me., 320; 54 Me., 400; 55 Me., 234; 57 Me., 551; 59 Me., 224; 65 Me., 513.

CHAPTER 82.

PROCEEDINGS IN CIVIL ACTIONS IN COURT.

MISCELLANEOUS PROVISIONS.

- SEC. 1. Actions to be entered first day. Further service may be ordered.
 Notice in civil proceedings ordered in term time or vacation.
2. When default may be recorded; when taken off.
 3. Defendant out of state, proceedings.
 4. Execution stayed one year, unless bond is given to repay if reversed on review. Attachment continued.
 5. Bond left with clerk; defendant may petition for a review, if review of right is not prosecuted.
 6. Executions inadvertently issued upon judgment rendered on default, without deposit of bond, are valid unless petition for review is filed within one year, or if judgment is not reversed on review.
 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. How writs may be amended.
 12. Writ or process lost, leave granted to file a new one.

SEC. 13. Defendants may be struck out or new ones inserted, on payment of costs. CHAP. 82.

14. Change of venue of civil or criminal cases at discretion of presiding justice.
15. Distinction between trespass and trespass on the case, abolished.
16. Treasurers may sue in their own names on contracts given to them or their predecessors.
17. Penalties recoverable by action of debt.
18. Assignee of a grantee may sue on real covenants of first grantor.
19. Grantees may defend in suits against grantors if real estate is attached.
20. Several breaches may be assigned in actions of covenant, and general performance pleaded.
21. In actions of covenant, if incumbrance is a right of dower, it may be assigned and be the measure of damages.
22. General issue may be pleaded with brief statement and must be joined.
23. Demurrer, when filed, to be joined and not withdrawn; amendment allowed after decision on demurrer, and before exceptions filed. If demurrer is overruled, defendant may plead anew, on payment of costs, unless plea is judged frivolous, when judgment shall be entered on the demurrer.
24. In involuntary trespasses on lands, tender may be made, or money brought into court.
25. Defendant's offer to be defaulted and its effect.
26. Plaintiff's offer of judgment against him and its effect.
27. Tender may be made before entry of action. Towns may tender or offer default in actions for injuries by defective ways.
28. Property of deceased debtor on joint contract, liable as if several.
29. Libel actions for, truth a justification; except for corrupt and malicious motives.
30. Counts, misjoinder of, and wrong joinder not cause for reversal.
31. Motions in arrest of judgment not allowed in civil actions.
32. Damages to be assessed by a jury on certain bonds and contracts.
33. When sureties on official bonds may defend suits against principals.
34. Interest on judgments allowed.
35. Judge's disqualification by residence in a town interested may be waived by parties.
36. Death of a party being suggested, executor or administrator may appear or be summoned; and heirs also, if in equity.
37. Female litigant marrying, her husband may appear as party.
38. When party becomes insane, guardian may be appointed ad litem.
39. Motions to set aside verdicts, or report, proceedings. Costs.
40. Presiding justice of supreme or superior court may set aside verdict. Limitation.
41. Willful trespasses, proceedings respecting them.
42. Damages on protest of bills.
43. Ten hours of actual labor a legal day's work; exceptions.
44. Action by a public officer not abated by his ceasing to be in office.
45. Action not maintainable on demands discharged by payment of part.

WHEN SUBSEQUENT ATTACHING CREDITORS MAY DEFEND SUITS.

- SEC. 46. Subsequent attaching creditor may petition court to defend suits.
47. If leave is granted, he gives bond and is admitted to defend.
 48. Judgment to be entered when defence fails.
 49. How entered when defence prevails.
 50. When judgment in such prior suit is rendered at first term, creditor may have review. Proceedings.
 51. Prior attachment made to defraud creditors is void.

CHAP. 82.

SUITS BY AND AGAINST BANKRUPTS.

- SEC. 52. A bankrupt may sue in his own name, unless suit is abated.
53. *An action in which an attachment is made four months before bankruptcy of defendant, to be disposed of in ordinary way.*
54. *Other actions against voluntary or involuntary bankrupts, to be continued till bankrupt proceedings are closed, unless their names are struck out, which may be done without cost.*

SET-OFF.

- SEC. 55. Set-off; defendant files during first term; clerk enters date and notice on docket.
56. Set-off, kind of demands.
57. Set-off must be between all of plaintiffs and all of defendants.
58. Set-off of demand assigned, when made.
59. Set-off of demand subsequently acquired, not to be made.
60. Set-off of demand in suits in name of one for benefit of another.
61. Set-off of sums equitably due only.
62. Set-off of demands due from a deceased person.
63. Set-off in actions brought in a representative capacity.
64. What demands may be set-off in actions brought by creditors or administrators of insolvent estates; and proceedings therein.
65. Set-off, pleadings and issue how made.
66. Set-off actions cannot be discontinued; statute of limitations.
67. Set-off no balance against a plaintiff suing on a demand assigned.
68. Set-off proceedings before inferior tribunals.

AUDITORS.

- SEC. 69. Auditors appointed in certain cases, parties notified, witnesses to attend.
70. Auditors must all hear, majority may report, may be discharged; report may be recommitted.
71. Auditors report is evidence, but may be disproved.
72. Auditors, neglect to appear before them in actions of account, effect.

REFEREES.

- SEC. 73. Court by agreement may appoint referees to be paid by county.

JURIES.

- SEC. 74. Juries, how impanelled and sworn, or drawn by lot.
75. Juries, supernumeraries, transfers, excuses.
76. Juries, form of their oath.
77. Juries, their foreman how chosen.
78. Juries, talesmen for, when and how returned.
79. Juries, new may be summoned during term time.
80. Juries, challenges how tried, and when jurors are to be excluded.
81. Each party may challenge, peremptorily, one juror; court may regulate this right by general rules.
82. Presiding justice may order a view in any case.
83. Shall charge jury on matters of law, but shall not express opinion on issues of fact.
84. Jury may return separate verdicts as to joint defendants. Costs, how apportioned.
85. Juries may find special or general verdicts in cases for law court.
86. Juries when they do not agree, proceedings.
87. Jurors not disqualified by residence, when their town or county is a party.
88. Jurors, objections to, if known and not stated before trial, waived.
89. Juries, their verdicts not affected by irregularities not injurious, or not objected to before verdict.

- SEC. 90. Jurors, verdict set aside for improper practices with them.
91. Justice of superior court may order jury trial when demand therefor was inadvertently omitted.

CHAP. 82.

WITNESSES AND EVIDENCE.

- SEC. 92. Witnesses may be summoned by clerks and justices of the peace.
93. Witnesses, religious belief of affects credibility only.
94. Witnesses, parties to suits and others interested may be. Husband and wife may be by consent of the other.
95. Witnesses, except where cause of action implies an offence.
96. Witnesses, attestations of to wills, &c., not affected.
97. Witnesses, testimony of a party out of the state, how taken.
98. Testimony of a party may be contradicted, like any other witness.
99. Provisions of five foregoing sections not applicable to suits by or against representations of deceased parties, except in certain specified cases.
100. Nor where party is insane.
101. Witnesses, same rules respecting them in all tribunals.
102. Witnesses, duly summoned and neglecting to appear; attachment.
103. Witnesses, refusing to answer, may be fined.
104. Witnesses, oaths how administered to them.
105. Witnesses, scrupulous of oath, affirm.
106. Witnesses, conviction of crime affects credibility only.
107. Witnesses, fees for travel and attendance first paid or tendered.
108. Records of other courts evidence.
109. Printed copy of statutes evidence.
110. Foreign and unwritten law, how proved.
111. Copies of consular and of custom house documents and records are evidence.
113. Adjutant general's certificate to be evidence.
114. Testimony of deceased subscribing witness or magistrate may be used in subsequent suit.
115. Deed or other writings, not void because dated on the Lord's day, unless made on that day.
116. Defendant in action on contract made on Sunday must restore consideration.

Costs.

- SEC. 117. Party prevailing recovers costs. Exception in certain cases in law court.
118. Costs, when plaintiff appeals from judgment in his favor.
119. Costs in actions of replevin regulated.
120. Costs in actions that should have been brought before a justice. Full costs on report of referee.
121. Costs, when damages are reduced by set-off.
122. Costs of evidence not doubled or trebled.
123. Costs, discretionary on petitions for review and the like.
124. Costs for first suit to be paid before second suit for same cause is tried. Proceedings to be stayed, or second suit dismissed if not paid within time fixed by court.
125. Costs, a person liable for, who sues in name of the state.
126. Costs, state liable for in a civil suit.
127. Costs, not taxable for travel of attorney for the state.
128. Assignee to indorse writ in name of assignor, or defendant may sue him for costs on stay of proceedings.
129. If assignee is not known, defendant may recover costs in an action on the case and offset the judgment.
130. Assignee of choses not negotiable may sue in his own name. Conditions.

- CHAP. 82. SEC. 131. Costs in one action only when several are unnecessarily brought.
 132. No costs in suits on judgments where executions might have issued.
 133. Costs for travel in actions by corporations, how computed.
 134. Costs, power of the court over, on amendments and continuances not affected.
 135. Bankrupt recovers no cost until certificate is produced in court.
 136. *U. S. tax paid, recoverable as costs.*
 137. Costs to be passed upon by the court during term and exceptions filed. Otherwise clerk's decision final.

ACTION FOR DAMAGES AGAINST PERJURED PARTIES AND WITNESSES.

- SEC. 138. When judgment has been obtained by perjury, action for damages against party or perjured witnesses.

EXECUTIONS.

- SEC. 139. Execution, when issued and returnable.
 140. Execution not to be issued after one year; exception.
 141. Execution may be renewed within three years.
 142. Execution, if it cannot be renewed, scire facias may issue.
 143. Executions to be framed to collect interest on judgment.
 144. Execution lost or destroyed, new may issue.
 145. When amount allowed to a creditor by commissioners on solvent estate is not paid in thirty days, S. J. C. may order execution, issued for debt, interest and costs. Clerk's fees.

STENOGRAPHERS.

- SEC. 146. Stenographers, their appointment, duties and compensation.
 147. Testimony of witness may be proved by copy of stenographic notes.
 148. Stenographic reports may be taxed in bill of costs.

CRIER.

- SEC. 149. Duties of crier to be performed by sheriff or clerk.

MISCELLANEOUS PROVISIONS.

Actions entered first day, &c. Further service. R.S., c. 82, § 1.

Orders of notice in term or vacation. 1875, c. 32.

When default may be recorded; when taken off. R.S., c. 82, § 2.

SEC. 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. (a) Any justice of the supreme judicial [or superior] court may order a notice concerning any civil proceeding, either in term time, or by an order indorsed in the process he may in vacation direct what notice shall be given.

SEC. 2. When a legal service of the writ has been made, and the defendant does not appear by himself or attorney within the first three 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* [juries] 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. (b)

(a) 56 Me., 426; 71 Me., 287.

(b) 16 Me., 228; 17 Me., 426; 21 Me., 45; 23 Me., 485; 26 Me., 340; 30 Me., 557; 33 Me., 102, 251; 41 Me., 439; 45 Me., 105.

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

SEC. 4. When judgment is rendered on default of an absent defendant in a personal action as provided in the preceding section, execution cannot be issued thereon within one year thereafter, unless the plaintiff first gives bond to the defendant, with one or more sureties in double the amount of damages and costs, conditioned to repay the amount to the defendant if the judgment is reversed on review, to which he is entitled of right, brought within one year, or so much of the amount recovered, as is recovered back on such review, and any attachment made on the original writ, shall continue one year and thirty days after said judgment is so rendered when no bond is given, and when a bond is given, said attachment shall continue thirty days after said bond is filed with the clerk of said court. (a)

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

SEC. 6. If an execution has been, or shall be issued by the clerk, judge, or recorder of any court in any county, upon a judgment rendered on default of an absent defendant in a personal action, within one year after the rendition of such judgment, without deposit of the bond specified in sections four and five through accident, inadvertence, or mistake, all proceedings upon or by virtue of such execution or judgment, shall, after the expiration of one year from the rendition of such judgment, have the same effect and validity as if the bond had been duly given, deposited and approved, unless a petition for review has been brought within said year; and, in case such judgment is not reversed on review if brought within said year, all such proceedings upon or by virtue of such execution shall be valid as aforesaid, after final judgment for the defendant in review.

SEC. 7. When an appeal is taken from a judgment of a trial justice or municipal or police court, and the action by mistake or

CHAP. 82.

Defendant out of state, proceedings. R.S., c. 82, § 3. 63 Me., 360. 72 Me., 237-8, 341.

Execution stayed one year, unless bond is given to repay amount, if judgment is reversed on review. 1881, c. 59. See c. 76, § 54.

Attachment on original writ, how long to continue.

Bond left with clerk; if review of right is not prosecuted, defendant may petition for review. R.S., c. 82, § 5. 72 Me., 338.

Executions issued by any court, upon judgment on default, without deposit of bond, valid unless review is petitioned for within a year. 1877, c. 149. 72 Me., 338, 342.

—if petition is so filed, ex'n is valid if judg't is not reversed on review.

May allow entry of appeals

CHAP. 82.

at another term.
R.S., c. 82, § 6.
45 Me., 306.
46 Me., 499.
59 Me., 344.

Petition to be within year; attachment or bail not revived.
R.S., c. 82, § 7.

On appeals, original papers to be sent up, except writ and pleadings.
R.S., c. 82, § 8.
39 Me., 136.

Proceedings not abated, &c., for want of form.
R.S., c. 82, § 9.
6 Me., 325.
16 Me., 265,
268, 283.
22 Me., 311.

Writs may be amended.
1874, c. 197.
67 Me., 500.
69 Me., 85.

Writ or process lost, new one may be filed, &c.
R.S., c. 82, § 10.
15 Me., 427.

Names of defendants may be struck out on payment of costs, or new ones in-

accident is not duly entered, and the judgment has not been affirmed, the court may, on petition of either party, allow the action or complaint to be entered at another term of the court, upon such terms as are deemed reasonable, and if entered the court shall proceed thereon as if entered at the proper term.

SEC. 8. Such petition must be presented to the court, or filed in the clerk's office within one year after the term at which the action ought to have been entered; and no attachment or bail shall be revived or continued by such proceedings.

SEC. 9. In cases carried from a trial justice, 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.

SEC. 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 are amendable, when the person and case can be rightly understood. Such errors and defects may be amended, on motion of either party, on such terms as the court orders. (a)

SEC. 11. In all civil actions the writ may be amended by inserting additional plaintiffs, or by striking out one or more plaintiffs when there are two or more, and the court may impose reasonable terms.

SEC. 12. 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.

SEC. 13. 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;

(a) 3 Me., 30; 10 Me., 286; 13 Me., 309; 15 Me., 402, 427, 466; 18 Me., 250; 23 Me., 237, 507; 25 Me., 333; 26 Me., 212, 238; 29 Me., 167; 30 Me., 31, 170; 33 Me., 231; 44 Me., 96; 45 Me., 284; 46 Me., 331; 47 Me., 158, 185; 48 Me., 22, 35, 254; 53 Me., 174; 54 Me., 202, 496, 498; 63 Me., 153.

Amendment of declaration; 2 Me., 49; 3 Me., 249; 4 Me., 480; 11 Me., 501; 13 Me., 89, 249, 419; 14 Me., 50; 15 Me., 138; 16 Me., 173, 234, 283, 449; 17 Me., 225, 411; 18 Me., 174, 413; 19 Me., 353; 20 Me., 148; 23 Me., 77; 24 Me., 17, 247; 25 Me., 252, 311; 26 Me., 28, 212; 58 Me., 352; 65 Me., 321; 67 Me., 490, 553; 71 Me., 28.

Ad damnum; 6 Me., 325; 15 Me., 432; 57 Me., 156, 449.

Seal of writ; 3 Me., 30; 19 Me., 208.

Date of writ; 14 Me., 396.

Of changing a writ of original summons, to a writ of attachment; 15 Me., 401, 466; 26 Me., 267; 71 Me., 28.

Teste of writ; 15 Me., 433.

Return day of writ; 16 Me., 267; 17 Me., 417; 35 Me., 123.

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 shall not be liable to costs before such service. (a)

SEC. 14. *It shall be the duty of any judge of the supreme judicial court for this state, while holding any nisi prius term of said court for the trial of civil or criminal causes, for good and sufficient reasons shown, on motion of either party, to [shall] order the transfer of any civil action or actions, or criminal case now pending, or hereafter to be brought in said court to the docket of said court in any other county in this state for trial, [preserving] all attachments in said actions shall remain in full force.*

SEC. 15. The distinction between actions of trespass and trespass on the case is abolished. A declaration in either form is good.

SEC. 16. 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.

SEC. 17. Penalties may be recovered by an action of debt, when no other form or mode of recovery is provided by the statute imposing them.

SEC. 18. 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 court for the use of his grantor, a release of the covenants of his deed and of all causes of action thereon. The prior grantee shall not, in such case, have power to release the covenants of the first grantor to the prejudice of his grantee.

SEC. 19. Grantees may appear and defend in suits against their grantors in which *suits* the real estate conveyed is attached.

SEC. 20. In actions on contract in a penal sum for performance of covenants or agreements, and in actions of covenant, several breaches may be assigned, and in defence, performance generally, both in affirmative and negative covenants, may be alleged.

SEC. 21. In an action for a breach of covenant against incumbrances contained in a deed of real estate, when the incumbrance is a right of dower, if such dower has been assigned and not released, the value thereof shall be the measure of damages; but if it has

CHAP. 82.
serted and
service made.
R.S., c. 82, § 11.

Change of
venue of
civil actions
or criminal
cases.
1872, c. 45, § 1.

Not to affect
attachments.
1872, c. 45, § 2.

Trespass,
and trespass
on the case.
R.S., c. 82, § 12.

Treasurers
may sue in
their own
names.
R.S., c. 82, § 13.

Penalties re-
coverable in
debt.
R.S., c. 82, § 14.
56 Me., 78.

When as-
signee of a
grantee may
sue on real
covenants of
first grantor.
R.S., c. 82, § 15.
50 Me., 453.
51 Me., 567.
68 Me., 193.
72 Me., 376.

Grantee may
defend suit
v. grantor.
1879, c. 152.
See §§ 46 to 51.

Assignment
of breaches
in covenant.
Pleadings.
R.S., c. 82, § 16.
58 Me., 130-2.

In actions of
covenant, if
incumbrance
is a right of
dower, it

(a) 2 Me., 120; 5 Me., 320; 11 Me., 127; 13 Me., 389; 20 Me., 420; 25 Me., 333; 34 Me., 34; 35 Me., 535; 45 Me., 24, 444; 58 Me., 41; 59 Me., 344; 60 Me., 208, 352.

CHAP. 82. been demanded and not assigned, on application of the plaintiff, the court shall cite the claimant of dower to appear and become a party by personal service made fourteen days before the term of court to which it is returnable; if she does not appear, or if she appears and refuses to release such right of dower, the court shall appoint three commissioners to assign the same, who shall proceed in the manner provided for commissioners appointed by the probate court; and when their report is made and accepted by the court, it shall be a legal assignment of dower, and the value thereof shall be the measure of damages in said action.

SEC. 22. The general issue may be pleaded in all cases, and a brief statement of special matter of defence filed, or a special plea, or double pleas in bar, may be filed. The plaintiff must join a general issue, and may file a counter brief statement. (a)

SEC. 23. A general demurrer to the declaration may be filed; and in any stage of the pleadings either party may demur, and the demurrer must be joined, and it shall not be withdrawn without leave of the court, and of the opposite party; but the judge shall rule on it, and his ruling shall be final unless the party aggrieved excepts to it; and before exceptions [are] filed and allowed, he shall have the same power as the full court to allow the plaintiff to amend, or the defendant to plead anew. If the law court deems such exceptions frivolous, it shall award treble costs against the party excepting from the time the exceptions were filed. If the declaration is adjudged defective and is amendable, the plaintiff may amend upon payment of costs from the time when the demurrer was filed. If the demurrer is filed at the first term and overruled, the defendant may plead anew on payment of costs from the time when it was filed, unless it is adjudged frivolous and intended for delay, in which case judgment shall be entered. At the next term of the court in the county where the action is pending, after a decision on the demurrer has been certified by the clerk of the district to the clerk of such county, and not before, judgment shall be entered on the demurrer, unless the costs are paid, and the amendment or new pleadings filed on the second day of the term.

SEC. 24. In actions of trespass on lands, the defendant may file a brief statement disclaiming all title to the land described, and alleging that the trespass was involuntary, or by negligence or mistake, or in the prosecution of a legal right, and that before action brought he tendered sufficient amends therefor, or that he brings money into court to satisfy the damages with costs to that

(a) 10 Me., 260; 11 Me., 166, 215; 13 Me., 38; 16 Me., 86, 425; 29 Me., 472; 47 Me., 350, 489; 49 Me., 333; 53 Me., 134, 429; 55 Me., 159.

may be assigned and be the measure of damages.
R.S., c. 82, § 17.

General issue pleaded with brief statement: to be joined.
R.S., c. 82, § 18.

Demurrers, when filed, to be joined, and not to be withdrawn; and amendments may be made; if overruled, def't may plead again, on payment of costs, unless judged frivolous; when judg't is to be entered on demurrer.
R.S., c. 82, § 19.
29 Me., 110.
51 Me., 390, 416.
52 Me., 22.
54 Me., 574.
58 Me., 133.
60 Me., 500-2.
63 Me., 152-3.
65 Me., 94.
66 Me., 236, 459.
67 Me., 27, 38, 491, 553.
68 Me., 147.
71 Me., 490.
72 Me., 104, 222, 430.

Tender may be made or money brought into court, in case of trespass on land.
R.S., c. 82, § 20.
36 Me., 408.
71 Me., 287.

time; and if on trial he establishes the truth of his allegations, he shall recover costs. CHAP. 82.

SEC. 25. In any personal action, the defendant may, in writing entered of record with its date, offer to be defaulted for a specified sum. If excepted, interest may be added from that date to date of judgment. If not excepted within such time as the court orders, it shall not be offered in evidence or have any effect upon the rights of the parties, or the judgment to be rendered, except the costs. If the plaintiff fails to recover a sum as due at the time of the offer greater than the sum offered, he recovers such costs only as accrued before the offer, and the defendant recovers costs accrued after that time; and his judgment for costs may be set off against the plaintiff's judgment for debt and costs. (*a*)

Offer to be defaulted and its effect. R.S., c. 82, § 21. 72 Me., 442.

SEC. 26. In any personal action the plaintiff may, in like manner, offer to have judgment rendered against him for a specified sum, and the proceedings thereon and the effect of such offer upon his rights and liabilities shall be the same as is provided in respect to the defendant in the preceding section.

Offer of judgment against plaintiff, proceedings in case of. 1875, c. 52.

SEC. 27. A tender, with the costs then accrued, may be made after action brought and before its entry, to the plaintiff or his attorney, with the same effect as if made before action brought. In actions against towns founded on injury to the person or damage to property from defect in ways, a town may make a tender before the commencement or entry of the action, or offer to be defaulted for a specified sum, with the same effect as in actions on contract.

Tender before entry.

Town may tender, or offer to be defaulted. R.S., c. 82, § 22. 9 Me., 112. 39 Me., 436.

SEC. 28. The goods and estate of a deceased debtor in a joint contract, express or implied, or in a judgment on contract, are as liable, and the creditor has his remedy, as in case of a joint and several contract.

Property of deceased debtor on joint contract liable. R.S., c. 82, § 23. 60 Me., 353.

SEC. 29. In a suit for writing and publishing a libel, evidence shall be received to establish the truth of the matter charged as libellous. If the truth of it is established, it shall be a justification, unless the publication is found to have originated in corrupt or malicious motives.

In libel the truth a justification; except for malicious motives.

R.S., c. 82, § 24. 30 Me., 467.

SEC. 30. When in a civil action, the declaration contains a good count and bad ones, or a wrong joinder of counts, and no written objection is made till after the cause is committed to the jury, and a general verdict has been recorded, the judgment cannot for such cause be reversed on writ of error.

No reversal for joinder of good and bad counts or wrong joinder of counts.

R.S., c. 82, § 25. 55 Me., 417.

SEC. 31. No motion in arrest of judgment in a civil action can be entertained. (*b*)

No motions in arrest. R.S., c. 82, § 26.

(*a*) 4 Me., 276; 5 Me., 394; 9 Me., 112; 13 Me., 313; 19 Me., 208; 20 Me., 40, 313; 21 Me., 531; 30 Me., 458; 31 Me., 414; 33 Me., 220; 39 Me., 72, 474; 42 Me., 54, 290; 46 Me., 545; 47 Me., 354; 48 Me., 301; 51 Me., 383; 55 Me., 533.

(*b*) 44 Me., 42; 53 Me., 109; 54 Me., 357; 69 Me., 456; 70 Me., 253.

CHAP. 82.

On certain bonds and recognizances, jury to assess damages.
R.S., c. 82, § 27.

Sureties on official bond may defend suits v. principal.
1880, c. 195.
Interest on judgments.
R.S., c. 82, § 28.
Judge may sit by consent when his town or county is a party.
R.S., c. 82, § 29.

Death of a party being suggested, his ex'r or adm'r may appear, or be summoned.
Heirs also, in equity suits.
R.S., c. 82, § 30.
6 Me., 429.
44 Me., 76.
59 Me., 343.
66 Me., 446.

Litigant marrying, her husband may become party.
R.S., c. 82, § 31.
Guardians ad litem may be appointed to insane parties.
R.S., c. 82, § 32.
68 Me., 432.

Motions to set aside verdicts on report to full court, proceedings.
R.S., c. 82, § 33.

SEC. 32. In actions on bond or contract in a penal sum, for the performance of covenants or agreements, or on a recognizance to prosecute an appeal, when a jury finds the condition broken, they shall estimate the plaintiff's damages, and judgment shall be entered for the penal sum, and execution shall issue for such damages and costs. (a)

SEC. 33. Sureties upon official bonds may appear and defend in suits against their principal, whenever such sureties may ultimately be liable upon such bonds.

SEC. 34. Interest is to be allowed on [the] amount found due for damages and costs, in actions on judgments of a court of record. (b)

SEC. 35. A judge shall sit in the trial or *disposition* [disposal] of an action, in which the county or town where he resides is a party or interested, if the party adverse to such county or town enters on the docket a waiver of all objections.

SEC. 36. When a party in a pending suit dies, and his death is suggested on the record, and the cause of action survives, his executor or administrator may become a party, or at the request of the other party, be summoned to appear and become a party. Service of the summons shall be made on him fourteen days before the term to which it is returnable. If he neglects to appear, judgment may be entered by nonsuit or default according to the provisions of chapter eighty-seven. If the suit is in equity, his executor, administrator, or heirs at law, may in like manner appear or be summoned without a bill of revivor.

SEC. 37. When an unmarried woman, a party to a pending suit, is married, her husband, on his request, may be admitted as a party as if originally joined in the suit.

SEC. 38. When a party to a suit becomes insane, it may be prosecuted or defended by his guardian, who, on application of his friend, or of the other party, may be appointed for that purpose by a justice of the court in term time or in vacation. He shall be entitled to a reasonable compensation, and not be liable for costs.

SEC. 39. When a motion is made in the supreme judicial court to have a verdict set aside as being against law or evidence, a report of the whole evidence shall be signed by the presiding judge. When the motion is founded on any alleged cause not shown by the evidence reported, the testimony respecting the allegations of the motion, shall be heard and reported by the judge, and the case is then to be marked "law." When the *court of law* [court] is of

(a) 17 Me., 452; 21 Me., 209; 22 Me., 486, 487; 24 Me., 168; 39 Me., 414; 49 Me., 325; 52 Me., 275; 56 Me., 504.

(b) 19 Me., 460; 22 Me., 120; 60 Me., 256, 257; 63 Me., 62.

opinion that the motion was for frivolous causes, or intended for delay, it may award double or treble costs. (a) CHAP. 82.

SEC. 40. Any justice of the supreme judicial court or of the superior courts, in Cumberland and Kennebec counties, may set aside a verdict and grant a new trial in a case tried before him, when in his opinion the evidence in the case demands it. Such verdict must be set aside at the same term at which it was rendered, but it shall not be set aside by a single justice when there have been two verdicts rendered against the applicant. Costs.
Verdict may be set aside by presiding justice, of supreme or superior court.
1881, c. 44.
59 Me., 580.
64 Me., 131.
Proviso.

SEC. 41. In action of trespass on property, the court and jury, or magistrate, shall determine whether it was committed willfully; if so found, a record thereof shall be made, and a memorandum of it on the margin of the execution. Willful trespasses, proceedings, &c.
R.S., c. 82, § 34.

SEC. 42. Damages on protest of bills of exchange of a hundred dollars or more payable by the acceptor, drawer, or indorser of one [a bill] in this state, are, if payable at a place seventy-five miles distant, one per cent.; if payable in the state of New York or in any state northerly of it, and not in this state, three per cent.; if payable in any Atlantic state or territory southerly of New York and northerly of Florida, six per cent.; and in any other state or territory, nine per cent. Damages on protests of bills.
R.S., c. 82, § 35.

SEC. 43. In all contracts for labor, ten hours of actual labor shall be a legal day's work, unless the contract stipulates for a longer time; but this rule does not apply to monthly labor or to agricultural employments. Ten hours labor a legal day's work; exceptions.
R.S., c. 82, § 36.
62 Me., 527.

SEC. 44. No action, commenced in his official capacity by a public officer, is abated by his ceasing to hold the office; it may be prosecuted by his successors to the same uses; and the necessary amendments may be made and notices given. Action by a public officer not abated by his ceasing to act.
R.S., c. 82, § 37.

SEC. 45. No action shall be maintained on a demand settled by a creditor, or his attorney intrusted to collect it, in full discharge of it, by the receipt of money or other valuable consideration, however small. (b) No action on demands discharged by partial payment.
R.S., c. 82, § 38.

WHEN SUBSEQUENT ATTACHING CREDITORS MAY DEFEND SUITS.

SEC. 46. When property has been attached, a plaintiff, who has caused it to be attached in a subsequent suit, may, by himself or attorney, petition the court for leave to defend the prior suit, and set forth therein the facts, as he believes them to be, under oath; and the court may grant or refuse such leave. Subsequent attaching creditor may petition court to defend suits.
R.S., c. 82, § 39.
64 Me., 319.
See § 19.

SEC. 47. If leave is granted, he shall give bond, or enter into

(a) 15 Me., 73; 16 Me., 204; 19 Me., 30, 405; 20 Me., 199, 352; 22 Me., 132; 40 Me., 245; 43 Me., 408, 538; 45 Me., 284; 48 Me., 242, 439; 53 Me., 172; 54 Me., 260; 56 Me., 233, 250; 58 Me., 351; 70 Me., 334.

(b) 46 Me., 434; 47 Me., 546; 48 Me., 434; 56 Me., 582; 57 Me., 492; 61 Me., 563; 62 Me., 12; 63 Me., 443.

CHAP. 82.

granted, he gives bond and may defend.
R.S., c. 82, § 40.
Judgment, how entered when defence fails.
R.S., c. 82, § 41.

How entered when defence prevails.
R.S., c. 82, § 42.
12 Me., 506.

When judgment in such prior suit is rendered at the first term, creditor may have review.
Proceedings.
R.S., c. 82, § 43.

Prior attachment made to delay or defraud creditors is void.
R.S., c. 82, § 44.
64 Me., 320.

A bankrupt may sue in his own name, unless suit is abated.
R.S., c. 82, § 45.

Attachment made four months before bankruptcy of def't, valid.
R.S., c. 82, § 46.
56 Me., 501.
67 Me., 19.
Other actions v. bankrupts, to be continued till bankrupt proceedings

recognizance with sufficient surety, in such sums as the court orders, to pay the plaintiff in the prior suit all damages and costs occasioned by such defence; and an entry of record shall be made that he is admitted to defend such suit.

SEC. 48. When the petitioner enters into recognizance, and fails in his defence, execution on his recognizance shall be issued against him for the damages found by the court, and costs; and judgment rendered between the original parties as if no such defence had been made.

SEC. 49. When the petitioner prevails, judgment shall be rendered against the plaintiff and in favor of the petitioner, and execution issued thereon for his costs; and costs may or may not be awarded to the original defendant.

SEC. 50. When judgment in such prior suit has been rendered, *since April nine, one thousand eight hundred and fifty-six*, at the first term of the court, the plaintiff in such subsequent suit, within one year thereafter, first giving bonds to each party as provided in section forty-seven, may petition as provided in section forty-six for leave to sue out a writ of review of such action; and such leave may or may not be granted. If granted, and on final judgment the sum originally recovered is reduced, judgment shall be entered and execution issued for the difference, not exceeding the amount due from the original defendant to the petitioner, with costs for his sole use; and it shall operate as a payment of his debt to the amount of damages recovered.

SEC. 51. When it appears by the verdict, or otherwise, that such prior attachment was made with intent to delay or defraud creditors, or that there was collusion between the plaintiff and defendant for that purpose, such attachment shall be void.

SUITS BY AND AGAINST BANKRUPTS.

SEC. 52. A person who has been declared a bankrupt, may maintain an action respecting his former property in his own name, unless objection is made by plea in abatement, if before final judgment the assent of his assignee is filed in the office of the clerk of the court in which the action is pending.

SEC. 53. *Actions in which an actual attachment of property was made four months prior to the filing of a petition in bankruptcy by any defendant therein, shall be disposed of under the ordinary rules of proceedings in court.*

SEC. 54. *All other actions brought in any court or before any trial justice, for the recovery of any debt provable in bankruptcy, when it appears that any defendant therein has filed his petition in bankruptcy or has been adjudged a bankrupt on petition of his creditors before or after the commencement of the suit, shall be continued,*

*until the bankrupt proceedings are closed, unless the plaintiff strikes such defendant's name from the suit, which he may do without costs; but when such defendant does not use due diligence in the prosecution of his bankrupt proceedings, after one term's notice to him, in writing, from the plaintiff, the court may refuse further delay.**

CHAP. 82.

are closed unless their names are struck out, without costs.
R.S., c. 82, § 47.
67 Me., 19.

SET-OFF.

SEC. 55. Demands between plaintiffs and defendants may be set off against each other as follows:

Defendant must file set-off during first term and clerk enter same on docket.
1875, c. 38.

The defendant, during the term to which the writ is returnable, must file a brief statement of his demand, in substance as certain as in a declaration, which by leave of the court may be amended. The clerk shall enter on it and on the docket the date, and on the docket, under the action, notice of the filing. (a)

SEC. 56. A demand originally payable to the defendant in his own right, founded on a judgment or contract, express or implied, for the price of real or personal estate sold, for money paid, or had and received, for services done, for a liquidated sum, or for one ascertainable by calculation, may be set off. (b)

What demands may be set off.
R.S., c. 82, § 40.

SEC. 57. The demand must be due from all the plaintiffs to all the defendants jointly. When there is a dormant partner, claims due from the ostensible one may be set off as if there was no dormant partner.

Must be due from all pl'ffs to all defendants.
R.S., c. 82, § 50.
15 Me., 269.

SEC. 58. When a plaintiff has received notice that a demand against him has been assigned to the defendant, and has agreed to pay it to him, or to receive it as payment towards his demand, before his suit was commenced, it may be set off. (c)

Demands assigned may be set off by agreement.
R.S., c. 82, § 51.

SEC. 59. When a defendant had notice of the assignment of a demand, he cannot have any demand set off that accrued or was acquired after such notice. (d)

Demands acquired after notice.
R.S., c. 82, § 52.

SEC. 60. When an action is brought by one person for the use of another, a demand against the latter may be set off.

Suits by one for another.
R.S., c. 82, § 53.
57 Me., 166.

SEC. 61. When the demand to be set off is a bond or contract with a penalty, the sum equitably due only can be set off.

Equitable dues set off.
R.S., c. 82, § 54.
57 Me., 166.

SEC. 62. Demands against a person belonging to a defendant at the time of the death of such person, may be set off against

Demands

* [QUERY. Has not the repeal of the Bankrupt act (in 1878) rendered sections 53 and 54 obsolete?]

(a) 6 Me., 241; 10 Me., 139; 15 Me., 269; 19 Me., 26; 20 Me., 423; 25 Me., 129; 31 Me., 133; 32 Me., 285; 35 Me., 81; 38 Me., 117; 47 Me., 369.

What claims may be set off; 28 Me., 473; 29 Me., 426; 31 Me., 161; 32 Me., 285; 33 Me., 231; 34 Me., 510; 35 Me., 81, 535; 37 Me., 75; 39 Me., 421, 447; 53 Me., 179; 57 Me., 166.

How presented and allowed; 35 Me., 180; 36 Me., 224; 41 Me., 204.

Set-off of judgment and executions; 29 Me., 15; 34 Me., 123.

(b) 5 Me., 416; 7 Me., 84; 11 Me., 352; 13 Me., 288; 16 Me., 62; 18 Me., 181; 20 Me., 423; 22 Me., 462; 24 Me., 38, 352; 39 Me., 421, 447.

(c) 19 Me., 72; 26 Me., 118; 56 Me., 168.

(d) 3 Me., 465; 17 Me., 271.

CHAP. 82.

due from a deceased person, how to be set off. R.S., c. 82, § 55.

What claims may be set off in actions against persons in a representative capacity. R.S., c. 82, § 56.

What demands may be set off in actions brought by executors or administrators of insolvent estates, and proceedings therein. R.S., c. 82, § 57.

Pleadings and issue in cases of set-off. R.S., c. 82, § 58.

No discontinuance without consent. R.S., c. 82, § 59.

68 Me., 472.

Limitations. Costs, when. When no judgment for a balance v. plaintiff. R.S., c. 82, § 60. 30 Me., 28. 68 Me., 132.

Similar proceedings before inferior tribunals. R.S., c. 82, § 61. 31 Me., 161.

claims prosecuted by his executor or administrator; and if a balance is found due to defendant, judgment shall be in like form and of like effect as if he had commenced a suit therefor; but if the estate is insolvent, it must be presented to the commissioners or added to the list of claims, as other judgments are. (a)

SEC. 63. In actions against executors, administrators, trustees, or others in a representative capacity, they may set off such demands as those whom they represent might have set off in actions against them; but no demands, due to or from them in their own right, can be set off in such actions. (b)

SEC. 64. In joint or several actions by the executor or administrator of an estate represented insolvent, against two or more persons having joint or several demands against such estate, the demands may be filed in set-off by either of the defendants, at the first term of the court, or at the first term after such representation of insolvency, if made after the commencement of such actions; and if, on the trial, a balance is found due to the defendants jointly, or to either of them, judgment shall be entered for such balance as the jury find or the court orders, and it shall be treated and disposed of as other judgments against insolvent estates.

SEC. 65. The trial may proceed in cases of set-off on issue joined without a plea of set-off; and if an issue is not otherwise formed, the defendant may, except in actions of assumpsit, plead that he does not owe the sum demanded; and the plaintiff will be entitled to every defence against such set-off, that he might have, by any form of pleading, to an action against him on the same demand. (c)

SEC. 66. When a demand is filed in set-off, the action cannot be discontinued without consent of the defendant. The statute of limitations is applicable to demands filed in set-off, as if actions were commenced on them at the date of the plaintiff's action.

SEC. 67. When no balance is found due to either party, no costs are recoverable. The party recovering a balance recovers costs. No judgment for debt can be entered against a plaintiff, when the demand sued was assigned to him before the suit was commenced, or for a balance due from another person.

SEC. 68. Similar proceedings in set-off may take place before municipal and police courts and trial justices, the demand in set-off being filed on the return day of the writ; but judgment cannot be rendered for a defendant for more than twenty dollars, exclusive of costs.

(a) 6 Me., 242; 34 Me., 147; 38 Me., 118; 41 Me., 263; 49 Me., 572.

(b) 1 Me., 183; 3 Me., 371; 24 Me., 38; 33 Me., 230.

(c) 37 Me., 75; 54 Me., 498; 56 Me., 141; 67 Me., 571.

AUDITORS.

CHAP. 82.

SEC. 69. When an investigation of accounts, or an examination of vouchers is required, the court may appoint one or more auditors to hear the parties and their testimony, state the accounts, and make a report to the court upon such matters therein as may be ordered by the court, and the report shall be prima facie evidence upon such matters only, as are expressly embraced in the order. 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 the auditor. (a)

Auditors may be appointed in certain cases and may make report. 1881, c. 36.

Parties may be notified and witnesses summoned.

SEC. 70. 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, paid by the plaintiff, and taxed in the costs if he prevails.

All hearing, a majority may report; they may be discharged; report re-committed. R.S., c. 82, § 63. 57 Me., 61. 65 Me., 328.

SEC. 71. Their report may be used as evidence by either party, and it may be disproved by other evidence.

The report prima facie evidence. R.S., c. 82, § 64.

SEC. 72. When in an action of account, judgment has been entered that the defendant *do* account, and he shall unreasonably neglect to appear, or appearing, [neglect] 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. (b)

If def't in action of acc't neglects to account, auditors to report it and default to be entered. R.S., c. 82, § 65.

REFEREES.

SEC. 73. In all cases *now pending, or which may be hereafter entered* in the supreme judicial [or superior] court[s] *for any county* in which the parties shall agree that the same may be tried by a referee or referees, the court may appoint such referee or referees, not exceeding three in number, whose fees and necessary expenses shall be paid by the county on presentation of the proper certificate of the clerk of courts for that county, and the amount of fees and expenses that said referee or referees shall be entitled to, shall be fixed by the court upon the coming in of the report.

Court may appoint referees not exceeding three. 1879, c. 88.

Fees to be fixed by court and paid by county.

JURIES.

SEC. 74. 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 impanelling 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

Jurors, how impanelled and sworn, or drawn by lot. R.S., c. 82, § 66.

(a) 40 Me., 340; 57 Me., 61; 65 Me., 328; 72 Me., 59.

(b) 45 Me., 111; 57 Me., 61; 65 Me., 328.

CHAP. 82. 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 impanelled and sworn in like manner, and shall compose the second jury; but before proceeding to the trial of any civil or criminal case, other than capital, the clerk may, under the direction of the court, at the request of either party place the names of all jurors legally summoned and in attendance, and not engaged in the trial of any other cause, separately upon tickets in a box, and the names shall be drawn from the box by the clerk, after having been thoroughly mixed, one at a time, for the purpose of constituting a jury; and each party shall have a right peremptorily to challenge two jurors; but in such case all peremptory or other challenges and objections to a juror drawn, if then known, shall be made and determined, and the juror sworn or set aside, before another name is drawn, and so on until the panel is completed. A new jury shall be thus drawn for the trial of each cause; and after the panel is thus completed, the presiding justice shall appoint a foreman for the trial of the case.

5 Me., 334.
49 Me., 575,
592.
60 Me., 304-5.

Supernumeraries,
transfers,
excuses.
R.S., c. 82, § 67.

SEC. 75. Supernumerary jurors may be excused, from time to time, till wanted, and they may be placed on either jury as occasion requires; and jurors may be transferred from one jury to the other when convenience of business requires it; and for good reason, any juror may be excused.

Form of
jurors' oath.
R.S., c. 82, § 68.
62 Me., 304.

SEC. 76. The following shall be the form of the oath, administered to traverse jurors in civil causes:

"You and each of you swear, that in all causes betwixt party and party, committed to you, you will give a true verdict therein according to the law and the evidence given you. So help you God."

When a juror is conscientiously scrupulous of taking an oath, the word "affirm," shall be used instead of "swear," and the words "this you do under the pains and penalties of perjury," instead of the words "so help you God."

Foreman,
how chosen.
R.S., c. 82, § 69.

SEC. 77. Each jury shall retire, after being thus impanelled and sworn, and choose their foreman by ballot, or make the choice upon retiring with the first cause with which they are charged; and when a foreman is absent or excused from service, a new foreman shall be chosen as aforesaid; subject in each case to appointment by the court, as provided in section seventy-four.

Talesmen,
when and
how re-
turned.
R.S., c. 82, § 70.
3 Me., 216.
51 Me., 396.

SEC. 78. When, by reason of challenge or other cause, a sufficient number of jurors duly drawn and summoned cannot be obtained for the trial of any cause, the court shall cause jurors to be returned from the by-standers, or from the county at large, to complete the panel; if there are on the jury not less than seven

jurors drawn and returned as before provided. Such jurors shall be returned by the sheriff or his deputy, a coroner, or such other disinterested person as the court appoints.

SEC. 79. The court may, in term time, issue venires for as many jurors as are wanted; to be drawn, notified, and returned forthwith, or on a day appointed; and when in any county, the business requires a protracted session, the court may, during the term, excuse all or any of the jurors originally returned, and issue venires for new jurors to supply their places; who shall be drawn and notified to attend at such time as the court directs.

SEC. 80. The court, on motion of either party in a suit, may examine, on oath, any person called as a juror therein, whether he is related to either party, has given or formed any opinion, or is sensible of any bias, prejudice, or particular interest in the cause; and if it appears from his answers or from any competent evidence introduced by the party objecting to the juror, that he does not stand indifferent in the cause, another juror shall be called and placed in his stead.

SEC. 81. In addition to challenges otherwise provided, either party may, before the trial commences, peremptorily challenge one juror from the panel unless the right of challenge provided in section seventy-four has been exercised; and the court may, by general rules, prescribe the manner in which such right shall be exercised.

SEC. 82. In any jury trial the presiding justice may, at his discretion, order a view by the jury.

SEC. 83. During the progress of a jury trial the presiding justice shall rule and charge the jury, orally or in writing, upon all matters of law arising in such cases, but shall not, during the progress of the trial, including the charge to the jury, express an opinion upon issues of fact arising in the case, and any such expression of opinion shall be deemed sufficient cause for a new trial, if either party aggrieved thereby and interested shall desire it; and the same shall be ordered accordingly by the law court upon exceptions. (a)

SEC. 84. In actions of contract against more than one defendant, the jury may return a separate verdict as to each defendant, or as to two or more defendants jointly, and judgments shall be entered up accordingly. In case of separate judgment against defendants in the same action, the court shall apportion the costs to be taxed against each *such* defendant.

SEC. 85. The traverse jury may, in all cases, find a special or general verdict, subject to the opinion of the court on a case

CHAP. 82.

New jurors may be summoned during term.
R.S., c. 82, § 71.
48 Me., 439.

Challenge of jurors, how tried, and when they are to be excluded.
R.S., c. 82, § 72.
6 Me., 329.
30 Me., 485.
32 Me., 311.
38 Me., 45.
43 Me., 109.

Either party has one challenge; court may regulate right by general rules.
R.S., c. 82, § 73.
70 Me., 333.

Judge may order a view.
1877, c. 170.

Judge to charge jury on matters of law but shall not express opinion on issues of fact.
1874, c. 212.

Separate verdicts to joint def'ts.
1874, c. 201.
65 Me., 499.
72 Me., 55.
Costs, how apportioned.

Juries may find special verdicts for cases of law.

(a) 64 Me., 291; 65 Me., 269, 324; 66 Me., 550; 67 Me., 76; 69 Me., 416; 70 Me., 236.

CHAP. 82. agreed by the parties and reserved, or on the facts as reported by the judge presiding at the trial.

R.S., c. 82, § 74.

When jurors do not agree, proceedings. R.S., c. 82, § 75.

SEC. 86. When a jury, not having agreed, return into court stating the fact, the judge may in his discretion, explain any questions of law, if proposed to him, or re-state any particular testimony, and send them out again for further consideration; but they shall not be sent out a third time in consequence of their disagreement, unless on account of some difficulties not stated when they first came into court. (a)

Juror not disqualified when his town or county is a party.

R.S., c. 82, § 76. 48 Me., 439. 52 Me., 413.

Objections known and not stated before trial, waived.

R.S., c. 82, § 77.

Verdict not affected by irregularities, if not injurious or not objected to before verdict.

R.S., c. 82, § 78.

Verdict set aside for improper practices with jurors.

R.S., c. 82, § 79.

SEC. 87. In prosecutions for the recovery of a sum of money, or other thing forfeited, it shall not be a cause of challenge to a juror that he is liable to pay taxes in a county, town, or plantation, which may be benefited by the recovery.

SEC. 88. If a party knows any objection to a juror in season to propose it before trial, and omits so to do, he shall not afterwards be allowed to make it; unless by leave of court for special reasons. (b)

SEC. 89. No irregularity in the venires, or drawing, summoning, returning, or impanelling jurors, shall be sufficient to set aside a verdict, unless the party making the objection was injured by the irregularity; or unless the objection was made before the return of the verdict. (c)

SEC. 90. If either party, in a cause in which a verdict is returned, shall, during the same term of the court, before or after the trial, give to any of the jurors who try the cause, anything by way of treat or gratuity, or purposely introduce among the papers in the case which are delivered to the jury when they retire with the cause, any papers which have any connection with it, but were not offered in evidence, the court, on motion of the adverse party, may set aside the verdict and order a new trial. (d)

When justices of superior courts may order trial by jury. 1874, c. 245.

SEC. 91. Whenever, [in either of the superior courts,] by accident or mistake, the plaintiff fails to indorse upon his writ at the time of entry a request for a jury trial, or if the defendant, by accident or mistake, shall fail to indorse upon his plea when filed a demand for a jury, the court may, on motion of either party, at its discretion, order a trial by jury in the cause.*

(a) 22 Me., 458; 24 Me., 509; 31 Me., 157; 33 Me., 492; 36 Me., 476.

(b) 6 Me., 329; 47 Me., 594; 52 Me., 413, 501; 53 Me., 536.

(c) 3 Me., 216; 8 Me., 50; 48 Me., 439; 65 Me., 469.

(d) Setting aside verdict for misconduct, or errors of any juror; 2 Me., 38; 3 Me., 204; 6 Me., 140, 380; 11 Me., 499; 17 Me., 306; 20 Me., 97; 22 Me., 200; 25 Me., 487; 38 Me., 139; 41 Me., 551; 53 Me., 470; 55 Me., 565; 67 Me., 493.

For excessive damages; 3 Me., 282, 312; 12 Me., 311; 16 Me., 191; 42 Me., 248; 50 Me., 224.

* [NOTE BY THE COMMISSIONER. The acts establishing the two superior courts, 1868, c. 103, and 1878, c. 10, and acts amendatory thereof are not included in this revision.]

WITNESSES AND EVIDENCE.

CHAP. 82.

SEC. 92. The clerks of the several courts, and any justice of the peace, may issue summonses for witnesses to attend before courts to give evidence concerning any matters there depending.

By whom witnesses may be summoned.
R.S., c. 82, § 80.

SEC. 93. No person shall be deemed an incompetent witness on account of his religious belief, but shall be subject to the test of credibility; and any person who does not believe in the existence of a Supreme Being, shall be permitted to testify under solemn affirmation, and shall be subject to all the pains and penalties of perjury.

Religious belief affects credibility only.
R.S., c. 82, § 81.
18 Me., 159.

SEC. 94. No person shall be excused or excluded from being a witness in any civil suit or proceeding at law, or in equity, by reason of his interest in the event thereof as party or otherwise, except as is hereinafter provided, but such interest may be shown for the purpose of affecting his credibility; and the husband or wife of either party may be a witness. (a)

Parties, husbands, wives, and others interested may be witnesses.
R.S., c. 82, § 82.
1873, c. 137, § 4.

SEC. 95. No defendant shall be compelled to testify in any suit when the cause of action implies an offence against the criminal law, on his part. If he offers himself as a witness, he waives his privilege of not criminating himself, but his testimony shall not be used in evidence against him in any criminal prosecution involving the same subject matter.

Exception when cause of action implies an offence.
R.S., c. 82, § 83.
46 Me., 326.
48 Me., 425.
55 Me., 490.

SEC. 96. Nothing in section ninety-four shall in any manner affect the law relating to the attestation of the execution of last wills and testaments, or of any other instrument, which by law is required to be attested.

Attestation of wills, &c., not affected.
R.S., c. 82, § 84.
32 Me., 581.
48 Me., 194.

SEC. 97. When a party to a suit resides without the state, or is absent from the state during the pendency of the suit, and the opposite party desires his testimony, a commission, under the rules of court, may issue to take his deposition; and such non-resident or absent party, upon such notice to him or his attorney of record in the suit of the time and place appointed for the taking his deposition, as the court orders, shall appear and give his deposition. If he refuses or unreasonably delays to do so, he may be non-suited or defaulted by order of court, unless his attorney will admit the affidavit of the party desiring his testimony, as to what the absent party would say if present, to be used as testimony in the case.

Testimony of a party out of the state, how taken.
R.S., c. 82, § 85.
67 Me., 272.

SEC. 98. When one of the plaintiffs or defendants is used as a witness by the opposite party, testimony may be introduced by his co-plaintiffs or co-defendants to contradict or discredit him, as if he was not a party to the suit.

Testimony of a party may be contradicted.
R.S., c. 82, § 86.

SEC. 99. The provisions of the five preceding sections shall

Not applicable to ex'rs,

(a) 44 Me., 19, 348; 46 Me., 237, 248, 325, 379, 471; 47 Me., 252, 478; 50 Me., 592; 55 Me., 490; 59 Me., 180, 260; 63 Me., 211; 64 Me., 573.

CHAP. 82.

adm'r's or
heir's, save in
special cases.
R.S., c. 82, § 87.

not be applied to any cases, where, at the time of taking testimony, or [at] the time of trial, the party prosecuting, or the party defending, or any one of them, is an executor or an administrator, or made a party as heir of a deceased party; except in the following cases: (a)

Party's testi-
mony may be
used after
his death.
1876, c. 128.
69 Me., 290.

First.—The deposition of a party, or his testimony given at a former trial, may be used at the trial after his death, if the opposite party is then alive, and in that case the latter may also testify.

Adm'r's may
testify to
facts
happening
before death
of certain
persons.
1873, c. 145.
59 Me., 260.
64 Me., 25.
65 Me., 424.
67 Me., 197.
68 Me., 417.
69 Me., 290.

Second.—In all cases in which an executor, administrator or other legal representative of a deceased person is a party, such party may testify to any facts legally admissible upon the general rules of evidence, happening before the death of such person; and when such person so testifies, the adverse party shall neither be excluded nor excused from testifying in reference to such facts, and any such representative party or heir of a deceased party may testify to any fact legally admissible upon general rules of evidence, happening after the decease of the testator, intestate, or ancestor; and in reference to such matters the adverse party may testify.

Adverse party
not ex-
cluded.

Third.—If the representative party is nominal only, both parties may be examined as witnesses; if the adverse party is nominal only, and had parted with his interest, if any, during the lifetime of the representative party's testator or intestate, he shall not be excluded from testifying if called by either party; and in an action against an executor or administrator if the plaintiff is nominal only, or having had an interest, disposed of it in the lifetime of the defendant's testator or intestate, neither party to the record shall be excused or excluded from testifying.

Nominal
parties, and
parties who
had disposed
of their
interests.
R.S., c. 82, § 87.
59 Me., 508.

Account
books of
deceased.
59 Me., 364.
64 Me., 26.

Fourth.—In an action by or against an executor, administrator or other legal representative of a deceased person, in which his account books or other memoranda are used as evidence on either side, the other party may testify in relation thereto.

Testimony
of witnesses
in probate
cases.
1876 c. 83.
69 Me., 290.

Fifth.—In all actions where an executor, administrator or other legal representative is a party, and the opposite party is an heir of *the estate* of the deceased, said heir may testify when any other heir of *the estate* of the deceased shall testify at the instance of such executor, administrator or other legal representative.

Rule appli-
cable to an
insane party.
R.S., c. 82, § 88.
65 Me., 534.

SEC. 100. The rules of evidence which apply to actions by or against executors or administrators, shall be applied in actions where a person shown to the court to be insane, is solely interested as a party.

Same rules
before all

SEC. 101. The rules of evidence in special proceedings of a

(a) 45 Me., 166; 46 Me., 173, 236, 249, 474; 47 Me., 468; 48 Me., 36; 52 Me., 577; 59 Me., 180, 195, 196, 260; 64 Me., 25, 26, 573; 65 Me., 534; 67 Me., 197; 69 Me., 290, 292; 71 Me., 75, 504; 72 Me., 325.

civil nature, such as before referees, auditors, county commissioners, [and] courts of probate, shall be the same as herein provided for civil actions. CHAP. 82.
Tribunals.
R.S., c. 82, § 89.

SEC. 102. When a person, duly summoned and obliged to attend before any judicial tribunal, fails to do so without a reasonable excuse, he shall be liable to the party aggrieved for all damages sustained thereby. The judge of such tribunal may issue a *capias* to apprehend and bring him before him; and he may be fined not exceeding twenty dollars and the cost of the attachment, and committed until the same and the costs of commitment are paid. Witnesses
duly sum-
moned, neg-
lecting to
attend, may
be attached
and fined,
and are also
liable for
damages.
R.S., c. 82, § 90.

SEC. 103. When a witness in court refuses to answer such questions as the court allows to be put, he may be fined not exceeding twenty dollars, and committed until the fine and costs of commitment are paid. Refusing to
answer, may
be fined or
committed.
R.S., c. 82, § 91.
68 Me., 219.

SEC. 104. A person, to whom an oath is administered, shall hold up his hand, unless he believes that an oath administered in that form is not binding, and then it may be administered in a form believed by him to be binding. One not believing the christian religion may be sworn according to the ceremonies of his religion. Oaths, how
adminis-
tered to
witnesses.
R.S., c. 82, § 92.

SEC. 105. Persons conscientiously scrupulous of taking an oath may make an affirmation as follows: "I *do* affirm under the pains and penalties of perjury," which shall be deemed of the same force and effect as an oath. Witnesses
scrupulous
of swearing,
may affirm.
R.S., c. 82, § 93.

SEC. 106. No person shall be incompetent to testify in any court or legal proceeding, in consequence of having been convicted of a criminal offence; but such conviction may be shown to affect his credibility. (a) Conviction
of crime
affects credi-
bility only.
R.S., c. 82, § 94.
See c. 134, § 19.

SEC. 107. No person is obliged to attend in any court as a witness in [a] civil suit, or at any place to have his deposition taken, unless his legal fees for travel to and from the place, and for one day's attendance, are first paid or tendered; and his fees for each subsequent day's attendance must be paid at the close of the preceding day, when he requests it. No person
obliged to
attend court
unless fees
are paid or
tendered.
R.S., c. 82, § 95.

SEC. 108. The records and proceedings of any court of the United States, or of any state, authenticated by the attestation of the clerk, or officer having charge thereof, and by the seal of such court, shall be admitted in evidence. Records of
other courts
admitted as
evidence.
R.S., c. 82, § 96.

SEC. 109. Printed copies, of statutes, acts, and resolves of the United States, or of this, or any other state or territory of the United States purporting to be published under the authority of Printed copy
of laws of
U. S., or of
any state,
evidence.
R.S., c. 82, § 97.

(a) 47 Me., 108; 48 Me., 328; 51 Me., 112, 125; 55 Me., 215; 63 Me., 136; 65 Me., 79.

CHAP. 82. government, may be admitted as evidence; those of this state as
 R.S., c. 82, § 97. sufficient, those of other states as prima facie.

Foreign laws and unwritten laws of the states, how proved. R.S., c. 82, § 98. SEC. 110. Foreign laws may be proved by parol evidence, but when such law appears to be existing in a written statute or code, it may be rejected unless accompanied by a copy thereof. The unwritten law of any other state or territory of the United States may be proved by parol evidence, and by books of reports of cases adjudged in their courts.

In what cases office copies of deeds admissible. R.S., c. 82, § 99. 54 Me., 138. 55 Me., 171. 61 Me., 412. 70 Me., 280. SEC. 111. In all actions touching the reality, or in which the title to real estate is material to the issue, and where original deeds would be admissible, attested copies of such deeds from the registry may be used in evidence, without proof of their execution, when the party offering such copy is not a grantee in the deed, nor claims as heir, nor justifies as servant of the grantee or his heirs.

Copies of consular and custom house documents and records are evidence. R. S., c. 82, § 100. SEC. 112. Copies of all papers and documents belonging to or filed, or remaining in the office, of any consul, vice-consul, or commercial agent of the United States, and of all official entries in the books or records of any such office, when certified under the hand and official seal of the proper consul, vice-consul or commercial agent, are admissible as evidence. Copies of registers or enrollment of vessels, or of any other custom house records or documents deposited in the office of the collector of customs, attested by him or his deputy, under seal of office, may be used in evidence, and [shall] have the same effect as the production of the records in court, verified by the recording officer in person.

Adjutant general's certificate evidence. R. S., c. 82, § 101. 60 Me., 252. 70 Me., 395. SEC. 113. The certificate of the adjutant general relating to the enlistment of any person in the United States' service, from this state, and of all facts pertaining to the situation of such person, to the time of and including his discharge, as found upon the records of his office, shall be prima facie evidence of the facts so certified, in any suit or proceeding *in any of the courts and tribunals of this [the] state.*

Testimony of a deceased subscribing witness, or magistrate, may be given in subsequent suit. R. S., c. 82, § 102. SEC. 114. When the testimony of a subscribing witness to any deed, or of the magistrate who took the acknowledgment thereof, has been taken in the trial of any civil cause, in relation to the execution, delivery, or registry of such deed, and such witness has since died, proof of such former testimony shall be admissible in the trial of any other civil cause involving the same question, if the parties are the same, or where one of the parties is the same, and the adverse party acted as agent or attorney for the adverse party in the former suit, but such testimony shall be liable to impeachment like the testimony of a living witness.

Writing dated on Lord's day, not void unless made on that day. SEC. 115. No deed, contract, receipt, or other instrument in writing, shall be held void by reason of being dated on the Lord's

day, without other proof than the date, of its being made and delivered on that day.

SEC. 116. No person who receives any money, or valuable thing, as the consideration for a contract, express or implied, made and entered into on *Sunday*, [the Lord's day,] shall be permitted to defend any action upon such contract on the ground that it was so made and entered into on *Sunday*, [the Lord's day,] until he shall restore such consideration so received.*

COSTS.

SEC. 117. In all actions, the party prevailing, shall recover costs, unless otherwise specially provided. (a) If, after a verdict returned by a jury, the party in whose favor the jury found, shall carry the case into the law court and the decision there shall be against him, he shall recover no costs subsequent to the verdict, but the party prevailing in the law court shall recover costs accruing after verdict.

SEC. 118. When a plaintiff appeals from a judgment of a municipal or police court, or a trial justice in his favor, and does not recover, in the appellate court, a greater sum as damages, he shall recover a quarter of the sum last recovered, for costs. (b)

SEC. 119. In actions of replevin, when the jury find that each party owned a part of the property, they shall find and state in their verdict the value of the part owned by the plaintiff when replevied, without regard to the value as estimated in the replevin bond; and if such value does not exceed twenty dollars, the plaintiff shall recover for costs only one quarter part of such value. (c)

SEC. 120. In actions commenced in the supreme judicial [or superior] court[s], except those by or against towns for the support of paupers, if it appears on the rendition of judgment, that the action should have been commenced before a municipal or police court or a trial justice, the plaintiff shall not recover for costs more than one quarter part of his debt or damages. On reports of referees, full costs may be allowed, unless the report otherwise provides. (d)

* [NOTE. See c. 50, § 1; c. 81, § 81; c. 124, §§ 17 to 24.]

(a) When parties recover costs; 2 Me., 399; 5 Me., 24, 281; 6 Me., 117; 12 Me., 346, 459; 15 Me., 53; 19 Me., 23; 20 Me., 124; 26 Me., 75; 30 Me., 557; 37 Me., 549; 38 Me., 191; 39 Me., 467; 54 Me., 437; 58 Me., 41; 61 Me., 24; 68 Me., 132.

When parties do not recover costs; 13 Me., 51; 19 Me., 210; 35 Me., 19; 38 Me., 256; 43 Me., 286.

Parties liable for costs; 5 Me., 177; 6 Me., 50; 7 Me., 402; 13 Me., 260; 18 Me., 336; 29 Me., 306, 560; 41 Me., 460.

(b) 1 Me., 16, 17; 4 Me., 67; 7 Me., 301; 10 Me., 69; 54 Me., 437.

(c) 2 Me., 162; 6 Me., 262; 12 Me., 54; 40 Me., 286; 49 Me., 325.

(d) 4 Me., 67; 8 Me., 106, 145; 11 Me., 149; 12 Me., 346; 21 Me., 390; 28 Me., 206; 32 Me., 85, 101; 34 Me., 207; 43 Me., 318; 47 Me., 459; 49 Me., 335; 50 Me., 335; 51 Me., 460; 53 Me., 516; 60 Me., 547; 63 Me., 268; 72 Me., 442.

Report of referees; 1 Me., 66; 14 Me., 398.

CHAP. 82.

R. S., c. 82,
§ 103.Def't in ac-
tion on con-
tract made
on Lord's
day must
restore con-
sideration
received.
1880, c. 194.

60 Me.. 547.

Party pre-
vailing re-
covers costs.
R. S., c. 82,
§ 104.Exception
in certain
cases in law
court.
1871, c. 206.Costs when
pl'ff appeals
from judg't
in his favor.
R. S., c. 82,
§ 105.Costs in
actions of
replevin.
R. S., c. 82,
§ 106.Costs in ac-
tions which
should have
been com-
menced be-
fore justice.
Full costs
on report of
referees.
R. S., c. 82,
§ 107.

CHAP. 82.

When damages reduced by set-off, full costs.
R. S., c. 82, § 108.

Costs of evidence not doubled, &c.
R. S., c. 82, § 109.

On petitions for review, &c.
R., S., c. 82, § 110.

21 Me., 400.
Plff becoming nonsuit, def't recovers cost.
1879, c. 119.

Second suit brought, proceedings stayed till costs of first suits are paid.

Suit dismissed, when.

A suitor in name of state is liable for costs.
R. S., c. 82, § 112.
55 Me., 455.

State liable for costs in a civil suit.
R. S., c. 82, § 113.
26 Me., 75.

No att'y fee when state recovers.
R. S., c. 82, § 114.

In suit in name of assignor, assignee's name to be indorsed, or defendant may sue him for costs.
R. S., c. 82, § 115.
See c. 111, § 7.

SEC. 121. When an account is filed in set-off and plaintiff recovers not exceeding twenty dollars, he is entitled to full costs, if the jury certify in their verdict that the damages were reduced as low as that sum by reason of the amount allowed in set-off. (a)

SEC. 122. When a party recovers double or treble costs, the fees of witnesses, depositions, copies, and other evidence are not to be doubled or trebled.

SEC. 123. On application of a private person for a writ of review, certiorari, mandamus, or quo warranto, or like process, the court may or [may] not allow costs to a person appearing on notice as respondent.

SEC. 124. When *any* [a] plaintiff *shall* in any stage of his action become[s] nonsuit, or discontinue[s] his suit, the defendant shall recover his costs against him, and in all actions, as well those of qui tam as others, the party prevailing shall be entitled to his legal costs. When costs have been allowed against a plaintiff on nonsuit or discontinuance, and a second suit is brought for the same cause before the costs of the former suits are paid, further proceedings shall be stayed *till* [until] such costs are paid, and the suit may be dismissed unless they are paid at such time as the court appoints. (b)

SEC. 125. When a suit is brought in the name of the state for the benefit of a private person, his name and place of residence shall be indorsed on the writ; and if the defendant prevails, judgment for his costs shall be rendered against such person, and execution issued, as if he were plaintiff.

SEC. 126. When a defendant prevails against the state in a civil suit, judgment for his costs shall be rendered against it, and the treasurer of the county shall pay the amount on a certified copy of the judgment; and the amount shall be allowed to him in his account with the state.

SEC. 127. When the state recovers costs in a civil suit no fees shall be taxed for the travel of an attorney.

SEC. 128. The name and place of residence, if known, of an assignee shall, at any time during the pendency of the suit, be indorsed by the request of the defendant on the back of a writ or process commenced in the name of his assignor, or further proceedings thereon shall be stayed; and if the defendant prevails, judgment for his costs shall be rendered against the plaintiff and such assignee, as if both had been originally joined in the action; but if not so indorsed and proceedings are stayed, the defendant may maintain an action on the case against the assignee for his costs. (c)

(a) 5 Me., 76; 31 Me., 130; 44 Me., 429; 56 Me., 71; 72 Me., 442.

(b) 32 Me., 36; 48 Me., 162; 65 Me., 58, 331.

(c) 59 Me., 199; 62 Me., 11; 69 Me., 82; 72 Me., 56.

SEC. 129. If the name of such assignee is not known to the defendant until after he has recovered judgment against the plaintiff for costs, he may maintain an action on the case against such assignee for his costs, within six years from the time of judgment; and such judgment for costs may be set off between such assignee and the defendant, as if the assignee had been plaintiff in the suit.

SEC. 130. Assignees of choses in action, not negotiable, assigned in writing, are authorized to bring and maintain actions in their own name, *and* [but] the assignee shall hold the assignor harmless of costs, and shall file with his writ the assignment or a copy thereof, and all rights of set-off shall be preserved to the defendant. (a)

SEC. 131. When a plaintiff at the same term of a court brings divers suits which might have been joined in one, against the same party, or divides an account that might all have been sued for in one action, and commences successive suits upon parts of the same, or brings more than one suit on a joint and several contract, he shall recover costs in only one of them, and on only one of the judgments shall execution run against the body of the same defendant, unless the court, after notice to the defendant, and hearing, certifies that there was good cause for commencing them. (b)

SEC. 132. A plaintiff shall not be allowed costs in an action on a judgment of any tribunal, on which an execution could issue when such suit was commenced, except in trustee process.

SEC. 133. In actions of a corporation, its travel is to be computed from the place where situated, if local, otherwise from the place where its business is usually transacted, not exceeding forty miles, unless its agent actually travels a greater distance to attend court.

SEC. 134. The power of the court to require payment of costs, or to refuse them as condition of amendment or continuance, is not affected by the provisions of this chapter.

SEC. 135. When a defendant pleads a discharge in bankruptcy, obtained after the commencement of the suit, he can recover no costs before the time when the certificate was produced in court.

SEC. 136. *Any tax required by act of congress on any process or proceeding in court, or on any evidence used therein, shall be allowed, as costs, to the prevailing party paying it.**

SEC. 137. When a nonsuit or default is entered, or verdict rendered, or a report of referees accepted, in an action, either party on application to the court, may have the costs recoverable taxed by the clerk, and passed upon by the court during the term;

CHAP. 82.

If assignee not known, def't may recover costs v. him and offset judg't. R. S., c. 82, § 116.

Assignee of choses not negotiable, may sue in his own name. Conditions. 1874, c. 235. See c. 111, § 7.

In divers actions against same party at same term, or in case of division of an account, only one bill of cost allowed plaintiff. 1876, c. 121.

When no costs in action on judgment. R. S., c. 82, § 118. 33 Me., 211. 56 Me., 80. Travel in actions by a corporation. R. S., c. 82, § 119.

Power of court over costs. R. S., c. 82, § 120.

Bankrupt recovers no costs until when. R. S., c. 82, § 121.

U. S. tax paid recoverable as costs. R. S., c. 82, § 122.

Costs may be heard by court, and exceptions; else clerk's

(a) 66 Me., 544, 545; 69 Me., 99, 443; 71 Me., 119; 72 Me., 56.

(b) 34 Me., 284; 55 Me., 454; 70 Me., 272.

* [QUERY. Is not section 136 obsolete?]

CHAP. 82. and any party aggrieved by the decision, may file exceptions thereto; but if no such application is made, the clerk, after adjournment, shall determine costs, and his decision shall be final.
 decision final.
 R. S., c. 82, § 123.
 60 Me., 547.

ACTION FOR PERJURY.

Rights of action v. the party or perjured witnesses for damages, when a judgment has been obtained by perjury.
 R. S., c. 82, § 124.

SEC. 138. When a judgment has been obtained against a party by the perjury of a witness or witnesses introduced at the trial by the adverse party, the injured party may bring an action on the case within three years after such judgment or after final judgment in any proceedings for a review thereof, against such adverse party, or any perjured witness, or confederate in the perjury, to recover the damages sustained by him, by reason of such perjury; and the judgment in the former action shall be no bar thereto.

EXECUTIONS.

Ex'on, when issued, and returnable.
 R. S., c. 82, § 125.

SEC. 139. Executions may be issued on a judgment of the supreme judicial court after twenty-four hours from its rendition, returnable within three months. (a)

Not after one year; exception.
 R. S., c. 82, § 126.

SEC. 140. No first execution can be issued after one year from the time of judgment, except in cases provided for by section four; in which the first execution may be issued not less than one, nor more than two years from the time of judgment.

May be renewed in three years.
 R. S., c. 82, § 127.

SEC. 141. An alias or pluries execution may be issued within three years after the day of the return of the preceding execution and not afterward.

When ex'on is not so issued, scire facias may be brought on judgment.
 R. S., c. 82, § 128.
 60 Me., 88.

SEC. 142. When execution is not issued within the times prescribed by the two preceding sections, a writ of scire facias against the debtor may be issued to show cause why execution on the judgment should not be issued, and if no sufficient cause *be* [is] shown, execution may be issued thereon.

Ex'ons to include interest on judgments.
 R. S., c. 82, § 129.
 60 Me., 258.

SEC. 143. On executions, issued on judgments or acknowledgments of debt, interest shall be collected from the time of judgment, or payment, and the form of the execution be varied accordingly.

New ex'on may be issued on proof of loss.
 R. S., c. 82, § 130.
 When amount allowed to a creditor by comm'rs on solvent estate is not

SEC. 144. A justice of the court in which the judgment was rendered, upon proof by affidavit or otherwise of the loss or destruction of an execution unsatisfied in whole or in part, may order a new execution to be issued for what remains unsatisfied.

SEC. 145. When the report of commissioners appointed by the probate court to decide upon exorbitant, unjust or illegal claims against a solvent estate, has been returned and finally accepted in favor of a creditor, and the amount allowed him is not paid within thirty days thereafter, he may file a certified copy of such report in

(a) 2 Me., 112; 8 Me., 209; 11 Me., 178; 15 Me., 66; 24 Me., 306; 27 Me., 560; 49 Me., 414.

the office of the clerk of the courts, and apply in writing to a judge of the supreme judicial court for an execution; and he shall order a hearing thereon, with or without notice to the adverse party. The application shall be entered on the docket of the court if in session, otherwise on the docket of the preceding term. If no sufficient cause is shown to the contrary, the judge shall direct an execution to be issued for the amount allowed the creditor by such report, with interest from its return to the probate court, and cost[s] allowed by the probate court, if any, three dollars for clerk's fees, and travel and attendance, and expense of copies and service of notices, as in suits at law.

CHAP. 82.

paid in thirty days, S. J. C. may order an ex' on issued for debt, interest and cost. Clerk's fees. R. S., c. 82, § 131. 61 Me., 239-40, 243. 67 Me., 117.

STENOGRAPHERS.

SEC. 146. At any term of the supreme judicial court, the presiding justice may appoint a stenographer to report the proceedings thereof, who shall be an officer of the court, and be sworn to a faithful discharge of his duty. Under the direction of the court, he shall take full notes of all oral testimony, and other proceedings in the trial of causes, including the charge of the judge, and furnish for the use of the court, a fair, legible, long-hand copy of so much of his notes as the court directs. He shall receive for his services, from the treasury of the county in which the court is held, the sum allowed by the court, not exceeding five dollars a day for attendance, six cents a mile for actual travel, and ten cents for every one hundred words of the long-hand copy furnished for the use of the court. He shall also furnish a copy of so much of the evidence and other proceedings, taken by him, as either party to the trial requests, on payment therefor, by such party at the rate aforesaid.

Stenographers; their appointment, duties and compensation. R. S., c. 82, § 132.

SEC. 147. Whenever it becomes necessary, in any court *in this state* to prove the testimony of any witness in the trial of any former case in any court in *this* [the] state, the certified copy of the notes of the testimony of said witness, taken by the stenographic reporter at the court where said witness testified, shall be legal evidence to prove the testimony of said witness.

Testimony of witness may be proved by certified copy of stenographic notes of former testimony. 1877, c. 187. 60 Me., 402.

SEC. 148. Any amount legally chargeable by stenographic court reporters, for writing out their reports for use in law cases, and actually paid by either party whose duty it is to furnish said reports, may be taxed in the bill of costs and allowed against the losing party, as copies are now allowed for, if furnished by the clerk.

Stenographic reports may be taxed in bill of costs. 1875, c. 43.

CRIER.

SEC. 149. The duties of crier in the *various courts of this state* shall be performed by the sheriff, or any deputy in attendance upon the court, or by the clerk, *so as to relieve the counties of the expense of employing persons especially for that purpose.*

Duties of crier to be performed by sheriff or clerk. 1878, c. 60.

CHAP. 83.

CHAPTER 83.

TRIAL JUSTICES, THEIR JURISDICTION AND PROCEEDINGS IN CIVIL ACTIONS.

APPOINTMENT, QUALIFICATION AND JURISDICTION.

- SEC. 1. Trial justices, their appointment and term of office.
 2. Oath or affirmation to be taken.
 3. Jurisdiction in civil actions; not to exceed twenty dollars.
 4. If title to real estate is pleaded, case to be removed to supreme court. Recognizance; if not given, case to be tried by justice.
 5. Copy, &c., to be produced at appellate court; proceedings, if not entered.
 6. Justice writs, form and service of.
 7. Municipal and police court writs, when returnable.
 8. Actions where brought, when parties live in same county.
 9. Where brought, when parties live in different counties.
 10. Writs issued by one justice returnable before another, in same county. Provision touching municipal and police court writs.
 11. Writs returnable between certain hours.
 12. Nonsuit or default if no appearance within one hour. May be stricken off.
 13. Continuance when justice is unable to attend. Proceedings.
 14. Trial justices and justices of the peace may issue subpoenas.
 15. Trial justice may hold court at his dwelling house or office. May adjourn court. General issue to be pleaded. Only one travel for plaintiff in action continued at his request.
 16. Judgments on defaults, nonsuits or trial.
 17. Costs for defendant, if plaintiff does not prevail.

APPEALS.

- SEC. 18. Appeal, when and how claimed; effect of.
 19. Appeal, recognizance for, when and how given.
 20. Papers to be produced by appellant at appellate court; failure to enter, &c., effect of.
 21. Either party may waive trial and appeal.

EXECUTIONS.

- SEC. 22. Executions; when issued; when returnable.
 23. Executions may be directed into other counties in certain cases.

SCIRE FACIAS.

- SEC. 24. Writs of scire facias, when trial justice may issue.
 25. Writs of scire facias when directed into other counties.

RECORDS, HOW KEPT AND TRANSCRIBED.

- SEC. 26. Records, how to be kept; on his death may be transcribed into the book of another trial justice.
 27. Execution issued on the transcribed record.
 28. Removing from the state must deposit his records with the clerk. Administrators, &c., of deceased trial justice also. Penalty on administrator, &c., for neglect. Duty of the clerk in such cases.

- SEC. 29. Proceedings if his records are not completed. When an execution may be used in place of a copy of the record. CHAP. 83.
30. Trial justice whose commission has expired may certify copies and issue new executions for two years; how done afterwards.
31. Unsatisfied execution issued by justice out of commission may be renewed by any trial justice in county.

JUSTICE NOT TO BE OF COUNSEL.

- SEC. 32. Justice not to be of counsel in any case before himself. Nor to try any case commenced by himself.

JUSTICES OF THE PEACE AND QUORUM.

- SEC. 33. Trial justices are, ex officio, justices of the peace and quorum.
34. Justices of peace and quorum commissioned for the state.

APPOINTMENT, QUALIFICATION AND JURISDICTION.

SEC. 1. Trial justices shall be appointed and commissioned by the governor, with *the advice and consent of the council*, to act within the county for which they are appointed, and shall hold their offices for the term of seven years from the date of their commissions. Trial justices, their appointment and term of office.
R.S., c. 83, § 1.
63 Me., 268.

SEC. 2. Before entering upon the duties of the office, each shall take and subscribe the oaths or affirmations prescribed by the constitution and the laws *of the state*, to be taken by other officers appointed in like manner. Qualification of trial justices.
R.S., c. 83, § 2.

SEC. 3. Every trial justice may hold a court in his county, as provided in this chapter, and have original and exclusive jurisdiction of all civil actions, including prosecutions for penalties in which his town is interested, when the debt or damages demanded do not exceed twenty dollars, except those in which the title to real estate, according to the pleadings or brief statement filed in the case by either party, is in question; and except that in those towns in which a municipal or police court is established, his jurisdiction shall be restricted to those cases in which jurisdiction has been heretofore given to justices of the peace, in the act establishing such court, and to cases wherein jurisdiction has been or may be given to trial justices in like manner. Jurisdiction in civil actions, not to exceed twenty dollars.
R.S., c. 83, § 3.
12 Me., 18.
13 Me., 140.
15 Me., 189.
18 Me., 28.
27 Me., 95.
29 Me., 543.
35 Me., 131.
39 Me., 477.
43 Me., 432.

SEC. 4. When it appears by the pleadings or brief statement in the case, that the title to real estate is in question, it shall be removed, on the request of either party, to the supreme judicial [or superior] court; and such party shall recognize to the other party in a reasonable sum, with sufficient sureties, to enter the case at the next term of said court; and if he does not so recognize, the justice shall hear and decide the case, as if such request had not been made. Title to real estate pleaded, case to be removed. Proceedings.
R.S., c. 83, § 4.
3 Me., 256.
9 Me., 113.
27 Me., 96.

SEC. 5. The party so recognizing shall produce at said court a copy of the record, and all such papers as are required to be produced by an appellant; and if he fails so to do, or to enter the Copy, &c., to be produced at appellate court. Proceedings,

CHAP. 83.

if not entered.
R.S., c. 83, § 5.

Writs, form and service of.
R.S., c. 83, § 6.

Municipal or police court writs, when returnable.
1876, c. 138.

Actions, where brought when parties live in same county.
R.S., c. 83, § 7.
68 Me., 248.

When parties live in different counties.
R.S., c. 83, § 8.

Writs issued by one justice, returnable before another of the county.
1874, c. 196.

Municipal and police court writs.

Writ returnable between certain hours.

Justice to be present with writ.
R.S., c. 83, § 10.
52 Me., 246.

Nonsuit or default after one hour.
May be sticken off.
R.S., c. 83, § 11.

When justice

the action as before provided, he shall, on the complaint of the adverse party, be nonsuited or defaulted, as the case may be; and such judgment shall be rendered as law and justice require.

SEC. 6. The writ in civil actions commenced before a trial justice, shall be a summons, a capias and attachment, or scire facias, of the form prescribed by law, signed by the justice, and duly served not less than seven, nor more than sixty days before the return day thereof.

SEC. 7. All writs in civil actions before any municipal or police court, may be made returnable at any term of such court, to be held not less than seven nor more than sixty days from their date.

SEC. 8. All actions between parties residing in the same county, returnable before any trial justice, shall be commenced before some such disinterested justice residing or holding his court in the town where one of the parties, or his attorney, or person summoned as trustee in such action, resides; and if there is no such justice residing or holding his court therein, then before some such justice, if any, in an adjoining town, otherwise before any such justice in the county.

SEC. 9. When the parties reside in different counties, such actions shall be commenced before any disinterested trial justice residing in the county where any defendant resides; but all trustee actions, returnable before such justice, shall be commenced within the county where some trustee, therein named, resides.

SEC. 10. Original writs, issued by any trial justice, may be made returnable before any other trial justice of the same county, and shall have the same effect as if signed by the latter justice; and in like manner, and with like effect, original writs, issued by any police or municipal court, may be made returnable before any other police or municipal court in the same or an adjoining county.

SEC. 11. No writ shall be made returnable before any trial justice, at an earlier hour than nine o'clock in the forenoon, nor later than four in the afternoon. No judgment of such justice shall be valid unless he shall be present with the plaintiff's writ at the place, and within one hour after the time therein named, unless the case is continued by some other justice, as provided in section thirteen.

SEC. 12. The justice may enter judgment on nonsuit or default against the party failing to appear, at the expiration of one hour after the time of return set forth in the writ; but may in his discretion, on motion of either party, strike off the same within twenty-four hours thereafter, upon such terms as he deems reasonable.

SEC. 13. When a trial justice is unable to attend at the time

and place appointed by him for the trial of any suit already entered, or at which any writ is returnable before him, any other trial justice who might legally try the same, or any justice of the peace and quorum, residing in the same or [an] adjoining town, may attend and continue such action, once, to a day certain, not exceeding thirty days, and note the fact on the writ, and in his own docket; and if the inability is not removed at that time, such action, at the time and place fixed in the continuance, may be entered before, and tried by some other trial justice of the same town, or if none such resides therein, then before some trial justice of the same county, who may render judgment and issue execution as if the action had been originally returnable before him.

CHAP. 83.
is unable to attend, another justice may continue.
Proceedings.
R.S., c. 83, §12.
17 Me., 415.
18 Me., 28.
31 Me., 337.
39 Me., 468.
61 Me., 579.
70 Me., 447.

SEC. 14. Every trial justice and justice of the peace may issue subpoenas for witnesses in civil actions pending before any court, or [before] persons authorized to examine witnesses.

Who may issue subpoenas.
R.S., c. 83, §13.

SEC. 15. Any trial justice may hold a court at his dwelling house, office, or other suitable place, and the writ shall be made returnable accordingly. He may adjourn his court by proclamation, from time to time, as justice requires. In actions before him the defendant shall plead the general issue, and need not file any brief statement, except where the title to real estate is in question. When an action in which the defendant does not appear, is continued at the request of the plaintiff, only one travel and attendance shall be taxed for him, unless the defendant agrees, in writing, to such continuance.

Where court may be held. May adjourn. General issue to be pleaded. Only one travel for pl'ff, in suit continued at plaintiff's request.
R.S., c. 83, §14.
70 Me., 448.

SEC. 16. If any person duly served with process does not appear and answer thereto, his default shall be recorded, and the charge in the declaration taken to be true; and on such default, and when the action is, on trial, maintained, the justice shall enter judgment for such sum, not exceeding twenty dollars, as he finds due to the plaintiff, with costs, and issue execution.

Judgment on default, non-suit and trial.
R.S., c. 83, §15.
49 Me., 413.

SEC. 17. If the plaintiff fails to enter and prosecute his action, or if, on trial, he does not maintain his action, the defendant shall recover judgment for his costs to be taxed by the justice; and execution shall issue therefor.

If plaintiff does not prevail, costs for defendant.
R.S., c. 83, §16.

APPEALS.

SEC. 18. Any party aggrieved by the judgment of the justice, may appeal to the next supreme judicial [or superior] court in the same county, and may enter such appeal at any time within twenty-four hours, Sunday not included, after the judgment; and in that case no execution shall issue, and the case shall be entered and determined in the *supreme judicial* [appellate] court.

Appeal, when and how claimed, effect.
R.S., c. 83, §17.
24 Me., 438.
57 Me., 292-4.
64 Me., 533.

SEC. 19. Before such appeal is allowed, the appellant shall recognize with sufficient surety or sureties to the adverse party,

Appellant's recognizance.

CHAP. 83. if required by him, in a reasonable sum, with condition to prosecute his appeal with effect, and pay all costs arising after the appeal.

R.S., c. 83, § 18.
42 Me., 328.
72 Me., 486-7.

On appeal, papers to be produced by appellant.
R.S., c. 83, § 19.
44 Me., 41.

Party may appeal without trial.
1872, c. 81.

SEC. 20. The appellant shall, at the appellate court, produce a copy of the record, and of all the papers filed in the cause, except depositions or other written evidence or documents, the originals of which shall be produced; and if he fails to produce such papers, and enter and prosecute his action, the court, on complaint of the adverse party, may affirm the former judgment with costs.

SEC. 21. In actions in a municipal or police court, or before a trial justice, either party after appearing and filing his pleadings, may waive a trial and give the adverse party judgment, and then appeal the same as if there had been an actual trial.

EXECUTIONS.

SEC. 22. Executions shall not be issued by a trial justice, until twenty-four hours after the rendition of judgment, and shall be made returnable in three months from the day they are issued.

SEC. 23. When a debtor removes or is out of the county in which judgment is rendered against him by a trial justice or municipal or police court, such justice or judge may issue execution against him, directed to the proper officers in the county where he is supposed to be; and it shall have the same force as if issued by a justice or court of the latter county.

SCIRE FACIAS.

SEC. 24. Every trial justice may issue writs of scire facias against executors or administrators, upon a suggestion of waste, after judgment against them; against bail in civil actions, and indorsers of writs; and enter judgment and issue execution, as any court might do in like cases.

SEC. 25. In cases of scire facias against bail, indorsers of writs, executors or administrators, in all trustee processes, or original writs against two or more defendants, before a trial justice or a judge of a municipal or police court, where the defendant or trustee resides out of the county where the proceedings are had, the justice or judge may direct the writ or execution to any proper officer of the county where the defendant or trustee resides, who shall charge fees of travel from the place of his residence to the place of service only, and postage paid by him.

RECORDS, HOW KEPT AND TRANSCRIBED.

SEC. 26. Every trial justice shall keep a fair record of his proceedings; and if he dies after giving judgment in a cause and before it is satisfied, any other justice of the county may, on complaint of the creditor, issue a summons to the person in whose

When ex'ors may issue, and when returnable.
R.S., c. 83, § 20.
11 Me., 178.
88 Me., 532.
Executions may be directed into other counties.
R.S., c. 83, § 21.

When writs of scire facias may issue.
R.S., c. 83, § 22.

Writs of scire facias, when directed into other counties.
R.S., c. 83, § 23.

Records, how to be kept and transcribed after death.
R.S., c. 83, § 24.

possession the record of such judgment is, directing him to produce and deliver it to him; and if he contemptuously refuses to produce it, or to be examined respecting it on oath, the justice may commit him to prison, *as punishment for the contempt*, to be detained until he submits to such examination and produces the record; and when the record is so delivered *to him, he* [the justice] shall transcribe it upon his own book of records, and return the original to the person who produced it; and a copy thereof attested by the transcribing justice, or otherwise proved, shall be legal evidence in all cases where an authenticated copy of the original might be received.

SEC. 27. On such transcribed record, the [trial] justice may issue execution as if the judgment was rendered by himself, changing the form as the case requires; but no such first execution shall issue after one year from the time the judgment was rendered, unless on scire facias.

SEC. 28. Every [trial] justice, who removes from the state, shall first deposit with the clerk of the judicial courts in the county for which he was commissioned, all his official records and papers; and the executor or administrator of a deceased justice shall so deposit all the deceased's official records and papers that come into his hands; and if either neglects to do so, he shall forfeit one hundred dollars. The clerk shall receive and safely keep such records and papers, and may grant certified copies thereof, which shall be as good evidence as if certified by the justice.

SEC. 29. If any [trial] justice dies or removes from the state, without recording and signing any judgment by him rendered in an action before him, and his docket, original writ, and papers pertaining thereto, and execution if any issued, are so deposited in the office of the clerk, he shall, on payment of [the] usual fees, make out and certify copies of all the papers in such cause, and all facts appearing in such docket; and such copies shall be legal evidence. But if such records have not been deposited with the clerk, the plaintiff in any action may use, in place of such certified copy, an execution issued on such judgment by the justice, with an affidavit thereon made by the plaintiff or his attorney, that it is not satisfied, or satisfied in part only, as the case may be.

SEC. 30. Any [trial] justice, whose commission expires and is not renewed, may, during two years thereafter, certify copies of judgments rendered by him while in commission, and issue and renew executions thereon, which shall be obeyed by the officer, as if the commission of the justice had not expired; and after two years such copies may be certified and executions issued and renewed, as in case of the death of the justice.

SEC. 31. Executions remaining unsatisfied, in whole or in part,

CHAP. 83.
61 Me., 565.

Execution issued on the transcribed record.
R.S., c. 83, § 25.
61 Me., 566.

On removal or death, records to be deposited with clerk. Penalty on administrator, &c., for neglect. Duty of the clerk.
R.S., c. 83, § 26.

Proceedings, if records are not completed. When an execution may be used instead of record.
R.S., c. 83, § 27.
33 Me., 442.
60 Me., 258.

Justice whose commission has expired, may certify copies and issue new ex'ons for 2 years.
R.S., c. 83, § 28.
11 Me., 380.
35 Me., 137.

Unsatisfied ex'ons of a

CHAP. 84. issued by a trial justice whose commission has expired, or who has removed from the county within and for which he was commissioned, may be renewed by any trial justice in commission in the same county, upon like vouchers as can now be done by the trial justice who rendered the judgment.

trial justice, may be renewed by any other trial justice in same county. 1878, c. 68.

TRIAL JUSTICE NOT TO BE OF COUNSEL.

Justice not to be of counsel. R.S., c. 83, §29.

SEC. 32. No [trial] justice shall be of counsel for or give advice to either party, in a suit before him, or be subsequently employed as counsel or attorney in any case tried before him; nor hear or determine any civil action commenced by himself; and every action so commenced shall abate.

JUSTICES OF THE PEACE AND QUORUM.

Ex-officio, justices of the peace and quorum. R.S., c. 83, §30. 66 Me., 271.

SEC. 33. Trial justices are declared to be, ex-officio, justices of the peace and of the quorum, and all their official acts, attested by them in either capacity, except those pertaining to the exclusive jurisdiction of trial justices, are of equal effect.

Justices of peace and quorum to be commissioned for the state. 1880, c. 215. —duties and powers extended.

SEC. 34. Justices of the peace and of the quorum shall be *appointed and commissioned by the governor, with the advice and consent of the council*, to act within and for *each and every county throughout the state*. All duties and powers now granted by law to, *and exercised by*, justices of the peace and of the quorum, shall be exercised by them in *each and every county in the state*.

CHAPTER 84.

LEVY OF EXECUTIONS ON PERSONAL PROPERTY.

- SEC. 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; notice of sale on.
- 5.** Execution; adjournment of sale, time.
- 6.** Execution; adjournment of sale to another place.
- 7.** Indemnity; officer may require.
- 8.** Re-sale, if purchaser refuses to take; officer to account for proceeds of second sale, 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.** Buildings on leased lands how sold for land rent. Sale of buildings in other cases and right of redeeming same.
- 12.** Shares in incorporated companies, how sold.
- 13.** Notice of seizure of, how given, if not attached; and how, if attached.
- 14.** Officers of corporations to certify number of debtor's shares. Penalty.

- SEC. 15. Shares sold to be transferred; new certificates to purchaser. Divi- CHAP. 84.
dends.
16. Notice of sale, how given.
 17. Franchise of corporation, how sold; notice of sale of, how given.
 18. Mode of sale. Possession, what and how given to purchaser.
 19. Rights and duties of the purchaser.
 20. Rights of redemption by the corporation.
 21. Franchises of railroads wholly within the state, notice of sale of, how given in each county interested. Conveyance by sheriff's deed.
 22. Proceeds of sale applied in order of attachment; balance paid to debtor.
 23. Notice of second attachment, to be given to the first attaching officer.
 24. Warrant against turupike corporation for damages. Sale of the franchise may be adjourned. In what county sale may be had.
 25. In case of a prior attachment, how the lien by seizure on execution may be preserved.
 26. Proceedings when such attachment is removed.
 27. Executions, to be set off against each other.
 28. Cases in which it may not be done.
 29. Proceeds of, how applied. Sale without tender.
 30. Executions and warrants of distress against towns, how issued and enforced on personal estate. How levied on real estate.
 31. Notice and incidents of the sale.
 32. Remedy of owner of property so sold.

SEC. 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.

SEC. 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.

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

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

SEC. 5. If at the time so appointed, the officer is prevented by sickness or other casualty from attending at such place, or is present and deems it for the advantage of all concerned to postpone the sale, he may postpone it not exceeding six days next after the day appointed; and so, from time to time, for like good cause, giving notice of every adjournment as required in the preceding section.

What goods may be sold on ex'on.
R.S., c. 84, § 1.
24 Me., 399.
51 Me., 557.
Coin and bank notes, how levied on.
R.S., c. 84, § 2.
57 Me., 414.

Goods, in what time sold on execution.
R.S., c. 84, § 3.
24 Me., 398.
61 Me., 531.
64 Me., 533.

Notice of sale.
R.S., c. 84, § 4.
60 Me., 206.

Adjournment of sale, time.
R.S., c. 84, § 5.
11 Me., 374.
34 Me., 442.
60 Me., 206.

CHAP. 84.

Adjournment of sale to another place.

R.S., c. 84, § 6. 11 Me., 374.

Indemnity, officer may require.

R.S., c. 84, § 7.

Re-sale, if purchaser refuses to take; officer to account for proceeds of second sale and for damages recovered.

R.S., c. 84, § 8.

Return of sale how made.

Penalty for fraud in sale and return.

R.S., c. 84, § 9.

Proceeds of sale how disposed of.

R.S., c. 84, § 10.

Buildings on leased land how sold for land rent.

Sale of buildings in other cases and right of redeeming same.

R.S., c. 84, § 11.

Shares in incorporated companies, how sold.

R.S., c. 84, § 12.

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

R.S., c. 84, § 13.

SEC. 6. For good reason, and for the purpose of obtaining a better price for the goods to be sold, he may, if he deems it for the benefit of the debtor, adjourn the auction to another place in the same town.

SEC. 7. Where there is reasonable doubt as to the ownership of goods, or their liability to be taken *in* [on] execution, the officer may require sufficient indemnity.

SEC. 8. If the highest bidder at such sale refuses to take and pay for an article, the officer shall sell it again at auction at any time within ten days, giving due notice of the second sale; and account for what he receives on the second sale, and for any damages he recovers of the first bidder for a loss on the re-sale, as for so much received on the execution.

SEC. 9. He shall, in his return on the execution, particularly describe each article or lot of goods sold, and the price at which it was sold; and if he is guilty of any fraud in the sale or return, he shall pay to the debtor in an action on the case, five times the sum of which he *is* [has] defrauded. [him.]

SEC. 10. The money arising from the sale of any property on execution, shall be applied to pay the charges and satisfy the execution; and the residue, if any, shall be returned to the debtor on demand, or otherwise legally applied as provided in section twenty-two.

SEC. 11. When a lessor of lands leased for the purpose of erecting a building thereon commences an action against the lessee, attaches the buildings within six months after the rent becomes due, and recovers such rent, he may, on execution, cause the rents and profits of such buildings to be sold for a term *of time* sufficient to pay the debt and costs; or cause such building to be sold like any other personal estate. In all cases, any mill or building seized and sold on execution as a chattel personal, may be redeemed within one year, as land levied upon by appraisalment may be; and the remedies and rights of the parties are the same as those of mortgagor and mortgagee, except the rate of interest, which shall be ten per cent. *per annum*. [a year.]

SEC. 12. Any share or interest of a stockholder or proprietor in an incorporated company, may be taken on execution and sold in the following manner, and in no other manner, notwithstanding any thing in the charter of such company to the contrary.

SEC. 13. If the property was not attached on mesne process in the same suit, the officer shall leave a copy of the execution with the treasurer, cashier, clerk, or other recording officer of the company, and the property shall be considered as seized on execution when the copy is so left. If it was so attached and remains

attached, the officer shall proceed in seizing and selling it on execution as in section sixteen. CHAP. 84.

SEC. 14. The officer of the company having the care of the records or account of shares, or interest of the stockholders, shall, on the exhibition to him of the execution, give the officer holding it a certificate of the number of shares held by the judgment debtor, or of the amount of his interest, under the penalty provided in chapter eighty-one, section twenty-seven. Officers of corporations to certify number of debtor's shares, under penalty. R.S., c. 84, §14.

SEC. 15. Within fourteen days after the day of sale, the officer shall leave an attested copy of the execution and of the return thereon, with the officer of the company whose duty it is to record transfers of shares; and the purchaser shall thereupon be entitled to a certificate or certificates of the shares bought by him, on paying the fees therefor, and for recording the transfers; and if such shares or interest were attached in the suit in which the execution issued, he shall have all dividends which accrued after the attachment. Shares sold to be transferred; new certificate to purchaser. Dividends. R.S., c. 84, §15. 63 Me., 514.

SEC. 16. In selling such shares or interest, the officer holding the execution shall give notice in writing of the time and place of sale to the debtor, by leaving it at his last and usual place of abode, if within the county where the officer dwells; and public notice thereof by posting it up in one or more public places in the town where the sale is to be made, and in two adjoining towns, if there are so many, thirty days at least before the day of sale; and shall publish an advertisement of the same import, and naming the judgment debtor, three weeks successively before the day of sale, in some public newspaper printed in the county, if any, if not, in the state paper; and if the debtor never lived in the county, posting the notification and publishing the advertisement as aforesaid shall be sufficient. Notice of sale how given. R.S., c. 84, §16.

SEC. 17. When judgment is recovered against a bridge, canal, or other incorporated company with power to receive toll, its franchise may be sold on execution at public auction, by giving notice of the time and place of sale by posting a notification in any town, in which the treasurer, clerk, or any officer of the company, if there are any officers, [and] if not, where any stockholder resides, thirty days at least before the day of sale, and by causing an advertisement, naming the creditor therein, to be inserted three weeks successively in a newspaper printed in a county where either of said officers, or, if [the company is] without officers, [where] any stockholder resides, four days before the day of sale; and if there is no newspaper printed in any such county, then in the state paper. Franchise of corporation how sold; notice of sale how given. R.S., c. 84, §17.

SEC. 18. In the sale of such franchise, whoever will pay and satisfy such execution, all fees, and incidental expenses, in consideration of being entitled to receive to his own use all such toll as Mode of sale. Possession, what and how given.

CHAP. 84. the corporation is entitled to receive, for the shortest period of
R.S., c. 84, § 18. time, shall be deemed the highest bidder, and the purchaser for such period of time ; and immediately after such sale, the officer shall deliver to him possession of the toll houses and gates, in whatever county situated, and state his doings therein in his return.

Rights and duties of the purchaser.
R.S., c. 84, § 19.

SEC. 19. The purchaser of such franchise, and those claiming under him, may receive to their own use the tolls accruing within the time limited in the purchase, and shall have all the powers of the corporation necessary for the convenient use of the property, and be subject to the same duties and penalties during the term of said purchase, and may recover of said corporation any moneys paid or expenses incurred in consequence of such liability, and without their fault or negligence.

Rights of redemption by the corporation.
R.S., c. 84, § 20.

SEC. 20. The corporation, at any time within three months after the day of sale, may redeem said franchise by paying to the purchaser the sum [which] he paid in satisfaction of the execution, with twelve per cent. interest *thereon*, in addition to the toll he has received.

Secs. 17 to 20 applied to franchises of railroads lying wholly within the state.
1880, c. 236, § 1.
 Notice, how given in each county interested.

SEC. 21. The provisions of the four preceding sections *shall be construed so as to apply to the franchises of railroad corporations whose railroads lie wholly within this [the] state, except that in case of railroad corporations notice shall be given of the time and place of sale, by posting a notification thereof at the court house in each county through which such railroad runs, either wholly or in part, thirty days at least before the day of sale, and by causing an advertisement to be inserted three weeks successively in at least one newspaper published in each county through which the road runs, either wholly or in part, the last publication to be at least four days before the day of sale, and if there is no newspaper printed in any one or more of such counties, then in the state paper in lieu thereof; and when the company has an established office in this [the] state, notice of the sale shall also be given by leaving an attested copy of the same at the office of said company not less than thirty days previous to such sale; and notice given in the manner herein provided shall be sufficient, and none other shall be required. In case of sale upon execution of such franchises, the officer shall deliver to the purchaser a conveyance by deed of the franchise so sold.*

Conveyance of franchise, by sheriff's deed.
1880, c. 236, § 2.

Proceeds of property sold applied in order of attachment; balance paid to debtor.
R.S., c. 84, § 21.
67 Me., 31.

SEC. 22. If goods or other property sold on execution have been attached by other creditors or seized on other executions by the same, or another officer, or if before payment of the residue to the debtor any other writ of attachment or execution against him is delivered to the officer who made the sale, the proceeds shall be applied to the discharge of the several judgments, in the

order in which the writs of attachment or execution were served ; and the residue, if any, shall be paid over to the debtor. CHAP. 84.

SEC. 23. If a share in a corporation, or other property that may be attached without taking and keeping possession thereof, is attached or taken on execution, and is subsequently attached or taken on execution by another officer, he shall give notice thereof to the officer who sells under the first attachment or seizure ; and if, without such notice, he pays the balance of the proceeds of sale to the debtor, he shall not be liable therefor to the person claiming under such subsequent attachment or seizure.

Notice of second attachment to be given to the first attaching officer.
R.S., c. 84, § 22.

SEC. 24. When damages are assessed in favor of a person by the county commissioners, or by a committee, or [by] verdict of a jury, for an injury sustained by him by the acts of any corporation authorized to demand and receive toll, and they are not paid in thirty days after order, or the acceptance of such verdict, or report of the committee, he may have a warrant of distress against such corporation for such damages, interest, and costs ; and the officer holding such warrant may adjourn the vendue, as in the sale of goods on execution ; and all proceedings respecting the attachment and sale on execution of the franchise of such corporation, and sales on warrant of distress as aforesaid, may be had in the county in which the creditor, the president, clerk, treasurer, or a director of said corporation, if there is any such officer, if not, a stockholder, resides.

When warrant against turnpike corporation may be issued.
Sale of franchise may be adjourned.
In what county sale may be had.
R.S., c. 84, § 23.

SEC. 25. When real or personal estate is seized on execution, and further service *thereof* is suspended by a prior attachment thereof, such estate shall be bound by seizure until it is set off or sold in whole or in part under the prior attachment, or until it is dissolved, if the officer seizing such real estate, within five days thereafter, files in the office of the register of deeds in the county or district where it lies, a copy of his return of the seizure, with the names of the parties, the court at which judgment was recovered, and the date and amount of the execution ; and the register shall file and enter the same of record, as in case of attachment of real estate on writs ; and like fees shall be allowed to the officer and register therefor.

In case of a prior attachment, how the lien may be preserved.
R.S., c. 84, § 24.

SEC. 26. If the prior attachment is dissolved, or the estate is set off or sold in part under it, the estate or remaining part thereof shall continue bound for thirty days thereafter, by such seizure on execution ; and the service of the execution may be completed within that time as if the estate had been then first seized thereon, although the return day of the execution has passed.

Proceedings when attachment is removed.
R.S., c. 84, § 25.

SEC. 27. When an officer has in his hands executions, wherein the creditor in one is debtor in the other in the same capacity and trust, he shall cause one execution to satisfy the other so far

Executions to be set off against each other.

CHAP. 84. as it will extend ; if one of such executions is in the hands of the officer, and the creditor in the other tenders his execution to him and requests him so to do, he shall so set off one against the other.

R.S., c. 84, § 26.
22 Me., 462.
24 Me., 352.
58 Me., 155.
Cases in which executions may not be set off.
R.S., c. 84, § 27.
3 Me., 37.
7 Me., 84.
58 Me., 155.

SEC. 28. Executions shall not thus be set off against each other, when the sum due on one of them has been lawfully and in good faith assigned to another person, before the creditor in the other execution became entitled to the sum due thereon ; nor when there are several creditors or debtors in one execution, and the sum due on the other is due to or from a part of them only ; nor as to so much of the first execution as is due to the attorney in the suit for his fees and disbursements therein.

Proceeds of sale of property mortgaged, how applied.
Sale without tender.
R.S., c. 84, § 28.
24 Me., 110.

SEC. 29. The officer shall apply the proceeds of the sale of property mortgaged or pledged, after deducting his fees and charges of sale, to the payment of the sum paid or tendered to the mortgagee, pledgee, or holder, and the interest thereon from the time of such payment ; and the residue of such proceeds shall be applied to the satisfaction of the plaintiff's judgment as provided by law ; or the plaintiff may have the property seized and sold on the execution, as in other cases, subject to the rights and interests of such mortgagee, pledgee, or holder, without paying or tendering the debt due to him.

Executions and warrants of distress against towns, how issued and satisfied on personal estate ; how levied on real estate.
R.S., c. 84, § 29.
69 Me., 467-9.

SEC. 30. All executions or warrants of distress against a town shall be issued against the goods and chattels of the inhabitants thereof, and against the real estate situated therein, whether owned by such town or not ; and the officer executing them shall satisfy them by distress and sale of the goods and chattels of the inhabitants as provided by law ; and for want thereof, after diligent search, which fact the officer shall certify in his return, he shall levy upon and sell so much of the real estate in said town by lots, as they are owned, occupied, or lotted out on the plan thereof, as is necessary to satisfy said precepts and expenses of sale.

Notice and incidents of the sale.
R.S., c. 84, § 30.
69 Me., 469,
470.

SEC. 31. He shall advertise in the state paper, and in one of the newspapers printed in the county where the lands lie, if any, three weeks successively, the names of such proprietors as are known to him, of the lands which he proposes to sell, with the amount of the execution or warrant of distress ; and, where the names of the proprietors are not known, he shall publish the numbers of the lots or divisions of said land ; the last publication shall be three months before the time appointed for the sale. If necessary to complete the sale, he may adjourn it from day to day not exceeding three days. He shall give a deed to the purchaser of said land in fee, expressing therein the cause of sale. The proprietor of the land so sold may redeem it within a year after the sale, by paying the sum for which it was sold, the necessary charges, and interest thereon.

SEC. 32. The owner of any real or personal estate so sold, may recover against the town, in an action of assumpsit, the full value thereof with interest at the rate of twelve per cent. yearly, with costs of suit; and may prove and recover the real value thereof, whatever was the price at which it was sold.

CHAP. 85.
Remedy of
owner of
property so
sold.
R.S., c. 84, § 31.
69 Me., 468,
470.

CHAPTER 85.

BAIL IN CIVIL ACTIONS.

- SEC. 1. Bail shall be by bond to the sheriff or other officer; bond to be returned with the writ.
2. What bail sheriff may require.
 3. In what cases the obligors shall be held.
 4. Surrender of principal before entry; how to be done and its effect.
 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. When scire facias against bail may issue.
 10. Pleadings and defence 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, and its effect.
 14. Officer's fees, duty, and liability for neglect.
 15. Surrender in such case before judgment, and after judgment.
 16. Remedy of bail against principal.

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

Bail by bond
to officer
returned
with writ.
R.S., c. 85, § 1.
1 Me., 336.
4 Me., 13.
8 Me., 423.
40 Me., 125.

SEC. 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.

What bail
officer may
require.
R.S., c. 85, § 2.
2 Me., 48.

SEC. 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.

In what cases
obligors are
held.
R.S., c. 85, § 3.

SEC. 4. Any bail may, before the action is entered, exonerate himself from all liability, by surrendering his principal to the jail

Surrender of
principal be-

CHAP. 85.

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, 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 committed by the officer making the arrest.

fore entry, how done and effect. R.S., c. 85, § 4. 2 Me., 383.

Names of bail to be entered on execution. R.S., c. 85, § 5. 4 Me., 13.

SEC. 5. If judgment is rendered against the principal in the action in which the bail is taken, the clerk of the court or trial justice issuing the execution on the judgment, shall insert, on the margin thereof, the names of the bail, their addition and place of abode, if 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.

Officer to notify bail; his fees to be paid. R.S., c. 85, § 6. 7 Me., 81.

SEC. 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 produce and deliver to the officer the principal debtor.

Surrender of principal in court. R.S., c. 85, § 7. 19 Me., 412. 20 Me., 481.

SEC. 7. If the bail do not surrender the principal as aforesaid, they may, at any time before final judgment in the original suit, bring him into court where the action is pending, and deliver him into the custody thereof and be thereby discharged.

In case of avoidance, officer's duty; liability of bail. R.S., c. 85, § 8.

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

When scire facias against bail may issue. R.S. c. 85, § 9.

SEC. 9. When the principal so avoids, and his property cannot be found to satisfy the execution, the original creditor may 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 rendition of judgment against the principal, and [he] need not declare on the bail bond, but [may] merely allege that the defendants became bail in the original action.

Pleadings

SEC. 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 defence which would avail them in an action of debt on the bond, on the plea that it is not their bond; or may show any special matter of discharge, filing a brief statement thereof as provided by law.

CHAP. 85.
and defence
by bail.
R.S., c. 85, § 10.

SEC. 11. The bail may surrender the principal in court before final judgment on the scire facias, and on paying all the costs on the scire facias, they shall be discharged; and the principal shall be committed to jail 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.

Surrender of
principal on
scire facias.
R.S., c. 85, § 11.

SEC. 12. When bail is taken on mesne process in an action returnable before a trial justice, and there is a return on the execution issued on the judgment therein, 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 rendition of judgment, against the principal, and issue execution accordingly, notwithstanding the debt and costs on the original judgment exceed *the sum of* twenty dollars.

Proceedings
when bail is
taken in a
justice
action.
R.S., c. 85, § 12.
6S Me., 30.

SEC. 13. If the bail, at any time before final judgment in the original suit or 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 order him into the custody of the officer to be committed to jail, to be proceeded with as mentioned in the preceding sections; and on payment of costs on the scire facias, the bail shall be fully discharged.

Surrender and
commitment
of
principal in
such case,
and effect
thereof.
R.S., c. 85, § 13.

SEC. 14. The officer shall attend before a justice for such purpose, when 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 such case, he shall be answerable for all damages to the party injured thereby.

Officer's
fees; duty,
and liability
for neglect.
R.S., c. 85, § 14.

SEC. 15. If the principal is surrendered before final judgment in the original suit, the bail shall deliver to the officer a copy of the writ, with the return thereon, attested by the justice; if after such judgment, the bail shall deliver a copy of the entry of surrender, attested by the justice; and in either case the officer shall deliver it to the jailer with the prisoner; and it shall be a sufficient warrant to the officer for receiving and conveying him to jail, and to the jailer for holding him in custody.

Surrender in
such case
before and
after judgment.
R.S., c. 85, § 15.
71 Me., 406.

SEC. 16. Bail may have their remedy against their principal, by an action on the case, for all damages sustained by them by reason of their suretyship.

Remedy of
bail against
principal.
R.S., c. 85, § 16.

CHAP. 86.

CHAPTER 86.

TRUSTEE PROCESS.

GENERAL PROVISIONS.

- SEC. 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. Corporations, domestic, foreign, or alien, may be summoned as trustees.
9. Taxes due from principal defendant to corporation, exempted.
10. Trustee, about to leave the state, may disclose before a justice. Proceedings in such case.
11. Court may appoint commissioner to take disclosure for other causes. Proceedings in such case.
12. Any trustee may so disclose, by consent.
13. An inhabitant of another state may be adjudged a trustee. Where writ may be returnable.
14. Costs, if the trustee is discharged at the first term. If adjudged trustee, he may retain his costs.
15. Disclosure to be sworn to.
16. Lien for costs on specific articles in his hands. Officer to pay same.
17. Not to proceed against the principal, if the trustees are all discharged, unless service has been made on him.
18. Additional compensation, if trustee dwells in another county.
19. Liability of trustee for not appearing at the first term.
20. Joint liability for costs if several fail to appear.
21. Exception in favor of trustees residing out of the county, or absent from the state, at the time of service.
22. If the action fails, costs for defendant and trustee.
23. No costs to trustee on discontinuance, unless he appears.
24. Trustee living out of the county may appear by attorney.
25. Proceedings in such case.
26. If plaintiff thinks proper to examine such trustee, how answers may be taken.
27. Disclosure, how sworn to.
28. Trustee not appearing, to be defaulted.
29. Trustee may submit a statement of facts to the court.
30. Disclosure deemed true until the contrary is proved; but either party may allege and prove any facts.
31. Such proof may be submitted to the court or a jury.
32. Proceedings, if trustee discloses 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 trustees.
35. Trustee may appear by consent, at a subsequent term, as of the first.
36. Executor or administrator liable as a trustee for a debt or legacy; liability of a stockholder of a corporation.

- SEC. 37. If a person dies, after being adjudged trustee, the goods and effects are held in the hands of the administrator. CHAP. 86.
38. If trustee dies before judgment, his administrator may be cited.
 39. If administrator does not appear, judgment rendered against him.
 40. If he does not pay, scire facias to issue.
 41. If trustee dies within thirty days after judgment is rendered, proceedings to preserve the attachment.
 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 officer, to be sold.
 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. Proceedings, if trustee discloses property mortgaged to him.
 51. On return of scire facias, amount of excess determined by court and jury.
 52. On disclosure, trustee shall deliver over property to the officer.
 53. Officer having sold on execution any personal property, shall pay plaintiff, and the balance to debtor.
 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. If defendant in an action pending is summoned as trustee of the plaintiff, proceedings.
 59. If first suit is not continued, and judgment rendered, defendant shall not afterwards be adjudged a trustee while liable on execution.
 60. If before final judgment defendant is adjudged trustee in prior suit, effect.
 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.

SCIRE FACIAS.

- SEC. 67. Scire facias against trustee.
68. Judgment on scire facias.
 69. When all defendants in writ are defaulted, court may enter up joint or several judgments.
 70. If any trustee defaulted on the scire facias was examined, judgment shall be rendered on the facts disclosed or proved.
 71. Liability for costs, if discharged on scire facias, not having before been examined.
 72. If examined in the original suit, he may be examined again on scire facias.

MISCELLANEOUS PROVISIONS.

- SEC. 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.

- CHAP. 86. SEC. 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 exceptions, the whole case may be re-examined and remanded.

TRUSTEE PROCESS IN TRIAL JUSTICES' COURTS.

- SEC. 80. Form and service for justice courts. In what county to be brought.
 81. Default, if trustee does not appear. Costs, if discharged. May retain costs, if adjudged trustee. Costs on discontinuance.
 82. Subsequent proceedings. Discharge of trustee, if judgment is less than five dollars, unless in case of set-off.
 83. How execution shall issue, if defendant or trustee removes from the county.
 84. Proceedings, if trustee is discharged, living in a county different from plaintiff and defendant.

DISCHARGE OF TRUSTEE BY PRINCIPAL DEFENDANT GIVING BOND.

- SEC. 85. Principal defendant may deliver bond to officer; its condition and how approved.
 86. Officer shall give immediate notice to trustees and return bond with writ.
 87. Notice discharges trustees, no disclosure required, and no costs for trustees.

WHEN TRUSTEE ACTIONS, BROUGHT ON JUDGMENT, MAY BE ABATED.

- SEC. 88. Trustee actions brought on judgment on which execution might issue, or to vex, or to make costs, abated with costs.

HOW TRUSTEE MAY BE HELD WHEN DEMAND AGAINST HIM IS ASSIGNED.

- SEC. 89. How demands assigned as security may be trusted and redeemed.
 90. Plaintiff's rights in case of redemption by him.

GENERAL PROVISIONS.

In what actions trustee process may be used.
 R.S., c. 86, § 1.
 36 Me., 234.
 57 Me., 408.
 70 Me., 242-3.

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

Form of writ.
 R.S., c. 86, § 2.

SEC. 2. The writ shall be in the form established by law, authorizing an attachment of goods and estate of the principal defendant in his own hands, and in the hands of the trustees.

Service.
 R.S., c. 86, § 3.

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

Effect of service on trustee.
 R.S., c. 86, § 4.
 32 Me., 33.
 47 Me., 304.

SEC. 4. A like service on the trustee shall bind all goods, effects, or credits of the principal defendant intrusted [to] and deposited in his possession, to respond [to] the final judgment in the action as when attached by the ordinary process.

In what county action to be

SEC. 5. If all the trustees live in the same county, the action shall be brought there; if they reside in different counties, in any

county in which one of them resides; and in a trustee process against a corporation aggregate, its residence shall be deemed to be in the county in which it has its established or usual place of business, held its last annual meeting, or usually holds its meetings.

SEC. 6. The plaintiff may insert the names of as many persons as trustees, as he deems necessary, at any time before the process is served on the principal, but not after; and he may have a further service made on any trustee, if found expedient, if the service is afterwards made or renewed on the principal; but no costs for services shall be taxed for the plaintiff in such case, except for that last made.

SEC. 7. When the principal is out of the state at the time of the service, and has no agent therein, notice shall be given as provided in section twenty-one, [of] chapter eighty-one; or proceedings may be had as provided in section three of chapter eighty-two, unless in the mean time he comes into the state before the sitting of the court; and when he does not appear in his own person or by attorney, any one or more of the trustees having goods, effects, or credits in their hands, and being adjudged trustees, may appear in his behalf, and in his name plead and defend the cause.

SEC. 8. All [domestic] corporations, and all foreign or alien companies or corporations established by the laws of any other state or country, and having a place of business, or doing business within this state, may be summoned as trustees, and *the* [trustee] writs [may be] served on them, as other writs [are served] on such companies or corporations; and they may answer by attorney or agent, and make disclosures, which shall be signed and sworn to by such attorney or agent, or such other person *as* upon whom legal service of the writ may be made; and the same proceedings shall thereupon be had throughout, except necessary changes in form, as in other cases of foreign attachment. (*a*)

SEC. 9. Any corporation summoned as trustees of a defendant, may set off and deduct from any amount found due the defendant from the trustees and attached by trustee process, the amount due from the defendant to the trustees for taxes.

SEC. 10. When any person summoned as trustee is about to depart from the state, or go on a voyage, and not return before the term of the court where he is summoned to appear, he may apply to a justice of the peace and quorum of the county where he resides, for a notice to the plaintiff in the suit to appear before said justice at a place and time appointed, for taking his disclosure. On service made and returned according to the order of the justice, the examination and disclosure shall be taken and sworn to before him;

(*a*) 34 Me., 590; 37 Me., 321; 47 Me., 304; 51 Me., 372; 52 Me., 593; 55 Me., 350; 62 Me., 256; 67 Me., 497.

CHAP. 86.

brought.
R.S., c. 86, § 5.
6 Me., 406.
33 Me., 576.
54 Me., 315,
380.
57 Me., 409.
Insertion of
additional
names of
trustees.
R.S., c. 86, § 6.
19 Me., 44.
52 Me., 236.
67 Me., 397.
71 Me., 436.

Notice to
principal, if
absent from
the state.
Trustee may
appear for
him.
R.S., c. 86, § 7.
1 Me., 325.
35 Me., 392.
36 Me., 303.
54 Me., 380.

Domestic
corporations
and foreign
companies
doing busi-
ness in state,
may be sum-
moned as
trustees.
1877, c. 153.
—may an-
swer by at-
torney or
agent, and
make dis-
closures.

Taxes due
corporation
from defend-
ant, exempt
from process.
1874, c. 185.

Trustee,
about to
leave the
state, may
disclose be-
fore a justice.
Proceedings
in such case.
R.S., c. 86, § 9.

CHAP. 86. and being certified and returned to the court, the same proceedings may be had thereon as if it had been in court.

Court may appoint commissioner to take disclosure for other causes. Proceedings in such case. R.S., c. 86, § 10.

SEC. 11. The court before whom any trustee is summoned, may appoint a commissioner to take the examination and disclosure of such trustee when any other reasonable cause appears, and prescribe the notice to be given to the plaintiff, of the time and place thereof; and upon return of such service made, the examination and disclosure shall be taken and sworn to before the commissioner, and being certified by him and returned to court, the same proceedings may be had thereon as if it had been in court.

Any trustee may so disclose, by consent. R.S., c. 86, § 11.

SEC. 12. The examination and disclosure of any person summoned as trustee may be taken, as provided in section ten, when the plaintiff and trustee consent thereto.

Inhabitant of another state may be adjudged trustee; writ where returnable. R.S., c. 86, § 12. 33 Me., 416.

SEC. 13. Any person summoned as trustee may be adjudged trustee by the court, though he was not then, and never had been an inhabitant of *this* [the] state; and the writ may be made returnable in the county in which either the plaintiff or principal defendant resides.

Trustee who comes into court is entitled to costs. 1881, c. 18.

SEC. 14. If any supposed trustee comes into court at the first term and submits himself to examination, on oath, after having in writing declared that at the time of the service of the trustee process upon him, he had *not any* [no] goods, effects or credits of the principal in his possession, he shall be entitled to his costs, as in civil actions where issue is joined for trial; and if adjudged a trustee, [he] may deduct his costs from the goods, effects and credits in his hands, and he shall be chargeable for the balance only to be paid on the execution. If such goods, effects and credits are not of sufficient value to discharge the costs taxed in his favor, he shall have judgment and execution against the plaintiff for the balance of such costs, after deducting the sum disclosed, in the same manner as if he had been discharged. (a)

—how paid.

Disclosure to be sworn to. R.S., c. 86, § 14. 36 Me., 298.

SEC. 15. The disclosure, when completed and subscribed by the trustee, shall be sworn to by him in open court, or before some justice of the peace.

(a) 3 Me., 49; 18 Me., 336, 363; 29 Me., 464.

Answers to interrogatories; 18 Me., 188; 33 Me., 32; 34 Me., 589; 38 Me., 134; 41 Me., 325; 45 Me., 218; 46 Me., 229.

Persons, claims and property not subject to trustee process; 17 Me., 30; 24 Me., 450; 27 Me., 298; 32 Me., 33; 33 Me., 416; 34 Me., 125; 39 Me., 165; 42 Me., 136, 366; 46 Me., 295; 48 Me., 82, 322, 367; 49 Me., 82; 53 Me., 550. Interest; 18 Me., 336.

Costs; 10 Me., 467; 18 Me., 336; 29 Me., 464; 46 Me., 22, 93, 229; 56 Me., 80; 59 Me., 427.

When charged; 4 Me., 494, 543; 6 Me., 80, 333; 7 Me., 396; 11 Me., 197; 12 Me., 120; 13 Me., 263, 421, 429; 15 Me., 87; 17 Me., 255; 19 Me., 44, 57; 20 Me., 370; 34 Me., 204; 37 Me., 286; 38 Me., 134; 42 Me., 134.

When discharged; 6 Me., 263; 17 Me., 30, 94; 18 Me., 335; 22 Me., 29; 24 Me., 450; 26 Me., 135, 450, 542; 27 Me., 299; 28 Me., 390; 32 Me., 33; 33 Me., 32; 34 Me., 125; 35 Me., 59, 148, 157, 232; 36 Me., 137, 209, 303; 37 Me., 316; 39 Me., 165, 404; 42 Me., 136, 297, 366, 382; 45 Me., 208; 46 Me., 167, 295; 48 Me., 367; 49 Me., 82, 284; 51 Me., 371; 52 Me., 593; 53 Me., 106; 54 Me., 104.

SEC. 16. Where any person is adjudged trustee for specific articles in his hands, he shall have a lien thereon for his costs; and the officer, who disposes thereof on execution, shall pay the trustee the amount due him for costs, and deduct it from the amount of sale, and account to the creditor for the balance; the amount of such fees shall be indorsed on the execution by the clerk, and shall be evidence of the lien.

CHAP. 86.
Lien for costs on articles in his hands. Officer to pay same. R.S., c. 86, §15.

SEC. 17. If all the persons summoned as trustees are discharged, or the suit against them is discontinued, the plaintiff shall not proceed against the principal defendant, unless there was sufficient personal service of the writ on him; but he may assume the defence of the suit.

If trustees discharged, not to proceed v. principal, unless service on him. R.S., c. 86, §16. 58 Me., 301.

SEC. 18. When the trustee, at the time the writ was served on him, did not live in the county where the writ is returnable, the court shall, in case of his discharge, allow him, in addition to his legal fee, a reasonable compensation for his time and expenses in appearing and defending.

Compensation, if trustee lives in another county. R.S., c. 86, §17.

SEC. 19. If any person resident in the county in which the writ is returnable, is summoned, and neglects to appear and submit to examination at the return term, without reasonable excuse, he shall be liable for all costs afterwards arising in the suit, to be paid out of his own goods or estate, if judgment is rendered for the plaintiff; unless paid out of the goods or effects in his hands belonging to the principal.

Liability of trustee for not appearing at first term. R.S., c. 86, §18. 29 Me., 464. 54 Me., 380.

SEC. 20. When several trustees, resident in the county where the action is pending, are summoned and neglect to appear, the judgment for costs shall be rendered against them jointly.

Joint liability for costs if several trustees fail to appear. R.S., c. 86, §19.

SEC. 21. Persons summoned as trustees, resident out of the county where the suit is pending, shall not be liable for any costs arising on the original process; and if the person summoned as trustee is out of the state at the time the writ is served on him, and appears at the first term of the court after his return, he shall be allowed for his costs and charges as if he had appeared at the return term.

Exception in favor of trustees out of their county, and those residing out of state. R.S., c. 86, §20.

SEC. 22. When the plaintiff does not support his action, the court shall award costs against him in favor of the principal, and in favor of the persons summoned as trustees severally who appeared and submitted to examination on oath; and several executions shall issue accordingly.

If the action fails, costs for defendant and trustee. R.S., c. 86, §21.

SEC. 23. When a person summoned as trustee does not come into court, and declare [that] he had no property or credits of the principal in his hands when the writ was served, and submit himself to examination on oath, the court shall not award costs in his favor, though the suit is discontinued.

No costs for trustee unless he appears. R.S., c. 86, §22. 29 Me., 464. 65 Me., 302.

SEC. 24. A person summoned as trustee, and not then living in Trustee liv-

CHAP. 86.

ing out of county may appear by attorney.
R.S., c. 86, § 23.
35 Me., 158.

Proceedings.
R.S., c. 86, § 24.

If plaintiff examines trustee, how answers may be taken.
R.S., c. 86, § 25.

Disclosure, how sworn to.
R.S., c. 86, § 26.

Trustee not appearing, to be defaulted.
R.S., c. 86, § 27.

Trustee may submit a statement of facts to the court.
R.S., c. 86, § 28.

Disclosure deemed true till disproved; but any party may prove facts.
R.S., c. 86, § 29.

Proof may be submitted to court or jury.
R.S., c. 86, § 30.

Proceedings if trustee discloses an assignment of the principal's claim.
R.S., c. 86, § 32.

the county where the writ is returnable, shall not be required to appear in person in the original suit, or in a suit on scire facias; but he may appear by attorney, and declare whether he had any goods or effects of the principal in his hands, when the writ was served; and thereupon offer to submit himself to examination on oath.

SEC. 25. If the plaintiff proceeds no further, the declaration shall be considered as true.

SEC. 26. But if he thinks proper to examine such supposed trustee on oath, the answers may be taken in the county in which the trustee dwells, before a judge of the supreme judicial [or superior] court, or a justice of the peace.

SEC. 27. When a trustee has submitted himself to examination on oath in court, his disclosure may be sworn to before a judge of the court, or a justice of the peace; and being filed in court, shall have the same effect as if sworn to in open court.

SEC. 28. When a person duly summoned as trustee, neglects to appear and answer to the suit, he shall be defaulted, and adjudged trustee as alleged.

SEC. 29. If a person summoned admits that he has in his hands goods, effects, or credits, of the principal, or wishes to refer that question to the court upon the facts, he may make a declaration of such facts as he deems material, and submit himself thereupon to a further examination on oath; and such declaration and further examination, if any, shall be sworn to as before provided. (*a*)

SEC. 30. The answers and statements sworn to by a trustee, shall be deemed true, in deciding how far he is chargeable, until the contrary is proved, but the plaintiff, defendant, and trustee, may allege and prove any facts material in deciding that question. (*b*)

SEC. 31. Any question of fact, arising upon such additional allegations, may, by consent, be decided by the court, or submitted to a jury in such manner as the court directs. (*c*)

SEC. 32. When it appears by the answers of a trustee, that any effects, goods, or credits in his hands are claimed by a third person in virtue of an assignment from the principal debtor, or in some other way, the court may permit such claimant, if he sees cause, to appear. If he does not appear voluntarily, notice may be issued and served on him, as the court directs; and if he appears, he may be admitted as a party to the suit so far as respects his title to the goods, effects, or credits in question; and may allege and prove any facts not stated or denied in the disclosure of the trustee; but if he does not appear in person or by

(*a*) 21 Me., 24; 33 Me., 32; 35 Me., 232.

(*b*) 17 Me., 95; 18 Me., 188; 25 Me., 75, 264; 42 Me., 139; 57 Me., 588; 58 Me., 319; 66 Me., 394; 68 Me., 199; 71 Me., 69.

(*c*) 58 Me., 319; 68 Me., 199; 70 Me., 507.

attorney, the assignment shall have no effect to defeat the plaintiff's attachment. (a)]

CHAP. 86.

SEC. 33. On the trial between the attaching creditor and such claimant, the principal defendant may be examined as a witness for either party, if there is no other objection to his competency except his being a party to the original suit.

Principal defendant may testify. R.S., c. 86, § 33.

SEC. 34. When the plaintiff recovers judgment against the principal, and there is any supposed trustee who has not appeared and been discharged by disclosure or discontinuance of the suit against him, the court shall award judgment and execution against the goods, effects, and credits in his hands, as well as against the principal, in the usual form.

Form of judgment against principal and trustee. R.S., c. 86, § 34.

SEC. 35. If an agreement is entered on the docket between the plaintiff and supposed trustee, that he may appear at a subsequent term of the court, with all the advantages that he would have on appearing and answering at the first term, the same shall be allowed him by the court.

Trustee may appear by consent at another term, as of the first. R.S., c. 86, § 35. 29 Me., 464.

SEC. 36. Any debt or legacy due from an executor or administrator, and any goods, effects, and credits in his hands, as such, may be attached by trustee process. The amount, which a stockholder of a corporation is liable to pay to a judgment creditor thereof, may be attached by a creditor of such judgment creditor, by trustee process served on such stockholder at any time after the commencement of the judgment creditor's action against him, and before the rendition of judgment therein.

Ex'r or adm'r liable as trustee; also stockholders of corporations. R.S., c. 86, § 36. 19 Me., 203. 39 Me., 404. 64 Me., 302.

SEC. 37. If any person, summoned as a trustee in his own right, dies before the judgment recovered by the plaintiff is satisfied, the goods, effects, and credits in his hands at the time of attachment, shall remain bound thereby; and his executors or administrators shall be liable therefor as if the writ had been originally served on them.

If a person dies after being trustee, goods held in hands of adm'r. R.S., c. 86, § 37. 1 Me., 333. 11 Me., 38.

SEC. 38. If he dies before judgment in the original suit, his executor or administrator may appear voluntarily, or may be cited to appear as in case of the death of a defendant in a *common* [an ordinary] action; and the further proceedings shall then be conducted as if the executor or administrator had been originally summoned as trustee; except that the examination of the deceased, if any had been taken and filed, shall have the same effect as if he were living.

If trustee dies before judgment, his administrator may be cited. R.S., c. 86, § 38. 21 Me., 24. 30 Me., 404. 47 Me., 563.

SEC. 39. If in such case the executor or administrator does not appear, the plaintiff, instead of suggesting the death of the deceased, may take judgment against him by default, or otherwise, as if he were living; and the executor or administrator shall pay,

If administrator does not appear, judgment may be rendered

(a) 1 Me., 328; 3 Me., 348; 5 Me., 411; 11 Me., 448; 16 Me., 254; 17 Me., 255, 328; 22 Me., 82; 26 Me., 135; 29 Me., 487; 33 Me., 441; 35 Me., 232; 37 Me., 410; 40 Me., 91; 42 Me., 383; 46 Me., 20; 48 Me., 43; 59 Me., 425; 66 Me., 394.

CHAP. 86. on the execution, the amount which he would have been liable to pay to the principal defendant; and he shall be thereby discharged from all demands on the part of the principal defendant in the suit for the amount so paid, as if he had himself been adjudged trustee.

If he does not pay, scire facias to issue.
R.S., c. 86, § 40.

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

If trustee dies within thirty days after judgment, proceedings to preserve the attachment.
R.S., c. 86, § 41.

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

Manner of issuing execution if administrator is adjudged trustee.
R.S., c. 86, § 42.

SEC. 42. When an executor or administrator is adjudged trustee on account of goods, effects, or credits in his hands or possession merely as executor or administrator, in a suit originally commenced against him as a trustee, or against the deceased, or in the original suit, or on a writ of scire facias, the execution shall not be served on his own goods or estate, or on his person; but he shall be liable for the amount in his hands, in like manner and to the same extent only, as he would have been to the principal defendant if there had been no trustee process.

Remedy on his bond if he neglects to pay.
R.S., c. 86, § 43.

SEC. 43. If after final judgment against an executor or administrator for any certain sum due from him as trustee, he neglects to pay it, the original plaintiff in the foreign attachment shall have the same remedy for recovering the amount, either upon a suggestion of waste or by a suit on the administration bond, as the principal defendant in the foreign attachment would have had upon a judgment recovered by himself for the same demand against the executor or administrator.

Articles in trustee's hands to be delivered to officer, to be sold.
R.S., c. 86, § 44.
13 Me., 422.

SEC. 44. When any person summoned as trustee is bound to deliver to the principal defendant any specific articles, he shall deliver them, or so much thereof as may be necessary, to the officer holding the execution; and they shall be sold by the officer and the proceeds applied and accounted for, as if they had been taken on execution in common form.

Remedy if trustee refuses.
R.S., c. 86, § 45.

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

Mode of set-

SEC. 46. When by the terms of the contract between the trustee

and the principal debtor, any mode of ascertaining the value of the property to be delivered to the officer is pointed out, the officer shall, on the application of the trustee, notify the principal debtor *previouslly* to the delivery, that the value may be thus ascertained, as far as it may affect the performance of the contract; and in other cases the value of the property, as between the principal and the trustee, shall be estimated and ascertained by the appraisal of three disinterested men, chosen, one by the trustee, one by the officer, and one by the principal, if he see[s] cause; and if he neglects or refuses, by the officer; and they shall all be duly sworn to appraise the same, and the officer, justice, and appraisers, shall certify their doings on the execution.

SEC. 47. When a part of such goods and articles is taken in execution as aforesaid, the trustee may deliver the residue to the principal, or tender it to him within thirty days after satisfaction of the execution, as he might have delivered the whole.

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

SEC. 49. When a judgment creditor has caused the debtor to be committed *in* [on] execution, and afterwards discovers goods, effects, or credits of the debtor, not attachable by the ordinary process of law, he may have the benefit of the trustee process like any other creditor, if, within seven days after the service of the process, he discharges the debtor from prison by a written direction to the jailer, stating the reason therefor; but such discharge shall not annul or affect the judgment.

SEC. 50. When a trustee states in his disclosure that he had, at the time the process was served on him, in his possession, property not exempted by law from attachment, mortgaged, pledged, or delivered to him by the principal defendant to secure the payment of *a sum of* money due to him, and that the principal defendant has an existing right to redeem it by payment thereof, the court or justice, before which the action is pending, shall order, that, on payment or tender of such money by the plaintiff to said trustee within such time as the court orders, and while the right of redemption exists, he shall deliver over the property to the officer serving the process, to be held and disposed of as if it had been attached on mesne process; and in default thereof, that he shall be charged as the trustee of the principal debtor. This order shall be entered on the records of the court or justice.

SEC. 51. On the return of the scire facias against such trustee, if it appears that the plaintiff has complied with the order of the court or justice, and the trustee has refused or neglected to comply therewith, the court or justice shall enter up judgment against him

CHAP. 86.
 ting the
 value, as
 between the
 principal
 and trustee.
 R.S., c. 86, § 46.
 65 Me., 302.

If part only
 is taken,
 balance to
 be delivered
 to principal.
 R.S., c. 86, § 47.

Officer to
 restore
 surplus.
 R.S., c. 86, § 48.

Trustee pro-
 cess, after
 commitment
 of the debtor.
 Effect there-
 of.
 R.S., c. 86, § 49.
 1 Me., 162.
 13 Me., 422.

Proceedings,
 if trustee
 discloses
 property
 mortgaged
 to him.
 R.S., c. 86, § 50.
 13 Me., 429.
 32 Me., 174.
 35 Me., 59,
 148.
 36 Me., 137.
 37 Me., 316.
 42 Me., 136,
 366.
 46 Me., 296.
 49 Me., 83.
 56 Me., 334.
 58 Me., 286-7.
 67 Me., 159.

On return of
 scire facias,
 excess deter-
 mined by
 court or jury.
 R.S., c. 86, § 51.

CHAP. 86. for the amount due and returned unsatisfied on the execution, if there appears to be in his hands such an amount of the property mortgaged over and above the sum due him; but if not, then for the amount of said property exceeding that sum, if any; and this amount of excess shall, on the trial of the scire facias, be determined by the court or jury.

On disclosure, trustee to deliver property to officer.
R.S., c. 86, § 52.
60 Me., 175.

SEC. 52. If, by the disclosure, it appears that the property in the hands of the supposed trustees was mortgaged, pledged, or subject to a lien to indemnify him against any liability, or to secure the performance of any contract or condition, and that the principal defendant has an existing right to redeem it, the court may order, that, upon the discharge of such liability or [the] performance of such contract or condition by the plaintiff, within such time as the court or justice orders, and while the right of redeeming exists, such trustee shall deliver over the property to the officer, to be by him held and disposed of as if it had been attached.

Officer having sold property on execution, to pay plaintiff, and balance to debtor.
R.S., c. 86, § 53.

SEC. 53. The officer, having sold on execution any personal property delivered to him in virtue of this chapter, after deducting the fees and charges of sale, shall pay the plaintiff the sum by him paid or tendered to the trustee, or applied in the performance of such contract or condition, or discharge of such liability, and the interest from the time of such payment, tender, or application, to the time of sale; and so much of the residue, as is required therefor, he shall apply in satisfaction of the plaintiff's judgment, and pay the balance, if any, to the debtor, first paying the trustee his costs accruing before the service of the scire facias, as provided in section fourteen.

Trustee not prevented from selling property mortgaged.
R.S., c. 86, § 54.

SEC. 54. Nothing contained in this chapter shall prevent the trustee from selling the goods in his hands for the payment of the sum for which they were mortgaged, pledged, or otherwise liable, at any time before the amount due to him is paid or tendered as aforesaid, if the sale would be authorized by the terms of the contract between him and the principal defendant.

Cases in which a person shall not be adjudged trustee.
R.S., c. 86, § 55.
71 Me., 435,
442.

SEC. 55. No person shall be adjudged trustee,
First.—By reason of any negotiable bill, draft, note, or other security drawn, accepted, made, or indorsed by him, except in the cases provided in section sixty-three;

Second.—By reason of any money or other thing received or collected by him as an officer, by force of a legal process in favor of the principal defendant in the trustee process, although it has been previously demanded of him by the defendant;

Third.—By reason of any money in his hands as a public officer, and for which he is accountable to the principal defendant;

Fourth.—By reason of any money or other thing due from him to the principal defendant, unless at the time of the service

of the writ upon him, it is due absolutely and not on any contingency; (a) CHAP. 86.

Fifth.—By reason of any debt due from him on a judgment, while he is liable to an execution thereon; 62 Me., 256.
72 Me., 454.

Sixth.—By reason of any amount due from him to the principal defendant, as wages for his personal labor, or that of his wife or minor children, for a time not exceeding one month next preceding the service of the process, and not exceeding twenty dollars of the amount due to him as wages for his personal labor; and this shall not be exempt in any suit for necessaries furnished him or his family; moreover, wages of minor children and of women, shall not, in any case, be subject to trustee process on account of any debt of parent or husband; (b) Cases in which a person shall not be adjudged trustee.
1877, c. 210.
Wages of children and women for debt of parent or husband.

Seventh.—Where service was made on him by leaving a copy, and before actual notice of such service or reasonable ground of belief that it was made, he paid the debt due to the principal defendant, or gave his negotiable security therefor; R.S., c. 86, § 55.
72 Me., 520.

Eighth.—By reason of any amount due for board furnished any member of the legislature, while in attendance upon the sessions thereof.

SEC. 56. When an action is brought for the recovery of a demand, and the defendant is summoned as a trustee of the plaintiff, the action shall be continued to await the disclosure of the trustee, unless the court otherwise orders, and if the defendant is adjudged trustee, the disclosure and the proceedings thereon may be given in evidence on the trial of the action between the trustee and his creditor. Effect, if def't in a suit is summoned as trustee of plaintiff.
R.S., c. 86, § 56.
17 Me., 255.
36 Me., 308.
58 Me., 319.
72 Me., 452.

SEC. 57. If the amount disclosed is as large as the sum recovered in the action, the trustee shall be liable to no costs after the service of the trustee process upon him; otherwise, he shall be liable to legal costs. Costs in such cases.
R.S., c. 86, § 57.
58 Me., 319.

SEC. 58. If, during the pendency of an action, the defendant is summoned as the trustee of the plaintiff, the first suit may nevertheless proceed so far as to ascertain by a verdict or otherwise, what sum, if any, is due from the defendant; but the court may, on motion of the plaintiff in the trustee suit, continue it for judgment, until the termination of the trustee suit, or until the attachment therein is dissolved by the discharge of the trustee, or satisfaction of the judgment otherwise. Proceedings, if def't in action pending is summoned as trustee of plaintiff.
R.S., c. 86, § 58.
17 Me., 255.
58 Me., 319.
72 Me., 452-4.

SEC. 59. If the first suit is not continued, and judgment is rendered therein, the defendant shall not be adjudged afterwards If in first suit judg't is rendered,

(a) 3 Me., 50; 30 Me., 388; 35 Me., 232; 47 Me., 564; 49 Me., 284; 50 Me., 298; 63 Me., 67; 65 Me., 535; 70 Me., 141.

(b) 22 Me., 494; 36 Me., 465; 37 Me., 203; 60 Me., 344; 61 Me., 524; 72 Me., 449.

CHAP. 86. a trustee on account of the demand thus recovered against him, while he is liable to an execution thereon.

def't cannot be adjudged trustee afterwards.

R.S., c. 86, § 59.
72 Me., 453-4.

Effect if before final judg't is rendered, def't is adjudged trustee.

R.S., c. 86, § 60.

Money, &c., may be attached by trustee process before payable.

R.S., c. 86, § 61.

Proceedings if trustee does not pay costs, when liable.

R.S., c. 86, § 62.

Goods fraudulently conveyed, may be held by trustee process.

R.S., c. 86, § 63.

Trustee may retain pay due him, but not for unliquidated damages.

R.S., c. 86, § 64.

7 Me., 361.

54 Me., 539.

62 Me., 125.

65 Me., 302.

Form of judgment against a trustee.

R.S., c. 86, § 65.

25 Me., 262.

28 Me., 455.

34 Me., 124,

589.

42 Me., 135.

SEC. 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.

SEC. 61. Any money or other thing due absolutely, to the principal defendant, may be attached before it has become payable; but the trustee shall not be compelled to pay or deliver it before the time appointed therefor by the contract. (*a*)

SEC. 62. If the person summoned as trustee, and liable for costs as provided in section nineteen, does 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 such trustee for the amount of such costs.

SEC. 63. If any alleged 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 defendant's creditors, he may be adjudged a trustee on account thereof, although the principal defendant could not have maintained an action therefor against him. (*b*)

SEC. 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, 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.

SEC. 65. When a person is adjudged trustee on disclosure in the original suit, the amount for which he is chargeable shall be fixed by the court, subject to exceptions, and be conclusive on scire facias, unless, for cause shown, an additional disclosure is allowed; but on default, the amount need not be expressed in the judgment; and in all cases on scire facias, if he is adjudged trustee, the amount for which he is chargeable shall be expressed in the judgment.

(*a*) 4 Me., 532; 22 Me., 182; 65 Me., 535.

(*b*) 25 Me., 264; 29 Me., 487; 35 Me., 332; 46 Me., 296; 48 Me., 325; 57 Me., 419; 66 Me., 247; 67 Me., 162.

SEC. 66. If any alleged trustee is discharged, the judgment shall be no bar to an action brought by the principal defendant against him for the same demand.

CHAP. 86.
Discharge no
bar to claim
of principal.
R.S., c. 86, § 66.
58 Me., 319.

SCIRE FACIAS.

SEC. 67. When a 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 court or 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.

Scire facias
against
trustee.
R.S., c. 86, § 67.
23 Me., 63.
48 Me., 171.
58 Me., 113.
65 Me., 302.
66 Me., 164-5.

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

Judgment
on scire
facias.
R.S., c. 86, § 68.

SEC. 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.

When all
def'ts are de-
faulted, joint
or several
judgment.
R.S., c. 86, § 69.

SEC. 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 of the goods, effects, and credits, for which he is chargeable as trustee, as remain in his hands, if any, 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.

If trustee,
defaulted on
scire facias,
was examin-
ed in first
suit, judg't
on his dis-
closure.
R.S., c. 86, § 70.
40 Me., 259.
46 Me., 92,
350.

SEC. 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 pay or recover any costs. (a)

Liability for
costs if dis-
charged on
scire facias,
not having
been before
examined.
R.S., c. 86, § 71.

SEC. 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 he may then prove any matter proper for his defence; and the court may enter such judgment, as law and

If examined
in original
suit, trustee
may be
examined
again.
R.S., c. 86, § 72.

(a) 7 Me., 130; 36 Me., 303; 40 Me., 260; 48 Me., 82; 60 Me., 173.

CHAP. 86. justice require, upon the whole matter appearing on such examination and trial. (a)

MISCELLANEOUS PROVISIONS.

Goods and effects liable to another attachment if not demanded in thirty days.
Exception.
R.S., c. 86, § 73.
34 Me., 73.
36 Me., 308.
58 Me., 286.
65 Me., 302.

SEC. 73. When any person is adjudged a trustee, if the goods, effects, and credits in his hands, are not demanded of him by virtue of the execution within thirty days next after final judgment, the attachment of them by the original process is dissolved; and they are liable to another attachment as though the prior attachment had not been made; but when the debt due from the trustee to the principal defendant is payable at a future day, or specific property is in his hands which he is bound to deliver at a future day, the attachment shall continue until the expiration of thirty days after such debt is payable in money, or the property aforesaid is demanded of the trustee.

If no second attachment, principal may recover them.

SEC. 74. If there is no second attachment, the principal defendant in the suit may recover the goods, effects, and credits, if not so demanded, as if they had not been attached.

R.S., c. 86, § 74.
64 Me., 349.

Demand, how made if trustee is out of the state, or has no dwelling in the state.
R.S., c. 86, § 75.

SEC. 75. When the officer holding the execution cannot find the trustee in the state, a copy of the execution may be left at his dwelling-house, or last and usual place of abode, with notice to the trustee indorsed thereon, and signed by the officer, signifying that he is required to pay and deliver, towards satisfying such execution, the goods, effects, and credits, for which he is liable. When such trustee has no such dwelling-house or place of abode in *this* [the] state, such copy and notice may be left at his dwelling-house or place of abode without the state, or be delivered to him personally by the officer, or other person by his direction; and such notice in either case shall be deemed a sufficient demand for all the purposes mentioned in the two preceding sections.

Effect of judgment against trustee.
R.S., c. 86, § 76.
18 Me., 335.
34 Me., 73.
48 Me., 143.
65 Me., 302.

SEC. 76. The judgment against any person as trustee shall discharge him from all demands by the principal defendant or his executors or administrators, for all goods, effects and credits, paid, delivered, or accounted for by the trustee thereon; and if he is afterward sued for the same by the defendant or his executors or administrators, such judgments, and *disposition* [disposal] of the goods, effects, and credits as above stated, being proved, shall be a bar to the action for the amount so paid or delivered by him.

Penalty if trustee discloses falsely.
R.S., c. 86, § 77.
16 Me., 435.
57 Me., 333,
419.

SEC. 77. If any person summoned as a trustee, upon his examination willfully and knowingly answers falsely, he shall be deemed guilty of perjury; and shall pay to the plaintiff in the suit so much of the judgment recovered against the principal defendant as remains unsatisfied, with interest and costs, to be recovered in an action on the case.

(a) 4 Me., 438; 15 Me., 345; 25 Me., 266; 40 Me., 260; 41 Me., 131; 60 Me., 173.

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

CHAP. 86.

Trustee exempt from costs on scire facias in certain cases.
R.S., c. 86, § 78.
60 Me., 346.

SEC. 79. In all cases under the trustee process in the supreme judicial [or superior] court, where exceptions are taken to the ruling and decision of a single judge as to the liability of the trustee to be charged, the whole case may be re-examined and determined by the law court, and remanded for further disclosures or other proceedings, as the court thinks [that] justice requires. (a)

On exceptions, whole case re-examined by law court.
R.S., c. 86, § 79.

TRUSTEE PROCESS IN TRIAL JUSTICES' COURTS.

SEC. 80. When a trustee process is issued by a municipal or police court or a trial justice, the writ shall be in the form now in use, and may contain a direction to attach property of the principal in his own hands, as well as in the hands of the person named as trustee, and be served as a trustee process issued by a judicial court, seven days before the return day; and shall be brought in the county where either of the supposed trustees resides; and if not so brought, it shall be dismissed and the trustees [shall] recover their costs.

Form and service of trustee process for justices' courts.

—in what county brought.
R.S., c. 86, § 80.
12 Me., 18.

SEC. 81. When the person summoned does not appear and answer to the suit, he shall be defaulted, adjudged trustee, and be liable to costs on scire facias; if he appears at the return day and submits himself to an examination on oath and is discharged, he shall be allowed his legal costs; but if he is charged, he may retain the amount of his costs; and when the plaintiff discontinues his suit against him or the principal, he shall be allowed his costs.

Default if trustee does not appear.
—costs.
R.S., c. 86, § 81.

SEC. 82. All subsequent proceedings in such causes shall be had, as is prescribed in this chapter in trustee processes in the supreme judicial court, varying forms as circumstances require; but when, in a trustee process before such court or justice, the debt recovered against the principal is less than five dollars, the trustee shall be discharged, unless the judgment is so reduced by means of a set-off filed in the case.

Subsequent proceedings.
—discharge of trustee if judgment is less than five dollars unless in case of set-off.
R.S., c. 86, § 82.

SEC. 83. If after a judgment is rendered in such trustee process, the principal defendant or trustee removes out of the county in which it *was* [has been] rendered, such court or justice may issue execution against either, directed to the proper officer of any other county where he is supposed to reside.

How execution shall issue if defendant or trustee removes.
R.S., c. 86, § 83.

SEC. 84. When an action is brought against a trustee in a Proceedings,

(a) 29 Me., 489; 34 Me., 124; 35 Me., 146; 42 Me., 134; 50 Me., 198; 60 Me., 346.

CHAP. 86.

if trustee living in another county is discharged.
R.S., c. 86, § 84.

county where he resides, but where neither the plaintiff nor defendant resides, and the trustee is discharged, or the action [is] discontinued as to him, the action shall still proceed if there was legal service on the principal defendant, unless it appears, by plea in abatement, that the trustee was collusively included in the writ for the purpose of giving the court in such county jurisdiction.

DISCHARGE OF TRUSTEE BY PRINCIPAL DEFENDANT GIVING BOND.

Principal defendant may deliver bond to officer.
1876, c. 69, § 1.

SEC. 85. In any [trustee] suit *brought in this state, wherein any person, company or corporation is summoned as a trustee of the defendant*, the [principal] defendant may deliver to the officer holding the writ, a bond, running to the creditor, in the amount of the ad damnum of the writ, with *surety or sureties* approved according to the provisions of section twenty-four of chapter one hundred and thirteen, conditioned to pay whatever judgment may be recovered against *the* [such] defendant, and the taxable costs, within thirty days from the date of final judgment *in said suit*.

Officer to notify trustees.
1876, c. 169, § 2.

SEC. 86. *When* [Any] officer *shall receive* [receiving] any such bond *according to the foregoing provisions*, he shall immediately give written notice thereof to [all] the *trustee or trustees*, and he shall be allowed *to charge as fees the sum of fifty cents* for each trustee so notified, and for his necessary travel. *The officer* [He] shall file the bond in court with the writ, and *shall make* [due] return *of his doings relative there[-of] in his return* upon the writ.

—to return bond with writ.
1876, c. 169, § 3.

Officer's notice discharges trustees.
1876, c. 169, § 4.

—no disclosure and no costs.

SEC. 87. *When any person, company or corporation, summoned as trustee in any action, shall be* [is] legally notified that the defendant has given [such] bond, *as above described*, he or *they* shall be discharged from *all* further liability in said action, and *any such trustee* shall not be required to *make any disclosure into court*, [disclose,] and shall not recover *any costs in said action*.

WHEN TRUSTEE ACTIONS ON JUDGMENT MAY BE ABATED.

Trustee action on judgment on which execution might issue, and debtor has attachable property, or to vex or make costs, to be abated with costs.
R.S., c. 86, § 85.

SEC. 88. When action is commenced by trustee process on a judgment on which an execution might legally issue, and it appears to the court or justice that, at the time of bringing it, the defendant openly had visible property liable to attachment, sufficient to satisfy such judgment; or that it was brought for the purpose of vexation; or to accumulate costs, it shall, at any time, on motion, be abated, with costs to the defendant.

HOW TRUSTEE MAY BE HELD WHEN DEMAND AGAINST HIM IS ASSIGNED.

Demands assigned as security may be trustee and redeemed.

SEC. 89. When it appears that a person summoned as trustee is indebted to the principal defendant on any demand on which he might be held as trustee, but that it has been conditionally assigned as security, and the principal defendant has a subsisting right to

redeem it, the court may order, that on the fulfillment of such conditions by the plaintiff, within the time fixed by the court, and while the right to redeem exists, the trustee shall be held for the full amount of such demand; and when the court is satisfied that its order has been complied with, it may charge the trustee accordingly.

SEC. 90. The officer making demand on the trustee on the execution, shall first deduct from the amount received by him the sum paid by the plaintiff to redeem, if any, with interest, and [shall] apply the balance towards the execution; but if the demand has been redeemed otherwise than by the payment of money, the plaintiff shall be subrogated for the holder thereof, and have the same rights and remedies against the principal defendant, and may enforce them, at his own expense, in the name of such holder or otherwise.

CHAP. 87.
R.S., c. 86, § 86.

Plaintiff's
rights in
case of re-
demption
by him.
R.S., c. 86, § 87.

CHAPTER 87.

ACTIONS BY OR AGAINST EXECUTORS AND ADMINISTRATORS.

- SEC. 1. Executors and administrators, writs and executions against them, how issued.
2. Executions for costs against them, how issued.
 3. Executions against deceased returned unsatisfied, proceedings.
 4. Administrator de bonis non may prosecute and defend suits as any other; may sue judgment recovered by deceased.
 5. Executor or administrator ceasing to be such after judgment, scire facias may issue against administrator de bonis non.
 6. Writ of error by or against administrator de bonis non.
 7. When an only party to an action dies, proceedings.
 8. Certain enumerated surviving actions, may be prosecuted or defended by executor or administrator.
 9. Actual damages only recoverable in actions of tort; goods returned in replevin, not considered as assets.
 10. When one of several plaintiffs or defendants dies, his executor or administrator may prosecute or defend jointly with survivors; joint judgment rendered; if there are survivors on both sides, they may be witnesses.
 11. Actions against executors or administrators commenced within a year after notice of appointment, to be continued at plaintiff's expense. Exceptions.
 12. Actions not maintainable unless brought within two years and after thirty days' written demand. Administrators and executors out of state must appoint agent or attorney in state.
 13. When creditor out of state may bring action.
 14. When action does not accrue within two years, claim to be filed. Heirs or devisees may give bond.
 15. Proceedings when bond is given and when not given.
 16. If claim is not filed, remedy against heirs and devisees only.
 17. Limitation of actions against administrators de bonis non.

- CHAP. 87. SEC. 18. Limitation of actions against administrators de bonis non, when no notice by first administrator. Actions against new administrator.
19. Limitation of actions not applicable to actions for legacies; liability for unfaithful administration on administration bond.

EXECUTIONS TO ISSUE AFTER CREDITOR'S DECEASE.

- SEC. 20. How an execution may issue after creditor's decease.
21. What such execution shall set forth, and to what uses property levied on shall be held.

Writs and ex'ons v. ex'rs and adm'rs run v. estate in their hands. R.S., c. 87, § 1.

Ex'ons for costs, when issued v. their own goods and estate. R.S., c. 87, § 2. 6 Me., 49. 20 Me., 22. 23 Me., 253. 24 Me., 29. 70 Me., 463.

Execution against the estate of deceased, returned unsatisfied, proceedings. R.S., c. 87, § 3. 2 Me., 112.

Adm'r de bonis non may prosecute and defend as any other; may sue judg't recovered by deceased. R.S., c. 87, § 4. 14 Me., 324. 32 Me., 131, 175. 69 Me., 150.

When ex'r or adm'r ceases to be such, seire facias may issue against adm'r de bonis non. R.S., c. 87, § 5.

Writ of error by or v. adm'r de bonis non. R.S., c. 87, § 6. 69 Me., 150.

SEC. 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. (a)

SEC. 2. Executions for costs shall run against the goods and estate, and for want thereof against the bodies of executors and administrators, in actions commenced by or against them, and in actions commenced by or against the deceased in which they have appeared, for costs that accrued after they assumed the prosecution or defence, to be allowed to them in their administration account, unless the judge of probate decides that the suit was prosecuted or defended without reasonable cause.

SEC. 3. When a proper officer makes his return, on an execution issued under *the first* section [one], that he cannot find personal property of the deceased, or other means to satisfy it, a writ of seire facias, suggesting waste, may be issued against the executor or administrator; and if he does not show cause to the contrary, execution shall issue against him for the amount of the judgment and interest, not exceeding the amount of waste, if proved.

SEC. 4. When an executor or administrator ceases to be such, an action pending in his favor or against him may be prosecuted by or against an administrator de bonis non; and if he does not appear after due notice, judgment may be rendered, as if the suit had been commenced by or against him for debt and for costs, as herein provided. An administrator de bonis non may maintain an action on uncollected judgments recovered by the deceased, or by his executors or administrators, before their death or removal from office.

SEC. 5. When an executor or administrator ceases to be such after judgment against him, a writ of seire facias may be issued against the administrator de bonis non, and after due notice an execution may issue as provided in the preceding section; but the costs for which the executor or first administrator was personally liable, may be enforced against his executor or administrator. (b)

SEC. 6. A writ of error may be maintained by or against an administrator de bonis non, when it could be by or against an executor or first administrator.

(a) 14 Me., 324; 23 Me., 253; 24 Me., 29; 36 Me., 246; 61 Me., 471.

(b) 32 Me., 131, 175; 69 Me., 150.

SEC. 7. When the only plaintiff or defendant dies while an action that survives is pending, or after its commencement and before its entry, his executor or administrator may prosecute or defend as follows; the action, or an appeal, if made, may be entered, the death of the party suggested on the record, and the executor or administrator may appear voluntarily; if he does not appear at the second term after such death, or after his appointment, he may be cited to appear, and after due notice thereof, judgment may be entered against him by nonsuit or default.

SEC. 8. In addition to those surviving by the common law, the following actions survive; replevin, trover, assault and battery, trespass, trespass on the case, and petitions for and actions of review; and these actions may be commenced by or against an executor or administrator, or when the deceased was a party to them, may be prosecuted or defended by them. (a)

SEC. 9. When an action of trespass, or trespass on the case, is commenced or prosecuted against an executor or administrator, the plaintiff can recover only the value of the goods taken, or damage actually sustained; and when judgment is rendered against an executor or administrator in an action of replevin for a return of goods, those returned shall not be considered assets, and such return shall discharge him.

SEC. 10. When either of several plaintiffs or defendants in an action that survives, dies, the death may be suggested on the record, and the executor or administrator of the deceased may appear, or be cited to appear, as provided in section seven; and the action may be further prosecuted or defended by the survivors, and such executor or administrator jointly, or by either of them; and judgment may be entered against the survivors, and also against the goods and estate of the deceased in the hands of such executor or administrator, and a joint execution issued; and the survivors, if any, on both sides of the action, may testify as witnesses. (b)

SEC. 11. Any action against an executor or administrator, commenced within one year after notice is given by him of his appointment, shall be continued at the expense of the plaintiff until said year expires, and shall be barred by a tender of the debt within the year; excepting actions on claims not affected by the insolvency of the estate, and actions in case of appeals from commissioners of insolvency or other commissioners appointed by the judge of probate.

SEC. 12. No action against an executor or administrator, *com-*

(a) 3 Me., 176; 17 Me., 410; 30 Me., 201; 45 Me., 210; 46 Me., 159; 50 Me., 87; 59 Me., 342; 60 Me., 491; 62 Me., 279; 65 Me., 18.

(b) 37 Me., 552; 50 Me., 88; 59 Me., 343; 60 Me., 353-5; 61 Me., 17; 64 Me., 385.

CHAP. 87.

When the only party to an action dies, proceedings. R.S., c. 87, § 7. 19 Me., 345. 59 Me., 342-4.

Actions which survive; may be prosecuted, or defended by executor or administrator. R.S., c. 87, § 8.

In trespass, actual damage or value only, recoverable; goods returned in replevin, not assets. R.S., c. 87, § 9. 62 Me., 279.

When one of several parties dies, his ex'r or adm'r may prosecute or defend jointly with survivors, and joint judgment rendered; if survivors on both sides, these may be witnesses. R.S., c. 87, § 10.

Actions against ex'rs and adm'rs commenced within a year after appointment, to be cont'd. 1872, c. 85. 63 Me., 333. 68 Me., 30, 31. 72 Me., 345.

Action

CHAP. 87. *menced since the third day of February, eighteen hundred and sixty-nine,†* on a claim against the estate, shall be maintained, except as provided in sections thirteen and fifteen, unless such claim is first presented in writing and payment demanded, [or the claim is filed in the probate office, supported by the affidavit of the claimant or of some other person cognizant thereof, as provided in chapter sixty-four, section sixty-two,*] at least thirty days before the action is commenced and within two years after notice is given by him of his appointment; and none [shall be maintained] on a claim so presented and demanded, [or filed,*] unless commenced during said two years or within six months next following. (a) Executors or administrators residing out of the state at the time of giving notice of their appointment, shall appoint an agent or attorney in the state and insert his name and address in such notice. Executors or administrators removing from the state after giving notice of their appointment, shall appoint an agent or attorney in the state and give public notice thereof; demand or service made on any such agent or attorney shall have the same effect in law as if made on such executors or administrators. When an executor or administrator residing out of the state has no agent or attorney in the state, demand or service may be made on one of his sureties and shall have the same legal effect as if made on him.

—executors and administrators residing out of state required to appoint an agent or attorney in the state, on whom demand or service may be made.

When creditor absent from the state, may bring his action. 1872, c. 85. 5 Me., 114. 40 Me., 201. 47 Me., 75. 63 Me., 332, 333.

Proceedings when action does not accrue within two years. 1872, c. 85. 39 Me., 500. 63 Me., 332, 333.

SEC. 13. A creditor who was absent from the state during said two years, and had no sufficient attorney in the state, may make presentment and demand of his claim, and after thirty days [may] commence his action, within six months from his return or appointment of such attorney. When assets come into the hands of an executor or administrator after said term of two years, presentment and demand may be made by a creditor, and after thirty days an action [may be] commenced, within two years from the receipt of such assets and within six months after the creditor has notice thereof. Judgment rendered in any action authorized by this section, shall not disturb payments made in good faith by the executor or administrator prior to presentment of the claim sued in such action.

SEC. 14. When an action on a covenant or contract does not accrue within said two years, the claimant may file his demand in the probate office within that time, verified as required in case of claims presented to commissioners on insolvent estates; and the judge of probate shall direct that sufficient assets, if such there are,

(a) 3 Me., 19; 8 Me., 168; 11 Me., 151; 21 Me., 265; 37 Me., 552; 63 Me., 333, 334; 68 Me., 30, 31; 69 Me., 554; 71 Me., 101, 163, 490; 72 Me., 117, 222, 246, 344, 345, 346.

† [NOTE. Is not this clause obsolete?]

* [NOTE. This clause is suggested by Judge Peabody, of Portland, for the convenience of claimants, as well as to meet the case where an executor, not required to give bond, has left the state without appointing an attorney.]

shall be retained by the executor or administrator, unless the heirs or devisees of the estate give bond to the executor or administrator, with one or more sureties, approved by said judge, to pay whatever may be found due on said claim.

SEC. 15. When no bond is so given, an action may be brought by the claimant against the executor or administrator, within six months after his demand becomes due. But when a bond is given, assets shall not be reserved, but the estate shall be liable in the hands of the heirs or devisees, or those claiming under them, and an action may be brought on such bond. If anything is found due, the claimant shall have judgment therefor, and for his costs.

SEC. 16. When such claim has not been filed in the probate office within said two years, the claimant may have remedy against the heirs or devisees of the estate within one year after it becomes due, and not against the executor or administrator.

SEC. 17. When a vacancy occurs within said two years, and an administrator de bonis non is appointed, an additional year shall be allowed for the presentment and demand of claims against the estate; but the time whilst the vacancy continues shall not be deemed a part of the three years limited; and on any claim presented to the administrator de bonis non or his predecessor, and demanded within the said three years, an action may be commenced after thirty days, and within six months from the end of said three years, but not within one year from the notice of appointment given by the executor or first administrator.

SEC. 18. When any executor or administrator does not give legal notice of his appointment, he shall have no benefit from the limitations contained in this chapter; and actions may be commenced against a new administrator on the same estate as though he were the first administrator or executor, subject to the conditions and limitations contained in this chapter.

SEC. 19. 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.

EXECUTIONS TO ISSUE AFTER CREDITOR'S DECEASE.

SEC. 20. When a judgment creditor dies before the first execution issues, or before an execution issued in his lifetime is fully satisfied, such execution may be issued or renewed by order of any justice of the court rendering such judgment, in term time or vacation, or by like order of a municipal or police judge or trial justice rendering such judgment, upon the application, in writing, of the

Proceedings when bond is given and when not given.
1872, c. 85.
63 Me., 332.

When claim not filed within two years, remedy v. heirs or devisees.
1872, c. 85.
6 Me., 138.
63 Me., 332-4.

Time within which actions can be brought against administrators de bonis non.
1872, c. 85.
1 Me., 157.
14 Me., 323.

Limitation of actions v. adm'r de bonis non, when no notice.
1872, c. 85.
63 Me., 30.
—actions v. new adm'r on same estate.
Actions for legacies not affected; liability on bond for unfaithful administration.
R.S., c. 87, § 19.

How an execution may issue after creditor's decease.
R.S., c. 87, § 20.
71 Me., 190.

CHAP. 88. executor, or general or special administrator of the deceased creditor; and any execution so issued or renewed may be subsequently renewed; but no execution shall issue nor be renewed, after the term time within which it might have been done if the party had not deceased.

What the execution shall set forth, and to what uses property levied on shall be held. R.S., c. 87, § 21.

SEC. 21. In any execution so issued, originally or by renewal, besides the ordinary recitals it shall be set forth in substance, that since the rendition of judgment, the creditor, naming him, has deceased, and that the person whose name is inserted in his place, is the executor or administrator of his estate; and the command to the officer shall be the same as if the judgment had been recovered by the executor or administrator, who shall hold any real estate levied on, to the same uses as if he had recovered judgment in his representative capacity.



CHAPTER 88.

PARTITION OF REAL ESTATE.

- SEC. 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 co-tenants are named, and how served.
 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. Petitioner may reply by counter brief statement showing insufficiency of defence.
 7. Guardians for infants and insane persons, and agents for persons out of the state, to be appointed.
 8. Division of time for occupation of saw mills, may be made.
 9. Respondent claiming whole of specific part, may have a separate trial, and one having no interest, pays cost.
 10. Petitioner owning a less share than claimed, pays costs; proceedings. Owners may join or sever.

- SEC. 11. Petitioner dying or conveying, his heirs, devisees or grantees may be admitted to proceed. CHAP. 88.
12. Respondent dying, his heirs or devisees may be cited to appear.
 13. Commissioners to be appointed to set off shares together or separately.
 14. Commissioners to be sworn and certificate of oath made on warrant.
 15. Commissioners to give notice of time and place for partition; majority may decide, but all must be present.
 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 his payment of award to the others; report not to be accepted until award is paid.
 18. Court to determine share of expenses to be paid by each, and may issue execution therefor.
 19. When a share too large, or of too much value, is set off, a new division may be had on application to court within three years.
 20. How a new division shall be made.
 21. Report of commissioners confirmed, recommitted, or set aside. When confirmed, to be recorded.
 22. Judgment conclusive of all rights, except as after provided.
 23. When an unequal share is left for one out of the state, new partition may be made in three years.
 24. Person not a party, claiming in severalty, not affected by judgment.
 25. Person claiming a share assigned or left, not precluded from suit for its possession.
 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 set out.
 29. Lots reserved for public uses, to be first set off.

SEC. 1. Persons seized or having a right of entry into real estate in fee simple or for life, as tenants in common, joint tenants, or co-partners, may be compelled to divide the same by writ of partition at common law. (a) Partition by writ at common law. R.S., c. 88, § 1.

SEC. 2. Persons so entitled, and those in possession or having a right of entry for a term of years, as tenants in common, may present a petition addressed to the supreme judicial court held in the county where such estate is, clearly describing it, and stating whether it is a fee simple, for life, or for years, and the proportion claimed by them, [the names of] the other tenants in common, and their places of residence, if known, and whether any or all of them are unknown. (b) Partition by petition. What must be stated in it. R.S., c. 88, § 2.

SEC. 3. The petition may be filed in the clerk's office in vacation, if all the co-tenants are named in it. A copy thereof, attested by the clerk, left with each or at his last and usual place of abode, twenty days before the session of the court to which it is addressed, shall be sufficient service. If all co-tenants named, petition may be filed in clerk's office; service. R.S., c. 88, § 3.

(a) 12 Me., 144, 327, 400; 16 Me., 390; 17 Me., 427; 21 Me., 49; 31 Me., 487; 35 Me., 110; 52 Me., 25; 64 Me., 99.

(b) 5 Me., 461; 12 Me., 145, 327; 16 Me., 391; 17 Me., 427; 30 Me., 164; 52 Me., 416; 64 Me., 99.

CHAP. 88.

When not all named, it may be presented in any county, and notice ordered.

R.S., c. 88, § 4.
5 Me., 461.

When persons not notified may appear.

Pleadings how made.

R.S., c. 88, § 5.
34 Me., 36.

35 Me., 462.

36 Me., 18.

46 Me., 90.

68 Me., 272.

Pet'r may file counter brief statement, showing insufficient defence.

R.S., c. 88, § 6.
22 Me., 325.

Guardian for infant or insane, and agent for those out of state, to be appointed.

R.S., c. 88, § 7.

Division of time for occupation of saw mills.

R.S., c. 88, § 8.
64 Me., 465.

Respondent claiming a specific part, may have separate trial, and one having no interest pays costs.

R.S., c. 88, § 9.

When petitioner owns less than claimed, he pays costs; otherwise he recovers costs.

R.S., c. 88, § 10.

Owners may join or sever.

SEC. 4. When the co-tenants are not all named in the petition, it may be presented to the court in that, or in any other county, returnable in the county where the estate is, and such notice shall be given to the other co-tenants, as the court orders; and in case of non-compliance therewith, or other imperfection of notice, the court may order further notice to be given.

SEC. 5. A person interested and not named in the petition, or out of the state, and not so notified as to enable him to appear earlier, may, in the discretion of the court be permitted to appear and defend at any time before final judgment, on such terms as may be imposed. And any person, defendant in an action at law, or respondent in a petition for partition, may, jointly with others, or separately, by brief statement, without a plea of the general issue, allege any matter tending to show that partition ought not to be made as prayed for.

SEC. 6. The plaintiff or petitioner may reply by counter brief statement, alleging that the defendant or respondent has no interest in the premises, or other matter to show the insufficiency of the defence.

SEC. 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 had been out of the state one year before the petition was presented, and do not return before judgment for the partition is to be made.

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

SEC. 9. When it appears from the pleadings that one or more respondents claim to be seized of the whole of a specific parcel of the premises of which partition is prayed, there may first be a separate trial of that question only, at the discretion of the presiding judge. When it appears on trial that any 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.

SEC. 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 recover costs of the respondent. In such cases, or on default, a judgment that partition be made shall be entered. (a)

SEC. 11. The owners may join or sever in their petitions.

(a) 45 Me., 164; 46 Me., 90.

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.

SEC. 12. The petition is not abated by the death of a party respondent. His heirs or devisees, or if the estate is for a term of years, his executor or administrator may be cited to appear, and upon service on them, they shall become parties to the proceedings; and the court may order such judgment, and with such costs, as the law and facts require.

SEC. 13. After judgment that partition be made, the court shall appoint three or five disinterested persons as commissioners, to make partition and set off to each his share, which shall be expressed in the warrant. Their shares may be set off together, or in one tract, or the share of each may be assigned to him, at his election.

SEC. 14. Before proceeding to discharge their duty, the commissioners shall be sworn to the faithful and impartial performance of it; and the justice of the peace, before whom they are sworn, shall make his certificate thereof on the back of their warrant.

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

SEC. 16. When one of the tenants in common, by mutual consent, has had the exclusive possession of a part of the estate, and made improvements thereon, his share shall be assigned from or including such part; and the value of the improvements made by a tenant in common shall be considered, and the assignment of shares be made in conformity therewith. (b)

SEC. 17. When any parcel of the estate to be divided is of greater value than either party's share, and cannot be divided without great inconvenience, it may be assigned to one party by his paying the sum of money awarded to the parties who have less than their share; but the report shall not be accepted, until the sums so awarded are paid or secured to the satisfaction of the parties entitled thereto.

SEC. 18. An account of all the charges and expenses attending the partition, shall, on request of any petitioner, be presented to the court, and the presiding judge shall determine, after giving notice to all concerned, the equitable proportion thereof to be paid by the several owners in the lands of which partition has been

CHAP. 88.

When petitioner dies or conveys, heirs, grantees, &c., may proceed. R.S., c. 88, § 11. 60 Me., 208.

On death of respondent, heirs or devisees may be cited in. R.S., c. 88, § 12.

Com'rs to be appointed and how to set off shares. R.S., c. 88, § 13. 15 Me., 367. 50 Me., 264.

Oath, and certificate on warrant. R.S., c. 88, § 14.

Notice; all to be present, but majority may report. R.S., c. 88, § 15.

Share of tenant how assigned; his improvements to be considered. R.S., c. 88, § 16.

Parcel of greater value than a share may be assigned to one who pays to others; when. R.S., c. 88, § 17. 15 Me., 367. 30 Me., 219. 62 Me., 113, 114.

Partition of real estate, expenses of, how apportioned. 1876, c. 72.

(a) 20 Me., 293; 32 Me., 137; 38 Me., 540.

(b) 33 Me., 540; 50 Me., 265; 68 Me., 140, 143, 570; 71 Me., 379.

CHAP. 88. made, and execution therefor may be issued against any owner neglecting to pay.

When a share of greater value is set off to one, party out of state may have new division in 3 years. R.S., c. 88, § 19.
How the new partition shall be made. R.S., c. 88, § 20.

SEC. 19. If a share larger than his real interest, or more than equal in value to his proportion, is set off to a part owner, an aggrieved part owner, who at the time of partition was out of the state and [was] not notified in season to prevent it, his heirs, or assigns, may, within three years thereafter, apply to the court that made the partition, and it shall cause a new partition to be made.

SEC. 20. In such new partition, so much and no more shall be taken from a share, as it is considered more than its proportion of the whole, estimated as in the state when divided; and if any improvements have been made on the part taken off, reasonable satisfaction therefor, to be estimated by the commissioners, shall be made to him, who made them, by him to whose share they are added; and the court may issue execution therefor, and for costs of the new partition.

Report; may be confirmed, recommitted, or set aside. When confirmed, to be recorded. R.S., c. 88, § 21.
20 Me., 294.
30 Me., 219.
39 Me., 218.

SEC. 21. Commissioners in all cases shall make and sign a written return of their proceedings, and make return thereof with their warrant to the court from which it issued. Their report may be confirmed, recommitted, or set aside and new proceedings be had as before. When confirmed, judgment shall be entered accordingly, and recorded by the clerk, and by the register of deeds of the district where the estate is.

Judge's conclusion of all rights, save as follows: R.S., c. 88, § 22.
29 Me., 42,
128, 130, 560.

SEC. 22. Such judgment shall be conclusive on all rights of property and possession of all parties and privies to the judgment, including all persons who might have appeared and answered, except as hereinafter provided.

When an unequal share is left for one out of state, a new partition may be made within three years. R.S., c. 88, § 23.

SEC. 23. When a person to whom a share was left, was out of the state when notice was served on him, and did not return in season to become a party to the proceedings, he may, within three years after final judgment, apply to the same court for a new partition; and if it appears to the court that the share left for him was less than he was entitled to, or that it was not equal in value to his proportion of the premises, it may order a new partition as provided in section twenty.

Claimant not party to proceedings, not affected by judge's. R.S., c. 88, § 24.
33 Me., 102.

SEC. 24. When a person, not a party to the proceedings, claims to hold the premises described, or any part thereof in severalty, he shall not be precluded by the judgment for partition; but may bring his action therefor, as if no such judgment had been rendered.

A person not party claiming a share assigned or left, not precluded from suit for its

SEC. 25. When a person, not a party to the proceedings, claims a share assigned to or left for a part owner, he shall be concluded so far as it respects the assignment of the shares; but shall not be prevented from maintaining an action, within the time in which it might have been brought if no judgment for partition had been

rendered, for the share claimed, against the tenant in possession, as if the demandant had claimed the piece demanded, instead of an undivided part of the whole.

CHAP. 89.
possession.
R.S., c. 88, § 25.

SEC. 26. When a person not a party to the proceedings, claims to have been a part owner of the estate, to whom no share was assigned or left, he shall be concluded so far as it respects the partition, but not from maintaining an action, against each person holding a share, for his proportion of each share as owned before partition was made.

Part owner to whom no share was assigned, may sue each shareholder for his part.
R.S., c. 88, § 26.

SEC. 27. When a person to whom a share has been assigned or left, has been evicted by an elder and better title than that of the parties to the judgment, he shall be entitled to a new partition of the residue, as if no partition had been made.

A person evicted of his share to have a new partition.
R.S., c. 88, § 27.

SEC. 28. A person having a mortgage, attachment, or other lien on the share in common of a part owner, shall be concluded by the judgment, so far as it respects the partition, but his mortgage or lien shall remain in force on the part assigned or left to such part owner.

A mortgage, attachment or lien on a share in common holds the share set out.
R.S., c. 88, § 28.
See c. 5, § 25.

SEC. 29. When portions or lots are reserved for public uses in a tract of land to be divided, they shall first be set out, of an average quality and situation, and a return made thereof to the land office, with a description of its quality and location; and the commissioners' return of partition, accepted and recorded as before provided, shall be a valid location of such reserved lands.

Lots reserved for public uses to be first set off.
R.S., c. 88, § 29.
17 Me., 427.
61 Me., 411.

CHAPTER 89.

PETITIONS AND ACTIONS OF REVIEW.

PETITIONS FOR REVIEW.

- SEC. 1. Reviews granted on petitions within three years after judgment, also in special cases.
2. Attorney may sign the petition. Property may be attached thereon; notice how ordered and when returnable.
 3. How evidence discovered pending petition may be used at hearing.
 4. Newly discovered evidence and the witnesses must be stated under oath in the petition. New cumulative evidence admissible.
 5. A justice of the court may grant a stay of execution or a supersedeas on filing a bond.

SECOND REVIEW.

- SEC. 6. When and how a second review may be granted.

ACTIONS OF REVIEW.

- SEC. 7. Writs of review issued and entered at the first term in the county where judgment was rendered. Copies to be produced.

CHAP. 89.

SEC. 8. What writ is to recite and how to be served.

9. When original plaintiff is plaintiff in review, property may be attached.
10. When pleadings have been made, cause tried on that issue; if not on new pleadings.
11. When plaintiff recovers greater sum, how judgment rendered.
12. When a less sum, how judgment rendered. When wholly reversed, how rendered; costs.
13. In actions of replevin and set off, plaintiff regarded as defendant.
14. If judgment is recovered on petition filed in one year, levy void.
15. Party prevailing has costs; court may impose terms respecting them.

PETITIONS FOR REVIEW.

Review, within three years after judgment, and in special cases. R.S., c. 89, § 1.

In 3 years after demand by officer on ex' on by default without appearance.

33 Me., 586.
42 Me., 571.
67 Me., 408.

If surprised, and afterwards discovers proof of perjury.

1 Me., 324.
3 Me., 93.
56 Me., 550.

By party in interest and not of record, on filing bond for costs.

63 Me., 464.

In case action and all other matters are referred and judgment on report.

What evidence may be used at the trial.

60 Me., 53.

When the declaration

SEC. 1. The supreme judicial court held by one justice, may grant one review in civil actions, including petitions for partition, and for certiorari, and proceedings for the location of lands reserved for public uses, when judgment has been rendered in any judicial tribunal, if partition therefor is presented within three years after the rendition of judgment, and in the special cases following: (a)

First.—When a petition for review of an action defaulted without appearance, is presented within three years after an officer having the execution issued on the judgment therein demands its payment of the defendant or his legal representative.

Second.—When the petitioner shows that a witness testified falsely to material facts against him in the trial of the action, whereby he was surprised, and was then unable to prove the falsity, but has since discovered evidence, which with that before known, is sufficient proof in the opinion of the court, that the testimony was false; or if the witness has been convicted of perjury therefor.

Third.—On the petition of a party in interest who was not a party to the record, setting forth the fact of such interest, and upon filing a bond with sufficient surety or sureties, approved by the presiding judge, to secure the party of record against any judgment recovered by the defendant in review.

Fourth.—When a judgment has been rendered on the report of referees in an action referred by rule of court, and other matters in dispute between the parties were included in the rule of reference. The depositions used before the referees may be used on the hearing of such petition, and if review is granted, they may be used at the trial; and all matters embraced in the rule of reference, although not wholly contained in the writ shall be included and tried in review.

Fifth.—When a material amendment of the declaration is made

(a) 1 Me., 324; 3 Me., 93; 4 Me., 61, 537; 6 Me., 412, 480; 8 Me., 212; 19 Me., 108, 260; 24 Me., 170; 27 Me., 538; 33 Me., 233, 586; 39 Me., 170; 72 Me., 366.

after the entry of the action, without actual notice thereof to the defendant, and judgment is rendered on default, a review may be granted before execution of final process in the action, or within three years thereafter.

CHAP. 89.

is amended without notice to def't.

Sixth.—In cases mentioned in section fifty-four of chapter seventy-six.

In cases in c. 76, § 54.

Seventh.—A review may be granted in any case where it appears that justice has not been done, through fraud, accident, mistake or misfortune; and that a further hearing would be just and equitable, if a petition therefor is presented to the court within six years after judgment.

Within six years in case of fraud, accident or mistake.
42 Me., 571.
60 Me., 52.
67 Me., 408.

Eighth.—Any defendant in the original judgment may petition in the name of all, by furnishing to each of his co-defendants requiring it, such security against all liability therefrom as the court deems reasonable; and the court, on motion of any original co-defendant shall require such security in any stage of the proceedings.

By one def't in name of all, on giving security to the others.
44 Me., 84.

SEC. 2. A petition for review may be signed by the petitioner's attorney when the facts therein stated are known to him, and the petitioner is out of the state at the time of filing it; and the petition may be inserted in a writ of attachment and property attached thereon, the same as on other writs; and notice thereon may be ordered by the supreme judicial court or any justice thereof in term time or vacation, returnable in the county where the judgment was rendered, and it must be given accordingly.

When att'y may sign petition.

SEC. 3. When a petitioner discovers new and important testimony during the pendency of his petition, he may avail himself of it at the hearing by serving notice thereof on the adverse party fourteen days at least before court, stating the names of the witnesses, and in substance what he expects to prove by them.

Attachment thereon.
Notice, how ordered and when returnable.
1878, c. 37.

Evidence discovered pending petition, how used at hearing.
R.S., c. 89, § 3.
6 Me., 412.
36 Me., 11.

SEC. 4. When the discovery of new evidence is alleged in the petition, the names of the witnesses to prove it, and what each is expected to testify, must be stated under oath. Newly discovered cumulative evidence is admissible, and shall have the same effect as other newly discovered evidence. (a)

Evidence and witnesses must be stated on oath in petition.
New cumulative evidence, admissible.
R.S., c. 89, § 4.

SEC. 5. On presentation of a petition for review, any justice of court may in term time, or in vacation, stay execution on the judgment complained of, or grant a supersedeas, upon a bond filed with sureties approved by him, or by such person as he appoints, in double the amount of the damages and costs, conditioned to pay said amount if the petition is denied, or the amount of the final judgment on review, if it is granted, with interest thereon at the rate of twelve per cent. from the date of the bond to the time of final judgment.

Justice of court may grant stay of ex'on or supersedeas on filing bond.
R.S., c. 89, § 5.
47 Me., 439.
64 Me., 237, 239.

(a) 44 Me., 65; 50 Me., 119; 53 Me., 356; 56 Me., 550.

CHAP. 89.

SECOND REVIEW.

When and how second review may be granted. R.S., c. 89, § 6.

SEC. 6. A second review may be granted on a petition filed within three years after judgment on the first, when the court thinks [that] justice manifestly requires it, and on such terms as it imposes; but no second review shall be granted except by the full court, in a case in which more than one verdict has been rendered against the petitioner.

ACTIONS OF REVIEW.

Writ of review to be issued and entered at first term, in county where judgment was rendered. Copies to be produced. R.S., c. 89, § 7.

SEC. 7. When a review is a matter of right as provided by section four of chapter eighty-two, or when granted on petition, a writ of review shall be issued, and the trial [shall] take place *in the supreme judicial court** in the county in which the judgment was rendered. It shall be entered at the next term after the review is granted, unless leave is granted to enter it at the second term; and the plaintiff in review shall produce and file an attested copy of the writ, judgment, proceedings, and depositions, or their originals, in the former suit. (a)

What writ is to recite and how to be served. R.S., c. 89, § 8.

SEC. 8. In the writ of review, it shall be sufficient to describe the former action and judgment so as to identify it. The writ shall contain a summons to appear and answer to the plaintiff in review, and it may be served as other writs, and when the party is not an inhabitant of or found within the state, it may be served on his attorney in the original suit.

When original pl'ff is pl'ff in review, property may be attached. R.S., c. 89, § 9.

SEC. 9. When the original plaintiff is plaintiff in review, the property of the defendant may be attached, as it might have been in the original suit, and the form of the writ [shall] be varied accordingly; but no attachment made, or bail taken in the original action, shall be *holden* [held] to satisfy the judgment on review.

When pleadings had been made, cause to be tried on that issue; if not, on new pleadings. R.S., c. 89, § 10.

SEC. 10. The proper pleadings shall be made on review, when no issue had been joined before judgment in the original action; when issue has been so joined, the cause shall be tried thereon; but amendments, brief statements, and other issues, may be made by leave of court, and the cause may be tried and disposed of as if it were an original suit.

When plaintiff recovers greater sum, judgment, how rendered. R.S., c. 89, § 11. 38 Me., 113. 64 Me., 238, 239.

SEC. 11. Judgment in the suit reviewed, shall be given without regard to the former judgment, except as follows. *When the original plaintiff recovers a greater sum than he did by the first judgment as debt or damage, he shall have judgment therefor, or for so much thereof as remains unsatisfied, and for costs on review.* [When the original plaintiff recovers on review as debt or damage, a sum exceeding that recovered by the first judgment, he shall

* [QUERY. Ought not the review of an action tried in the superior court to be tried in the same court?]

(a) 1 Me., 405; 61 Me., 336; 68 Me., 480, 481; 72 Me., 338.

have judgment for the debt or damage recovered on review, or for so much thereof as remains unsatisfied, and for costs on review.*]

CHAP. 90.

SEC. 12. When the sum first recovered is reduced, the original defendant shall have judgment for the difference, with costs, on the review; and if the former judgment has not been satisfied, one judgment may be set off against the other, and execution be issued for the balance. When the original judgment is wholly reversed, judgment shall be entered in review for the amount of the former judgment and costs, with interest thereon, and for such further sum as the prevailing party would have been entitled to recover as costs in the original action, if, in the opinion of the court, justice requires it. In such case, if the original judgment remains unpaid, it shall be cancelled by a set-off entered of record, in the judgment on review, and execution shall issue for the balance only; otherwise for the amount of the latter judgment.

When sum first recovered is reduced, how judgment is rendered.

When wholly reversed, how rendered.
Costs.
R.S., c. 89, §12.
1 Me., 255.
2 Me., 397.
38 Me., 113.
47 Me., 440,
529.
48 Me., 288.
64 Me., 238,
239.

SEC. 13. When actions of replevin, and actions in which a claim in set-off was filed, are reviewed, the defendant shall be regarded as in the position of a plaintiff, so far as it respects the damages awarded to him.

In actions of replevin and set-off, plaintiff regarded as defendant.
R.S., c. 89, §13.

SEC. 14. If, on a petition for review, commenced within one year after an execution issued on the original judgment is levied on real estate, such judgment is finally reversed, the levy is void.

If judg't is reversed on petition filed within year, levy void.

SEC. 15. In all actions of review the party prevailing recovers costs, and shall also recover the costs to which he would have been entitled if he had prevailed in the original action, unless the court otherwise order[s]; but the court granting a review, may impose terms respecting costs. (a)

R.S., c. 89, §14.
47 Me., 529.
Party prevailing has costs; court may impose terms.
R.S., c. 89, §15.

* [NOTE. This clause is substituted at the suggestion of Mr. Justice Virgin, of the supreme judicial court, to meet the decision in *Crehore v. Pike*, 47 Me., 438.]

(a) 1 Me., 255; 2 Me., 397; 40 Me., 332; 64 Me., 239.

CHAPTER 90.

MORTGAGES OF REAL ESTATE.

- SEC. 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. Mortgagor may redeem within three years.
7. In case of mortgagor's death, proceedings for redemption.

- CHAP. 90. SEC. 8. Form of declaring in a suit to obtain possession on mortgage. Conditional judgment, and judgment as at common law, in certain cases.
9. Form of conditional judgment; when to be paid; form of judgment when condition is for some act other than payment of money.
 10. Judgment for defendant, if nothing is due.
 11. Action for foreclosure by executor or administrator.
 12. Mortgages to be assets in hands of administrators, who are to be seized to use of heirs, and when paid may give discharges.
 13. Against whom action on a mortgage shall be brought.
 14. Proceedings in equity to redeem a mortgage.
 15. Proceedings when the amount due on a mortgage has been paid or tendered, and when not.
 16. When bill to redeem is brought before entry, breach, payment or tender, courts to order notice, if mortgagee or assignee is out of state. Remedy of innocent assignee, in case of fraudulent mortgage.
 17. Provisions for redemption when the mortgagee is out of the state.
 18. When mortgagee or assignee is out of state, provisions for redemption after payment or tender, and before foreclosure.
 19. Limitation of such bill in equity.
 20. Court may order others to be joined as defendants, and notified.
 21. Award of execution on decree of court.
 22. Deduction of rents and profits from the sum brought into court for redemption.
 23. State treasurer may discharge or foreclose mortgages made or assigned to the state.
 24. Bill in equity for redemption may be filed against the state.
 25. Where to be filed and proceedings thereon.
 26. On decease of a person entitled to redeem, his administrator or heir may redeem.
 27. Tender may be made to guardian of mortgagee, if under guardianship.
 28. How mortgages may be discharged.
 29. Mortgage may be discharged by attorney at law. Proviso.
 30. Redemption of estate from purchaser of equity of redemption.
 31. Writ of entry against a mortgagee in possession after mortgage paid, and before foreclosure perfected.

How mortgages of real estate are made. R.S., c. 90, § 1.

SEC. 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, and 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. (a)

Mortgagee may enter before or after breach, unless otherwise agreed. 1881, c. 84, § 1.

SEC. 2. Any mortgagee, or person claiming under him, may enter on the premises, or recover possession thereof, before or after breach of condition, when there is no agreement to the contrary; but in such case, if the mortgage is afterwards redeemed, the amount of the clear rents and profits from the time of taking

(a) What constitutes a mortgage; 2 Me., 136; 5 Me., 88; 8 Me., 250; 10 Me., 199; 12 Me., 349; 18 Me., 105; 21 Me., 197; 23 Me., 241; 24 Me., 189; 27 Me., 533; 32 Me., 145; 36 Me., 123; 38 Me., 448; 40 Me., 382; 43 Me., 372, 566; 44 Me., 299; 47 Me., 236; 49 Me., 363, 479; 50 Me., 98, 175, 250; 53 Me., 11, 464; 52 Me., 98; 55 Me., 388, 407; 68 Me., 488; 70 Me., 209; 71 Me., 553.

possession, shall be accounted for and deducted from the sum due on the mortgage. (*a*) CHAP. 90.

SEC. 3. After breach of the condition, if the mortgagee, or any one claiming under him, desires to obtain possession of the premises for the purpose of foreclosure, he may proceed in either of the following ways, viz.: (*b*) Modes of obtaining possession for foreclosure. R.S., c. 90, § 3.

First.—He may obtain possession under a writ of possession issued on a conditional judgment, as provided in section nine, 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 [has been] obtained. (*c*) —by writ of possession. 1881, c. 84, § 2.

Second.—He may enter possession, and hold the same by consent in writing of the mortgagor, or the person holding under him. (*d*)* —by entry with consent. R.S., c. 90, § 3.

Third.—He may enter peaceably and openly, if not opposed, in the presence of two witnesses, and take possession of the premises; and a certificate of the fact and time of such entry shall be made, signed, and sworn to by such witnesses before a justice of the peace; and such written consent and certificates shall be recorded in each registry of deeds in which the mortgage is or by law ought to be recorded, within thirty days next after the entry is made. (*e*) * —by peaceable entry.

SEC. 4. Possession obtained in either of these three modes, and continued for the three following years, shall forever foreclose the right of redemption. (*f*) Foreclosure in 3 years. R.S., c. 90, § 4.

SEC. 5. If after breach of the condition, the mortgagee, or any person claiming under him, is not desirous of taking and holding possession of the premises, he may proceed for the purpose of foreclosure in either of the following modes: Modes of foreclosing without taking possession. R.S., c. 90, § 5.

(*a*) Rights of parties; 2 Me., 136, 175, 328, 389; 5 Me., 92; 14 Me., 132; 15 Me., 307; 18 Me., 105; 19 Me., 55, 99, 433; 20 Me., 114; 21 Me., 249, 467, 500; 24 Me., 404; 25 Me., 218, 248, 345; 27 Me., 533; 29 Me., 116, 169; 30 Me., 367; 33 Me., 42; 34 Me., 90, 189; 35 Me., 40, 220, 551; 36 Me., 123, 284, 438; 40 Me., 255; 41 Me., 116, 252; 42 Me., 188; 44 Me., 120; 45 Me., 97, 388, 414; 47 Me., 513; 49 Me., 428; 50 Me., 165, 449, 463; 51 Me., 49; 52 Me., 102, 116, 130, 185, 406; 55 Me., 495, 522; 58 Me., 367; 66 Me., 275, 276; 67 Me., 547; 72 Me., 281.

Transfers of mortgages; 2 Me., 331; 5 Me., 276; 8 Me., 281; 23 Me., 346; 24 Me., 191; 27 Me., 240; 31 Me., 313; 32 Me., 202; 41 Me., 223; 44 Me., 302; 46 Me., 447; 50 Me., 177; 51 Me., 123; 52 Me., 185; 71 Me., 379.

(*b*) 18 Me., 199; 21 Me., 123; 23 Me., 25; 24 Me., 156; 35 Me., 557; 40 Me., 523; 42 Me., 38; 48 Me., 62; 49 Me., 266, 378; 51 Me., 381.

(*c*) 27 Me., 241; 33 Me., 198; 35 Me., 551; 45 Me., 452; 51 Me., 395; 52 Me., 469; 55 Me., 522.

(*d*) 28 Me., 353; 29 Me., 57; 33 Me., 364; 38 Me., 551; 41 Me., 71.

(*e*) 4 Me., 495; 37 Me., 388; 47 Me., 296; 50 Me., 473; 52 Me., 135; 58 Me., 368; 64 Me., 161; 66 Me., 272, 273.

(*f*) 3 Me., 263; 7 Me., 33; 23 Me., 25; 24 Me., 156; 37 Me., 388; 42 Me., 190; 58 Me., 368; 64 Me., 162; 66 Me., 273; 67 Me., 312.

* [QUERY suggested to the commissioner by Hon. Nahum Morrill, of Auburn. Ought not the statute to require a certificate of the *fact of entry*, in addition to the written consent of the mortgagor?]

CHAP. 90.

—by publishing notice.
 25 Me., 392.
 38 Me., 258.
 45 Me., 99,
 452.
 46 Me., 274,
 497.
 49 Me., 103,
 379.
 53 Me., 74.
 55 Me., 544.
 58 Me., 367.
 61 Me., 54.
 63 Me., 544.
 66 Me., 170.
 71 Me., 445.
 —by serving notice.

Mortgagor may redeem within three years.
 1876, c. 113.
 20 Me., 271.
 36 Me., 51.

—parties may agree upon a less time.

Mortgages, redemption of, in case of decease of mortgagee.
 1874, c. 243, §1.

—administrator may be appointed.

—notice to be given.

Form of de-

First.—He may give public notice in a newspaper printed in the county where the premises are situated, if any, or if not, in the state paper, three weeks successively, of his claim by mortgage on such real estate, describing the premises intelligibly, and naming the date of the mortgage, and that the condition in it is broken, by reason whereof he claims a foreclosure; and cause a copy of such printed notice, and the name and date of the newspaper in which it was last published, to be recorded in each registry of deeds in which the mortgage deed is or by law ought to be recorded, within thirty days after such last publication.

Second.—He may cause an attested copy of such notice to be served on the mortgagor or his assignee, if he lives in *this* [the] state, by the sheriff of the same county or his deputy, by delivering it to him in hand or leaving it at his place of last and usual abode; and cause the original notice and the sheriff's return thereon to be recorded within thirty days after such service as aforesaid; and in all cases the certificate of the register of deeds shall be prima facie evidence of the fact of such entry, notice, publication of foreclosure, and of the sheriff's return.

SEC. 6. The mortgagor, or person claiming under him, may redeem the mortgaged premises within three years next after the first publication, or the service of the notice mentioned in the preceding section, and if not so redeemed his right of redemption shall be forever foreclosed; *provided*, [that] the mortgagor and mortgagee may agree upon a less time, not less than one year, in which the mortgage shall be forever foreclosed, which agreement shall be inserted in the mortgage and be binding on the parties, their heirs and assigns, and shall apply to *each and* all the modes prescribed by statute for the foreclosure of mortgages on real estate.

SEC. 7. Whenever any mortgagee or his assignee *shall* die[s], and there is no executor or administrator to receive the mortgage money, the mortgagor or person claiming under him having right to redeem, may apply to the judge of probate of the county where the estate mortgaged is situated, for the appointment of an administrator to such estate, and if, after due notice to all parties interested in the estate, they neglect or refuse to take out administration for thirty days *after such notice*, then the judge may commit administration to such person as he deems suitable, who shall have full power to act as such with reference to said mortgage as is already provided by law. In all such cases, however, personal notice shall first be given to the widow and heirs of the deceased known to be living in the state, either by service on them in person or by leaving such notice at their last and usual place of abode.

SEC. 8. The mortgagee, or 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 on default, demurrer, verdict, or otherwise, that the plaintiff is entitled to possession, and that the condition *was* [had been] broken when the action was commenced, the court shall, on motion of either party, award the conditional judgment, unless it appears that the tenant is not the mortgagor or a person claiming under him, or that the owner of the mortgage proceeded for foreclosure conformably to sections five and six before the suit was commenced, the plaintiff not consenting to such judgment; and unless such judgment is awarded, judgment shall be entered as at common law.

SEC. 9. The conditional judgment shall be, that if the mortgagor, his heirs, executor or administrator, pay the sum [that] the court adjudges to be due and payable, with interest, within two months from the time of judgment, and shall also pay such other sums as the court adjudges to be thereafter payable, within two months from the time they fall due, no writ of possession shall issue and the mortgage shall be void; otherwise it shall issue in due form of law, upon the first failure to pay according to said judgment. And if, after the expiration of three years from the time of the rendition of the judgment, the writ of possession has not been served or the judgment wholly satisfied, another conditional judgment may, on scire facias sued out in the name of the mortgagee or assignee, be rendered, and a writ of possession issued as before provided. When the condition is for doing some other act than the payment of money, the court may vary the conditional judgment 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.

SEC. 10. 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. (a)

SEC. 11. 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 had if living.

SEC. 12. Lands mortgaged to secure the payment of debts, or the performance of any collateral engagement, and the debts so secured, shall on the decease of the mortgagee, or person claiming under him, 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 of the widow and heirs, or devisees, or creditors of the deceased, as the case may be; and when redeemed, they may

CHAP. 90.

declaring in a suit to obtain possession on mortgage, &c. 1881, c. 84, § 3. 2 Me., 332. 13 Me., 186. 14 Me., 299. 17 Me., 439. 19 Me., 276, 366. 23 Me., 135. 42 Me., 188. 53 Me., 77. 56 Me., 10.

Form of conditional judgment, and when to be paid. R.S., c. 90, § 8. 35 Me., 551, 532. 53 Me., 78. 64 Me., 446. 70 Me., 345.

1872, c. 18.

R.S., c. 90, § 8.

Judgment if nothing due. R.S., c. 90, § 9.

Action for foreclosure by ex'r or adm'r. R.S., c. 90, § 10.

Mortgages to be assets in the hands of adm'rs, and when paid they may give discharges. R.S., c. 90, § 11. 20 Me., 163. 31 Me., 313. 51 Me., 124. 56 Me., 210.

CHAP. 90. receive the money, and give effectual discharges therefor, and releases of the mortgaged premises.

Against whom action on a mortgage shall be brought.
R.S., c. 90, § 12.
14 Me., 299.
17 Me., 439.

SEC. 13. An action on a mortgage deed may be brought against a person in possession of the mortgaged premises; and the mortgagor, or person claiming under him, may, in all cases, be joined with him as a co-tenant, whether he then has any interest or not in the premises; but he shall not be liable for costs, when he has no such interest, and makes his disclaimer thereto upon the records of the court.

Proceedings in equity to redeem a mortgage.
R.S., c. 90, § 13.

SEC. 14. Any mortgagor, or other person having a right to redeem lands mortgaged, may demand of the mortgagee or person claiming under him a true account of the sum due on the mortgage, and of the rents and profits, and money expended in repairs and improvements, if any; and if he unreasonably refuses or neglects to render such account in writing, or, in any other way by his default prevents the plaintiff from performing or tendering performance of the condition of the mortgage, he may bring his bill in equity for the redemption of the mortgaged premises within the time limited in section six, and therein offer to pay the sum found to be equitably due, or to perform any other condition, as the case may require; and such offer shall have the same force as a tender of payment or performance before the commencement of the suit; and the bill shall be sustained without such tender, and thereupon he shall be entitled to judgment for redemption and costs. (a)

When the amount due on a mortgage has been paid or tendered; when not.
R.S., c. 90, § 14.
7 Me., 33.
27 Me., 241.
30 Me., 360.
36 Me., 51.
40 Me., 117.
47 Me., 54.
52 Me., 561.

SEC. 15. When the amount due on a mortgage has been paid or tendered to the mortgagee, or person claiming under him, by the mortgagor or the person claiming under him, within the time so limited, he may have a bill in equity for the redemption of the mortgaged premises, and compel the mortgagee, or person claiming under him, by a decree of the supreme judicial court, to release to him all his right and title therein; though such mortgagee or his assignee has never had actual possession of the premises for breach of the condition; or, without having made a tender before the commencement of the suit, he may have his bill in the manner prescribed in section seventeen, and the cause shall be tried in the same manner.

When bill to redeem is brought before entry, breach,

SEC. 16. When the bill to redeem is brought before an actual entry for breach of the condition, and before payment or tender, if the mortgagee, or the person claiming under him, is out of the

(a) 8 Me., 250, 282; 18 Me., 210; 19 Me., 366; 20 Me., 271; 21 Me., 129; 23 Me., 48, 178; 24 Me., 298; 25 Me., 387; 28 Me., 354; 34 Me., 271; 35 Me., 220; 36 Me., 123; 38 Me., 329; 39 Me., 112; 41 Me., 223; 42 Me., 246; 44 Me., 300; 46 Me., 299, 443, 448, 496; 48 Me., 111; 49 Me., 565; 50 Me., 174, 240; 51 Me., 348; 52 Me., 135, 408, 544; 53 Me., 142, 246, 353, 441; 54 Me., 185, 406; 55 Me., 157; 56 Me., 159, 572; 62 Me., 577; 65 Me., 198, 288; 66 Me., 190, 272, 470; 68 Me., 193, 194; 69 Me., 193.

state and has not had actual notice, the court shall order proper notice to be given to him, and continue the cause as long as necessary. When a mortgage is alleged and proved to be fraudulent, in whole or in part, an innocent assignee of the mortgagor, for a valuable consideration, may file his bill within the time allowed to redeem, and be allowed to redeem without a tender.

SEC. 17. When *the* [a] mortgagee, or person claiming under him, residing out of the state, or whose residence is unknown to the party entitled to redeem, has commenced proceedings under section five, or when such mortgagee or claimant having no tenant, agent, or attorney in possession on whom service can be made, has commenced proceedings under section three, in either case the party entitled to redeem may file his bill, as prescribed in section fourteen, and pay at the same time to the clerk of the courts the sum due, which payment shall have the same effect as a tender before the suit; and the court shall order such notice to be given of the pendency of the suit, as they judge proper.

SEC. 18. When an amount due on a mortgage has been paid, or tendered to the mortgagee, or person claiming under him, before the foreclosure of the mortgage, and the mortgagee or his assignee is beyond the limits of *this* [the] state, and the mortgage is undischarged on the record, the mortgagor or person claiming under him, may have his bill in equity for the redemption of the mortgaged premises, as provided in section fifteen, or for the discharge of the mortgage; and on notice of the pendency of the bill, given by publication in some newspaper in the county where said premises are situated, three weeks successively, the last publication being thirty days before the time of hearing, or in such other way as the supreme judicial court or a judge thereof, in vacation, [may] orders, said court may decree a discharge of such mortgage; and the record of such decree in the records for deeds in said county shall be evidence of the discharge of said mortgage.

SEC. 19. No bill in equity shall be brought for redemption of mortgaged premises, founded on a tender of payment or performance of the condition made before the commencement of the suit, unless within one year next after making such tender.

SEC. 20. In any suit brought for the redemption of mortgaged premises, when it is necessary to the attainment of justice that any other person, besides the defendant, claiming an interest in the premises, should be made a party with the original defendant, on motion, the court may order him to be served with an attested copy of the bill amended in such manner as *they* [it] may direct, and on his appearance, the cause shall proceed as though he had been originally joined.

SEC. 21. The court, when a decree is made for the redemption

CHAP. 90.

payment or tender, courts to order notice if mortgagee is out of state; remedy for fraudulent mortgage. R.S., c. 90, §15. Provisions for redemption when the mortgagee is out of the state. 1872, c. 41. R.S., c. 90, §16.

Mortgages, redemption of after payment or tender, and before foreclosure, when mortgagee is beyond the state. 1874, c. 233, §1.

—notice to be published.

—discharge of.

Limitation of such a bill in equity. R.S., c. 90, §17. 60 Me., 233.

Court may order other persons to be joined as defendants, and notified. R.S., c. 90, §18.

Award of ex-

CHAP. 90.

Execution on decree of court, jointly or severally. R.S., c. 90, § 19.
Deduction of rents and profits from the sum brought into court for redemption. R.S., c. 90, § 20, 37 Me., 310, 53 Me., 67.

State treasurer may discharge or foreclose mortgages made to state. R.S., c. 90, § 21.

Bill in equity for redemption may be filed against state. R.S., c. 90, § 22.

Where to be filed, and proceedings thereon. R.S., c. 90, § 23.

On decease of person entitled to redeem, his administrator or heir may redeem. If residing out of state, any one may tender for him. R.S., c. 90, § 24.

Tender to guardian of mortgagee, and he may discharge mortgage. R.S., c. 90, § 25.

How mort-

of mortgaged lands, may award execution jointly or severally, as the case requires; and for sums found due for rents and profits over and above the sums reasonably expended in repairing and increasing the value of the estate redeemed.

SEC. 22. When any sum of money is brought into court in a suit for redemption of mortgaged premises, the court may deduct therefrom such sum as the defendant is chargeable with on account of rents and profits by him received, or costs awarded against him; and the person to whom a sum of money is tendered to redeem such lands, if he receives a larger sum than he is entitled to retain, shall refund the excess.

SEC. 23. 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 sections three and five.

SEC. 24. 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.

SEC. 25. 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* [shall] accept the sum adjudged by the court to be due, and discharge the mortgage.

SEC. 26. If a person entitled to redeem a 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 a tender for that purpose, a tender^r may be made and a bill for redemption commenced and prosecuted by his executor or administrator, heirs or devisees; and if the plaintiff in any such bill in equity dies pending the suit, it may be prosecuted to final judgment by his heirs, devisees, or his executor or administrator. When a mortgagor resides out of the state, any person may, in his behalf, tender to the holder of the mortgage the amount due thereon; and it shall be as effectual as if made by the mortgagor.

SEC. 27. 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 discharge of the mortgage.

SEC. 28. In all cases, the mortgage may be discharged by the deed

of release from the person authorized to discharge it, or by causing satisfaction and payment under his hand to be entered in the margin of the record of such mortgage in the register's office. (a)

SEC. 29. A mortgage may be discharged on the record thereof in the office of the registry of deeds by an attorney at law, authorized in writing by the mortgagee or person claiming under him; *provided*, however, that said writing *be* [is] first recorded or filed in said office and a minute of [the] same *be* [is] made by the register of deeds on the margin of the page in connection with said discharge.

SEC. 30. If the purchaser of an equity of redemption, sold on execution, has satisfied and paid to the mortgagee, or those claiming under him, the sum due on the mortgage, the mortgagor, or those claiming under him, having redeemed the equity of redemption within one year after such sale, shall have a right to redeem such mortgaged estate of such purchaser, or any person claiming under him, within the time and in the manner he might have redeemed it of the mortgagee if there had been no such sale made, and within such time only.

SEC. 31. When the mortgagee or person claiming under him has taken possession of the mortgaged premises, and the debt secured by the mortgage is paid or released after condition broken and before foreclosure perfected, the mortgagor or person claiming under him may maintain a writ of entry to recover possession of said premises, the same as if paid or released before condition broken.

(a) What constitutes a discharge; 5 Me., 275; 6 Me., 260; 17 Me., 371; 18 Me., 11; 24 Me., 335, 437; 25 Me., 346, 462; 27 Me., 219; 31 Me., 394; 33 Me., 451; 39 Me., 22; 44 Me., 115; 45 Me., 100; 54 Me., 466.

What does not; 17 Me., 371; 22 Me., 87; 23 Me., 389; 29 Me., 452; 31 Me., 313; 34 Me., 51, 302; 37 Me., 13; 48 Me., 111; 49 Me., 416; 50 Me., 131, 176; 52 Me., 186; 56 Me., 159.

CHAP. 90.
Mortgages may be discharged.
R.S., c. 90, § 26.

Mortgage may be discharged by attorney at law.
1874, c. 233, § 2.

Redemption of estate from purchaser of equity.
R.S., c. 90, § 27.
2 Me., 343.
6 Me., 237.
7 Me., 103.
21 Me., 105.
46 Me., 437.
49 Me., 266.
52 Me., 407.
55 Me., 253.

Writ of entry v. mortgagee in possession, after mortgage paid and before foreclosure perfected.
R.S., c. 90, § 28.
67 Me., 361.

CHAP. 91.

CHAPTER 91.

MORTGAGES OF PERSONAL PROPERTY. LIENS AND THEIR ENFORCEMENT.

MORTGAGES OF PERSONAL PROPERTY.

- SEC. 1. Mortgages not valid except between the parties, unless recorded, or possession of the property taken. Where to be recorded.
2. Clerk to record mortgages in a book, noting therein, and on the mortgage, when received.
 3. How mortgages may be redeemed after breach of condition; property may be replevied if not delivered.
 4. Notice of foreclosure, how to be given and served.
 5. Sworn copy of notice to be recorded, and a copy of record to be evidence of the facts. Mortgagee out of the state, to appoint agent to receive pay, or no forfeiture.
 6. Right of redemption forfeited in sixty days. Exceptions.
 7. Redemption of personal property held as security for debt by Holmes' note.
 8. Lien on vessel for four days after launching for labor or materials. In case of uncompleted contract lien, extended to four days after its completion. Lien on materials before they are used. Lien on vessels by dry docks and marine railways.
 9. Form of writ for enforcing lien. How signed, sealed and tested, and where returnable.
 10. Specifications to be annexed to writ, and to be sworn to.
 11. Attachment, how made before vessel is launched. Possession, when to be taken by officer; if before launching, work not to be hindered. Attachment how made after it is launched. Sale of attached vessels liable to depreciate in value.
 12. Service of writ on debtor and on owners. Form of notice to owners; how served and posted fourteen days before court.
 13. Writs made after first attachment to be served by same officer. If he is disqualified, by any qualified officer.
 14. Action how entered on docket, and who may defend on giving bond.
 15. Defendant may offer to be defaulted and its effect. Vessel-owner may admit a certain sum due and its effect.
 16. Court to decide questions of costs as in equity.
 17. What questions shall be submitted to jury and found in verdict; or if jury trial is waived, decided by court.
 18. Judgment how to be rendered against defendant.
 19. Right of exceptions as in other cases.
 20. Court may order vessel sold on execution. Proceeds to be paid into court. Manner of sale. Title of purchaser.
 21. Disposal of proceeds and of surplus.
 22. When proceeds are not enough, to be distributed pro rata, and when. Double liens to be prevented.
 23. How vessel, attached for non-lien claim by sheriff or deputy, may be attached on lien claim; how and when attached by constable.
 24. How vessel attached for lien, may be attached for non-lien claim against owner, and its effect.

- SEC. 25. When vessel attached on both kinds of claims, is sold, balance, after paying lien claims applied to non-lien claims. CHAP. 91.
26. Admiralty powers of court.

LIENS ON LIME, LIMEROCK, GRANITE AND SLATE.

- SEC. 27. Liens on lime, limerock, granite and slate for thirty days, to be enforced by attachment, with precedence of all other claims.

LIEN ON BRICKS.

- SEC. 28. Lien on bricks, how enforced when debtor or employer has died.

LIEN ON HEMLOCK BARK.

- SEC. 29. Lien for cutting and peeling hemlock bark.

LIENS ON BUILDINGS AND LOTS.

- SEC. 30. Liens on buildings and lots for labor and materials, and how enforced. If levy is made, lot may be set out. If debtor has no title to land, lien on building. Lien enforced on building of minors and married women.
31. When labor or materials are not furnished by contract with owner of building, how he may prevent lien.
32. Lien dissolved unless sworn claim is filed in town clerk's office within thirty days. Clerk's fees.
33. Inaccuracy not to avoid, if claim is reasonably certain in description.
34. Suit must be commenced in ninety days, or lien dissolved.
35. When owner dies or becomes insolvent before suit, how action brought and when.
36. Lien for rent on buildings placed on leased land, how enforced.
37. Lien on buildings for land rent, whether under written lease or not. Proviso, if a third person is interested in the buildings.

LIEN ON LOGS AND LUMBER.

- SEC. 38. Liens on logs and lumber for personal labor and as cook for sixty days after arrival of at destination; to take precedence. Costs as in equity.
39. Boomage to be paid by attaching officer. Lien not defeated by taking note. Notice to owner.

LIEN ON ANIMALS FOR PASTURAGE, FOOD AND SHELTER.

- SEC. 40. Lien on animals for pasturage, food and shelter.

GENERAL PROVISIONS FOR ENFORCEMENT OR DISCHARGE.

- SEC. 41. Lien attachments to have precedence. Suits after death and insolvency. Writ must show that they are for lien.
42. Tender of amount due discharges lien.
43. When labor or materials are not furnished by contract with owner, he may appear. If he does not, notice to be given him.
44. Judgment, how rendered. Plaintiff may discontinue as to any defendant. Costs, how apportioned.

LIENS ON GOODS AND PERSONAL BAGGAGE.

- SEC. 45. Innholders and keepers of boarding houses have a lien on goods and personal baggage, and how enforced.

LIENS ON GOODS IN POSSESSION, HOW ENFORCED.

- SEC. 46. Lien on goods in possession enforced by sale.
47. Petition to be filed; contents of it.
48. Service on owners within the state.

CHAP. 91.

- SEC. 49. Service on owners when unknown or out of the state.
 50. When owner appears, proceedings. Jury trial.
 51. When owner appears, he may be required to give bond.
 52. Court may order property to be sold to pay lien.
 53. Disposal of the proceeds.
 54. Liens less than twenty dollars enforced by trial justice. Appeal.
 55. Municipal and police courts have concurrent jurisdiction.

PLEDGES.

- SEC. 56. Holder of forfeited pledge may notify owner in writing of intended sale. How served and recorded.
 57. Sale of pledge; proceeds, how applied.

MORTGAGES OF PERSONAL PROPERTY.

Mortgages not valid except between the parties, unless recorded or possession taken. 1880, c. 193.

Where recorded.

SEC. 1. No mortgage of personal property shall be valid against any other person than the parties thereto, unless possession of such property is delivered to, and retained by the mortgagee, or the mortgage is recorded by the clerk of the [city,] town, or plantation organized for any purpose, in which the mortgagor resides. When all the mortgagors reside without the state, the mortgage shall be recorded in said [city,] town, or plantation where the property is when the mortgage is made; but if a part of the mortgagors reside in the state, then in the [cities,] towns, or plantations in which such mortgagors reside. A mortgage made by a corporation, shall be recorded in the town where it has its established place of business. If any mortgagor resides in an unorganized place, the mortgage shall be recorded in the oldest adjoining town or plantation, organized as aforesaid, in the county. (a)

Clerk to record mortgages, noting when received. 1880, c. 193. See c. 3, § 16.

SEC. 2. The clerk, on payment of twenty-five cents, 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 be considered as recorded when received. (b)

How mortgage may be redeemed after breach of condition. 1880, c. 193. 49 Me., 39. 54 Me., 561. 64 Me., 107.

SEC. 3. When the condition of a mortgage of personal property is broken, the mortgagor, or any *other* person lawfully claiming under him, may redeem it any time before it is sold, by virtue of a contract between the parties, or on execution against the mortgagor, or before the right of redemption is foreclosed, as hereinafter provided, by paying or tendering to the mortgagor, or the person holding the mortgage by assignment thereof, recorded where the mortgage is recorded, the sum due thereon, or by performing, or offering to perform the conditions thereof,

(a) 19 Me., 170; 21 Me., 92; 22 Me., 561; 24 Me., 103, 558; 25 Me., 421; 27 Me., 404; 30 Me., 184; 31 Me., 74; 32 Me., 30, 237; 33 Me., 319; 34 Me., 209; 37 Me., 186, 545; 40 Me., 413, 562; 42 Me., 131, 174; 44 Me., 18; 45 Me., 605; 46 Me., 296, 415; 47 Me., 13, 505; 48 Me., 30, 369, 550, 586; 49 Me., 98, 567; 50 Me., 129, 396; 51 Me., 601; 53 Me., 321; 55 Me., 81; 56 Me., 464; 65 Me., 490; 72 Me., 400.

(b) 19 Me., 173; 31 Me., 74; 37 Me., 186; 40 Me., 285; 43 Me., 376.

when not for the payment of money, with all reasonable charges incurred ; and the property, if not immediately restored, may be replevied, or damages for withholding it recovered in an action of [on] the case. CHAP. 91.
Property may be replevied.

SEC. 4. The mortgagee or his assignee, after condition broken, may give to the mortgagor or his assignee, when his assignment is recorded where the mortgage is recorded, written notice of his intention to foreclose the same, by leaving a copy thereof with the mortgagor or such assignee, or if the mortgagor is out of the state, though resident therein, by leaving such copy at his last and usual place of abode, or by publishing it once a week, for three successive weeks in one of the principal newspapers published in the town where the mortgage is recorded. When the mortgagor or his assignee of record is not a resident of the state and there is no newspaper published in such town, such notice may be published in any newspaper printed in the county where the mortgage is recorded. Notice of foreclosure, how to be given and served.
R.S., c.91, § 4.
59 Me., 420.

SEC. 5. The notice with an affidavit of service or a copy of the publication, with the name and date of the paper in which it was last published, shall be recorded where the mortgage is recorded, and the copy of such record shall be evidence that the notice has been given. If the mortgagee or his assignee is not a resident of the state, he shall at the time of recording such notice, record therewith his appointment of an agent resident in the same town, to receive satisfaction of the mortgage ; and payment or tender thereof may be made to him. If he does not appoint such agent, the right to redeem shall not be forfeited. Sworn copy of notice to be recorded. Evidence of the facts. Mortgagor out of state to appoint agent to receive pay, or no forfeiture.
R.S., c.91, § 5.

SEC. 6. The right to redeem shall be forfeited, except as provided in the preceding sections, if the money to be paid or other thing to be done is not paid or performed, or tender thereof made, within sixty days after such notice is recorded ; but 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 is taken as soon as may be after their arrival in the state. (a) Right of redemption forfeited in sixty days. Exceptions.
R.S., c.91, § 6.

SEC. 7. All personal property held as security for debt by the agreements and notes mentioned in section five of chapter one hundred and eleven [is] subject to a redemption as provided for in cases of personal property mortgaged by the four preceding sections, and shall be subject to trustee process as provided in section fifty of chapter eighty-six in relation to property mortgaged ; but the parties may lawfully stipulate in said notes, that no right of redemption shall exist after breach thereof by non-payment. Redemption of personal property held as security for debt.
1872, c. 71.

(a) 24 Me., 136; 29 Me., 432; 31 Me., 106, 502; 32 Me., 174; 36 Me., 49; 39 Me., 450; 55 Me., 81.

CHAP. 91.

LIENS ON VESSELS.

Lien on vessels for four days after launching, for labor or materials furnished. 1875, c. 1.

In case of incomplete contracts, in force four days after completion of contract. 1879, c. 103.

—lien on materials before they are used, and how enforced. 1875, c. 1.

—on vessels by dry docks and marine railways and when enforced.

SEC. 8. Any person who furnishes labor or materials for building a vessel, shall have a lien on it therefor, which may be enforced by attachment thereof, within four days after it is launched; but if the labor and materials have been so furnished by virtue of a contract not fully performed and completed at the time of the launching of the vessel, the lien may be enforced within four days after such contract has been completed. He shall also have a lien on the materials furnished, before they become part of the vessel, which may be enforced by attachment; and a person who furnishes labor or materials for a vessel after it is launched, or for its repair, shall have a lien on it therefor, which may be enforced by attachment within four days after the work has been completed; and the *owner or* owners of any dry dock or marine railway, which shall be used for any vessel, shall have a lien on said vessel for the use of said dry dock or marine railway, which lien may be enforced by attachment within four days after the last day in which said dry dock or marine railway shall have been used or occupied by said vessel. (a)

SEC. 9. The form of a writ for enforcing such lien, shall be in substance as follows:

"STATE OF MAINE.

"—, ss.

To the sheriff of our county of —, or his deputy:

Greeting.

Form of writ forenforcing lien.

How signed, sealed and attested, and where returnable.

R.S., c. 91, § 8. 61 Me., 567. 69 Me., 237.

[L. S.] We command you to attach the *ship or* vessel" (here give such a description of the vessel as will identify it,) "and summon all persons interested, in the manner directed by law, to appear before our justices of our — court, next to be held at —, within and for [our] *the* county of —, on the — Tuesday of — next, then and there in our said court, to answer to A. B., of —, who claims a lien on said ship or vessel for" (here describe briefly the nature of the lien,) "to the amount of — dollars and — cents, according to the specification hereto annexed, which amount, C. D., of —, who owes the same, neglects and refuses to pay, to the damage of said A. B., as he says, the sum of — dollars, which shall then and there be made to appear, with other due damages; and have you there, this writ with your doings thereon.

Witness, — —, esquire, at —, the — day of —, in the year of our Lord, one thousand eight hundred and —.

E. F., Clerk."

(a) 33 Me., 479; 34 Me., 206; 36 Me., 387; 40 Me., 292, 411; 41 Me., 399; 42 Me., 81, 147; 58 Me., 99; 61 Me., 567; 69 Me., 235; 70 Me., 351; 71 Me., 465, 494; 72 Me., 129.

Said writ shall be signed, sealed and tested like other writs in civil actions, and returned in the county where said vessel is. CHAP. 91.

SEC. 10. The specification annexed to the writ, shall contain a just, true and particular account of the demand claimed to be due the plaintiff with all just credits; the name of the persons personally liable to him, and names of the owners of the *ship or* vessel if known to him, and shall be verified by the oath of one plaintiff, or of some person in his behalf, that the amount claimed in said specification is justly due from the person named in the writ and specification as owing it, and that he believes that by the laws of this state, he has a lien on such ship or vessel for the whole or a part thereof.

Specification to be annexed to the writ.
What to contain, to be verified by oath.
What must be sworn to.
R.S., c. 91, § 9.
61 Me., 588.
69 Me., 237, 240.

SEC. 11. If the vessel at the time is on the stocks, the attachment shall be made by filing in the office of the clerk of the town in which such vessel is, within forty-eight hours thereafter, a copy of so much of his return on the writ, as relates to the attachment, with the name of the plaintiff, the name of the person liable for the debt, the description of the vessel as given in the writ, the date of the writ, the amount claimed, and the court to which it is returnable, and by leaving a copy of such certificate with one of the owners of the vessel, if known to him and residing within his precinct, or with the master workman thereon; if the attachment is so made the officer need not take possession of the vessel before it is launched, unless specially directed by the plaintiff or his attorney to do so; but he shall as soon as may be afterwards; *but* [and] he may take possession at any time before it is launched; and if he does, he shall not hinder the work thereon, or prevent or delay the launching. If the vessel is launched at the time of attachment, it shall be attached like other personal property. And whenever a vessel *shall have* [has] been attached as aforesaid, and the expense of retaining possession of said vessel *shall be* [is] great, or the vessel *shall be* [is] liable to depreciate in value by reason thereof, any attaching creditor, or an owner of said vessel may in term time or vacation, petition a justice of the supreme judicial court, praying that said vessel attached as aforesaid, may be sold, and said justice may order a hearing on said petition; and due notice shall be given to all parties in interest, of the time and place appointed for said hearing, and a hearing on said petition shall be had before a justice of said court; and if it shall then appear to said justice to be for the benefit of all parties in interest that said vessel should be sold, *said justice* [he] shall issue to the officer in possession of said vessel, or to the sheriff of the county in which said vessel has been attached, an order to sell said vessel at public auction, and *said justice* shall designate in said order the notice to be given of the time and place of said sale; and said vessel

Vessel on the stocks, attachment how made.
Possession, when to be taken by officer.
If before launching, work not to be hindered.
When it is launched how attachment is made.
R.S., c. 91, § 10.

Proceedings for the sale of attached vessels liable to depreciate in value.
1880, c. 243.

CHAP. 91. shall be sold pursuant to said order, and the proceeds of said sale, after deducting necessary expenses, shall be held by the first attaching officer or the sheriff, subject to the successive attachments, as if sold on execution; *provided*, however, that if said parties do not consent to a sale as herein provided, the provisions of sections thirty-one to forty, inclusive, of chapter eighty-one, so far as the same are applicable, shall apply to proceedings under this section.*

Proviso.

Service of writ on debtor and on owners. Form of notice to owners, how served and posted fourteen days before court. R.S., c. 91, § 11.

SEC. 12. The writ shall be served on persons named as personally liable for the plaintiff's claim, as in other personal actions against them, or [on] the owners of the vessel, who are known or reside in the county where the vessel is, by a notice in substance, as follows, and served as summonses are :

“—, ss. To the owners of the ship or vessel,” (describe it as in writ,) “Greeting.”

“Take notice that the above-described vessel is attached on a writ in favor of — —, who claims a lien thereon for the sum of — dollars and — cents,” (naming the amount of the claim,) “due him by C. D., and that said writ is returnable to the — court to be held at —, in and for the county of —, on the — Tuesday of —, A. D. 18—, when and where you may appear and defend if you see fit.

Dated,” (&c.)

“G. H., Sheriff,” (or) “Deputy Sheriff;”— and by a notice in like form posted in some conspicuous place on the vessel attached. The attachment, service and notices shall be made fourteen days at least before the term of the court to which the writ is returnable.

Subsequent writs to be served by same officer. If disqualified, by a qualified officer. R.S., c. 91, § 12.

SEC. 13. On all writs made after the first attachment and while any lien attachment is pending, the attachment and services shall be made as aforesaid by the same officer, or if he is disqualified, by any qualified officer, by his giving notice thereof to the first attaching officer.

Action how to be entered on docket, and who may defend on giving bond. R.S., c. 91, § 13.

SEC. 14. At the return term, the actions shall be entered on the docket as follows : The person claiming the lien, as plaintiff ; the person alleged to be personally liable, as defendant, and the name or other description of the vessel attached ; and the owners or mortgagees of the vessel, or any plaintiff in suit wherein it is attached for a lien, may appear for and defend any action so far as relates to the validity and amount of the lien claim ; but no such plaintiff shall so defend until he gives bond, to the satisfaction of the court, to pay the costs awarded against him.

Defendant

SEC. 15. The defendant may offer to be defaulted as in other

* [QUERY suggested to the commissioner by Harvey D. Hadlock, Esq., of Portland. Ought the practical application of the act of 1880, c. 243, to depend upon the consent of parties?]

cases; and the owners of the vessel may admit, in writing filed with the clerk, that a certain sum is due the plaintiff as a lien on the vessel; and if the plaintiff does not recover a greater sum as lien, he shall recover no costs against such owner or the vessel or its proceeds, after the admission is filed; but such owner shall recover costs thereafter.

SEC. 16. The court, except as provided in the preceding section, may decide all questions of costs and apportion them as they think proper, as in cases in equity.

SEC. 17. At the request of either party, the following questions of fact shall be submitted to a jury: "What amount claimed in the writ is due from the defendant to the plaintiff?" and "For how much of such amount has the plaintiff a lien on the vessel attached?" And the verdict shall be in answer to these questions. If the parties waive a jury trial, these questions shall be decided by the court, on a hearing or report of an auditor appointed by the court.

SEC. 18. Upon ascertaining the amount aforesaid, judgment shall be rendered in his favor against the defendant, as in other personal actions, for the amount found not to be a lien on the vessel, with such costs as the court awards; and a separate judgment shall be rendered in his favor against said defendant and the vessel attached, for the amount decided to be a lien, with such costs as the court awards; and separate executions shall be issued thereon.

SEC. 19. Parties shall have the same right of exceptions, motions for new trials and writs of error, as in other actions.

SEC. 20. When judgment is recovered in any suit on which a vessel was attached, the court may issue an order to the attaching officer to sell it at auction, and to pay the proceeds thereof into court after deducting the expenses of sale and for taking care of the vessel while under attachment. Such officer shall sell it as other personal property is sold on execution; and the purchaser shall hold it free from any prior claim.

SEC. 21. If such proceeds are more than all the judgments recovered against such vessel, and the amounts claimed in the undecided suits, the court may order the judgments as fast as they are recovered against such vessel, to be paid from said fund until all such suits are terminated and all judgments satisfied. The balance, if any, the court may, on petition, order to be paid to the persons legally entitled thereto.

SEC. 22. If such proceeds are not enough to pay in the full judgments recovered and the claims still undecided, the court may order the money to remain until all the suits are terminated, and then divide pro rata; or it may direct a sufficient amount to be

CHAP. 91.

may offer to be defaulted. Owner may admit certain sum due, and its effect. R.S., c. 91, § 14. 69 Me., 240.

Court to apportion costs as in equity. R.S., c. 91, § 15. 61 Me., 498.

What questions shall be submitted to jury and found in verdict; or if jury trial waived, decided by court. R.S., c. 91, § 16. 69 Me., 240.

Judgment, how to be rendered against defendant. R.S., c. 91, § 17. 61 Me., 567. 69 Me., 240.

Exceptions, &c. R.S., c. 91, § 18.

Court may order vessel sold on ex'con. Proceeds to be paid into court. Title of purchaser. R.S., c. 91, § 19. 61 Me., 567, 568.

Distribution of proceeds and of a surplus. R.S., c. 91, § 20.

When proceeds not enough, to be distributed pro rata, and when

CHAP. 91.
double liens
are to be
prevented.
R.S., c. 91, § 21.

retained to pay on the undecided claims their proportion, and divide the residue ratably among the judgments recovered, and if after all the suits are terminated and the judgments recovered subsequent to the first division have received the same proportion as prior judgments, there is any sum remaining, it shall be divided among the judgments pro rata, and in such division the court shall make such orders as will prevent the enforcement of a double lien, and secure the just rights of all.

How vessel
already at-
tached by
sheriff or
deputy, may
be attached
on lien claim;
how when
attached by
constable.
R.S., c. 91, § 22.

SEC. 23. If the vessel has been already attached by a sheriff or his deputy, where a writ is issued for such lien claim, it shall be served by such officer; if attached by a constable, he shall give up to the officer having the lien writ the possession and the receipt upon which he attached it with his return of the facts thereon; and the attachment shall hold subject to the legal priorities of the lien claim.

How vessel
attached for
lien, may be
attached for
non-lien
claim v.
owner.
R.S., c. 91, § 23.

SEC. 24. A vessel attached for a lien claim, may be attached by the same officer, in the ordinary manner, in a suit against the owners thereof, and such attachment shall be valid, subject to the legal priorities of the lien attachments.

When vessel
attached on
both kind of
claims is
sold, pro-
ceedings.
R.S., c. 91, § 24.
Admiralty
powers of
court.
R.S., c. 91, § 25.

SEC. 25. When a vessel attached for liens, and also in the ordinary manner, is sold by order of the court, and the proceeds are more than sufficient to satisfy the lien judgments, the surplus shall be paid to the officer, to hold on the writs not founded on the lien claims.

SEC. 26. The court like a court in admiralty, may make all orders necessary for carrying out the provisions hereof, according to their true intent and meaning.

LIENS ON LIME, LIMEROCK, GRANITE AND SLATE.

Liens on
lime and
limerock, for
thirty days,
enforced by
attachment.
1879, c. 163.
72 Me., 423.

SEC. 27. *Any person* who[-ever] digs, hauls, or furnishes rock for the manufacture of lime, has a lien thereon for his personal service, and [on] the rock so furnished, for thirty days after such rock is manufactured into lime, or until such lime is sold or shipped on board a vessel; any person who labors in quarrying or cutting and dressing granite in any quarry, has a lien for *his* [the] wages of his labor on all the granite quarried or cut and dressed in the quarry by him or his co-laborers for thirty days after such granite is cut or dressed, or until such granite is sold or shipped on board a vessel; any person who labors in mining, quarrying or manufacturing slate in any quarry, has a lien for the wages of his labor on all slate mined, quarried or manufactured in the quarry by him or his co-laborers for thirty days after the slate arrives at the port of shipment; such liens shall have precedence of all other claims and may be enforced by attachment within the times aforesaid.

—on granite.

—on slate.

Such liens to
have preced-
ence of all
other claims.
Enforce-
ment of.

CHAP. 91.

LIEN ON BRICKS.

SEC. 28. *Any person* who[-ever] performs or furnishes labor or wood for manufacturing and burning bricks shall have a lien on such bricks for such labor and wood, to take precedence of all other claims, to continue in force [for] thirty days after the same are burned suitable for use, provided said bricks remain in the yard where burnt, and to be enforced by attachment within that time, which [attachment] shall have precedence of all attachments and incumbrances not made to secure a similar lien; and such suit may be maintained though the employer or debtor is dead and his estate rendered insolvent, and in that case his executor or administrator may be summoned to answer thereto, and judgment [shall be] rendered as in other cases against executors and administrators, and execution issued and enforced to satisfy such lien.

Liens on bricks authorized. 1872, c. 7.

How enforced.

How suit may be maintained when the employer or debtor has died.

LIEN ON HEMLOCK BARK.

SEC. 29. *A person* who[-ever] labors at cutting and peeling hemlock bark shall have a lien thereon for the amount due for his personal services, which shall take precedence of all other claims, to continue for thirty days, and be enforced by attachment; *provided*, however, that such lien shall not continue after the bark shall have arrived at a market.

Lien on hemlock bark for labor. 1878, c. 30.

Proviso.

LIENS ON BUILDINGS AND LOTS.

SEC. 30. *A person* who[-ever] performs or furnishes labor or materials in erecting, altering, or repairing a house, building or appurtenances, by virtue of a contract with or by consent of the owner, has a lien thereon, and the land on which it stands, *or* [and] on any interest such owner has in the same, to secure payment thereof with costs, to be enforced by attachment; and if a levy is made thereon, the appraisers may set out a suitable lot for said building, if they think the whole is not needed therefor. If the debtor has no legal interest in the land on which the building is erected, the lien attaches to the building and may be enforced as before provided; and if the owner of such land or building, so contracting, is a minor or married woman, such lien shall exist, and such minority or coverture shall not bar a recovery in any suit brought to enforce it.

Lien on buildings and lots for labor and materials, how enforced. R.S., c. 91, § 27. 16 Me., 273. 28 Me., 520. 33 Me., 144, 374. 34 Me., 199. 35 Me., 74, 297, 482. 52 Me., 304. 54 Me., 350. 71 Me., 292.

SEC. 31. If the labor or materials were not furnished by a contract with the owner of the property to be affected, the owner may prevent such lien for labor or materials not then performed or furnished, by giving written notice to the person performing or furnishing the same, that he will not be responsible therefor.

Lien on property for labor or materials to be furnished by contractor, how avoided. 1876, c. 140.

SEC. 32. The lien mentioned in the preceding section shall be dissolved unless the claimant within thirty days after he ceases to

Lien dissolved unless

CHAP. 91.

sworn claim
filed in town
clerk's office
in thirty
days.

Clerk's fees.
R.S., c. 91, § 29.
72 Me., 108.

No inaccu-
racy avoids
if reasonably
certain.
R.S., c. 91, § 30.

Suit within
ninety days,
or lien dis-
solved.
R.S., c. 91, § 31.

In case of
death or in-
solvency of
owner before
suit, action
how and
when
brought,
1881, c. 5.

Lien for rent
on buildings
placed on
leased land,
how
enforced.
R.S., c. 91, § 33.

Lien on
buildings for
land rent
whether un-
der written
lease or not.
1879, c. 89.

Proviso
when third
person has
an interest
in building.

labor or furnish materials as aforesaid, files in the office of the clerk of the town in which such building is situated, a true statement of the amount due him, with all just credits given, together with a description of the property intended to be covered by the lien, sufficiently accurate to identify it, and the names of the owners, if known; which shall be subscribed and sworn to by the person claiming the lien, or by some one in his behalf, and recorded in a book kept for that purpose, by said clerk, who is entitled to the same fees therefor as for recording mortgages.

SEC. 33. No inaccuracy in such statement relating to said property, if the same can be reasonably recognized, or to the amount due for labor or materials, shall invalidate the proceedings, unless it appears that the person making it willfully claims more than his due.

SEC. 34. A suit to enforce the liens in the four preceding sections must be commenced within ninety days after the last labor is performed or materials so furnished, or the lien shall be dissolved. (a)

SEC. 35. When the owner dies, or a warrant in insolvency issues against his estate within the ninety days and before the commencement of a suit, it may be commenced within sixty days after notice given of the election or appointment of the assignee in insolvency, executor or administrator, or the revocation of the warrant; and the lien shall be extended accordingly.

SEC. 36. When a lease of land, with a rent payable, is made for the purpose of erecting a mill or other buildings thereon, such buildings and all the interest of the lessee shall be subject to a lien and liable to be attached for the rent due. Such attachment, made within six months after the rent becomes due, shall be effectual against any transfer of the property by the lessee.

SEC. 37. In all cases where land rent accrues and remains unpaid, whether under a *written* lease, or otherwise, all buildings upon the premises while the rent accrues, shall be subject to a lien and to attachment for the rent due, as provided in the preceding section, although other persons than the lessee may own the whole or a part thereof, and whether or not the land was leased for the purpose of erecting such buildings: *Provided*, however, [that] if any person is interested in said buildings, except the lessee, the proceedings shall be substantially in the forms directed by statute for enforcing liens against vessels, with such additional notice to supposed or unknown owners, as any justice of the supreme judicial court may order, or the attachment and levy of execution shall not be valid except against the lessee.

(a) 35 Me., 297; 54 Me., 350; 71 Me., 293.

LIENS ON LOGS AND LUMBER.

CHAP. 91.

SEC. 38. *A person* who[-ever] labors at cutting, hauling, rafting or driving logs or lumber, or at cooking for persons engaged in such labor, shall have a lien thereon for the amount due for his personal services, and the services performed by his team, which shall take precedence of all other claims, except liens reserved to the states of Maine and *Massachusetts*; to continue for sixty days after the logs or lumber arrive at the place of destination for sale or manufacture; and [to] be enforced by attachment. In such actions the court has the same power to allow and apportion costs as in equity. (a)

Lien for labor on lumber and as cook. 1876, c. 64.

—continues for 60 days.

—how enforced. Costs as in equity. 1874, c. 191.

SEC. 39. The officer making such attachment may pay the boomage thereon, not exceeding the rate per thousand on the quantity actually attached by him, and return the amount paid on the writ, which shall be included in the damages recovered. The action or lien shall not be defeated by taking a note, unless it was taken in discharge of the amount due and of the lien. Notice of the suit, such as the court orders, shall be given to the owner of the logs or lumber, and he may be admitted to defend it. (b)

Boomage may be paid by officer. Lien not defeated by taking note.

Notice to owner. R.S., c. 91, § 35.

LIENS ON ANIMALS FOR PASTURAGE, &c.

SEC. 40. Any person who pastures, feeds or shelters animals by virtue of a contract with, or by consent of the owner, shall have a lien thereon for the amount due for such pasturing, feeding or sheltering, to secure payment thereof with costs, to be enforced in the same manner as liens on goods and personal baggage by innholders or keepers of boarding-houses.

Lien on animals to secure payment for pasturage, food and shelter. 1873, c. 125. See § 45. 63 Me., 533.

GENERAL PROVISIONS FOR ENFORCEMENT OR DISCHARGE.

SEC. 41. Suits to enforce any of the liens before named shall have precedence of all attachments and incumbrances made after the lien attached, and not made to enforce a lien, and may be maintained although the employer or debtor is deceased and his estate [is] represented insolvent; and his executor or administrator may be summoned and held to answer to an action brought to enforce the lien. The declaration must show that the suit is brought to enforce the lien; but all the other forms and proceedings therein, shall be the same as in ordinary actions of assumpsit. (c)

Lien attachments have precedence of other incumbrances, and maintained though debtor dies and estate is insolvent. Writ must show lien. R.S., c. 91, § 36. See c. 6, § 22.

(a) 9 Me., 22; 24 Me., 219; 33 Me., 291, 431; 34 Me., 280, 287; 35 Me., 128; 36 Me., 538, 544; 38 Me., 82, 131; 39 Me., 450; 42 Me., 500; 43 Me., 585; 45 Me., 319, 507; 46 Me., 365; 49 Me., 77; 56 Me., 152, 298; 66 Me., 57, 58, 67; 72 Me., 440.

(b) 35 Me., 128; 41 Me., 471; 43 Me., 456, 585; 47 Me., 144, 156; 50 Me., 430; 61 Me., 489; 66 Me., 140.

(c) 28 Me., 520; 33 Me., 144, 292; 34 Me., 281, 287; 35 Me., 297; 36 Me., 387; 37 Me., 552; 38 Me., 131; 41 Me., 371; 42 Me., 82, 130, 149; 45 Me., 295, 319; 50 Me., 430; 53 Me., 321; 61 Me., 494, 497; 63 Me., 564; 65 Me., 577; 66 Me., 58.

CHAP. 91.

Tender.
R.S., c. 91, § 37.
35 Me., 74.
66 Me., 59.

When labor,
&c., are not
furnished by
contract
with owner,
he may appear
voluntarily.

If not, notice.
1879, c. 136, § 1.

Judgment—
how rendered.
1879, c. 136, § 2.

Plaintiff may
discontinue
as to any defendant.

Court to
apportion
costs.

SEC. 42. All liens named herein may be discharged by tender of [the] a sum *sufficient to pay all that is justly* due, made by the debtor or owner of the property, or their agents.

SEC. 43. In all [lien] actions, *brought to enforce a lien* when the labor or materials were not furnished by a contract with the owner of the property to be *effected*, [affected] such owner may voluntarily appear and become a party to the suit. If he does not so appear, such notice of the suit as the court orders, shall be given him, and he shall then become a party to the suit.

SEC. 44. In any such action, judgment may be rendered for the plaintiff against the defendant and the property *attached* covered by the lien, or against either, for so much as shall be found due by virtue of the lien, and in case the amount due exceeds the amount covered by the lien, then a separate execution shall be issued to the plaintiff against the defendant for said excess, and the plaintiff may discontinue as to any defendant. The court may apportion costs as justice requires.

LIEN ON GOODS AND PERSONAL BAGGAGE.

Lien on
goods and
personal
baggage
to secure
payment for
board, &c.
1876, c. 99.
35 Me., 154.
38 Me., 192.
42 Me., 51.
Goods and
baggage un-
redeemed
may be
sold.

Notice of
sale to be
given.

Inn holders
shall give
description
of articles
and name of
person.

Proceeds of
sale, how ap-
propriated.

Record of
sales to be
kept.

SEC. 45. Inn-holders or keepers of boarding-houses have a lien on the goods and personal baggage of their boarders, to secure the payment of any money due from them for board or lodging, and may enforce the same by a sale of such goods or baggage, in the manner following: After such goods or personal baggage have remained in the possession of such inn-holder or boarding-house keeper for *the period of* six months, unredeemed, the same may be sold at auction to pay the sum due for board or lodging, and the expense of advertising and selling the same. Before selling any such articles, as aforesaid, the inn-holder or boarding-house keeper holding the same shall give thirty days' notice of the time and place of such sale, in a newspaper published in the town or city where such articles are held, and if no newspaper is published in such town or city, notice shall be posted in three conspicuous places in such town or city, of the time and place of sale; said notice shall give a description of such articles, and the name of the owner; and the proceeds of sale, after deducting all charges and expense of advertising said sale, shall be applied in satisfaction of the claim upon which such articles are sold, and the balance, if any, [shall be] held for the benefit of the person entitled thereto. All sales under the provisions of this section shall be recorded in the office of the town clerk where such sale takes place, in a book kept for that purpose, in which the articles sold shall be correctly described, and the charges and expenses of advertising and selling, and the prices at which they were sold, and such book shall be open to the inspection of all.

LIENS HOW ENFORCED ON GOODS IN POSSESSION.

CHAP. 91.

SEC. 46. Any person, having a lien on any article in his possession, may enforce it by a sale thereof, as hereinafter provided.

Sale of goods.
R.S., c. 91, § 39.

SEC. 47. The person claiming the lien may file, in the supreme judicial court in the county where he resides, or in the office of the clerk thereof, a petition briefly setting forth the nature and amount of his claim, a description of the article possessed, and the name and residence of its owners, if known to him, and a prayer for process to enforce his lien.

Petition to be filed; contents thereof.
R.S., c. 91, § 40.

SEC. 48. If the owners are set forth in a petition filed in the clerk's office, and are residents of *this* [the] state, the clerk may issue an order of notice to *such owners*, by serving them with a copy of the petition and order thereon, fourteen days before the next term of the court in such county.

Service on owners within the state.
R.S., c. 91, § 41.

SEC. 49. If the owners are not known, or not residents in the state, or the petition is filed in court, the court may order reasonable notice to the owners and others interested; which may be returnable at the same or a subsequent term, and [may] be by personal service of a copy of the petition with the order of court thereon, or by publication in a newspaper, or both, as the court directs. But such order shall always allow at least fourteen days from the service or publication, before the time fixed for the appearance of the persons notified.

Service on owners when unknown or out of the state.
R.S., c. 91, § 42.

SEC. 50. At the time fixed in the notice, any party interested in the article as owner, mortgagee, or otherwise, may appear, and after appearance, the proceedings shall be the same as in an action on the case in which the petitioner is plaintiff and the party appearing is defendant. Questions of fact, at the instance of either party, shall be submitted to a jury on an issue framed under the direction of the court.

When owner appears, proceedings. Jury trial.
R.S., c. 91, § 43.

SEC. 51. If in the opinion of the court the article on which the lien is claimed is not of sufficient value to pay the petitioner's claim, with the probable costs of the suit, the court may order the persons appearing in defence to give bond to the petitioner, with sufficient sureties approved by the court, to pay such costs as are awarded against him, so far as they are not paid out of the proceeds of the articles on which the lien is claimed.

Owner may be required to give bond for costs.
R.S., c. 91, § 44.

SEC. 52. After trial and final adjudication in favor of the petitioner, the court may order any competent officer to sell the article on which the lien is claimed, as personal property is sold on execution, and out of the proceeds, after deducting his fees and the expenses of sale, to pay to the petitioner the amount and costs awarded him, and the balance to the person entitled to it, if they are known to the court, otherwise into court.

Court may order property to be sold to pay lien.
R.S., c. 91, § 45.

CHAP. 91. **SEC. 53.** Money paid into court may be paid over to the person legally entitled to it, on petition and order of the court. If it is not called for at the first term after it is paid into court, it shall be paid into the county treasury; and if afterwards the person entitled to it petitions and establishes his claim to it, the court may order the county treasurer to pay it to him.

Lien less than \$20, trial justices have jurisdiction. Appeal. R.S., c. 91, § 46.

SEC. 54. Liens for less *amount* than twenty dollars, may be enforced before any trial justice for the county where the person having the lien resides, and all the proceedings, rights, and liabilities, shall be the same as hereinbefore provided, as far as the nature of the tribunal will admit; and either party may appeal, *and the proceedings shall be the same as in appeals in civil actions before a trial justice* [as in other cases.]

Jurisdiction of police courts. 1875, c. 28.

SEC. 55. *The municipal and police courts of the several cities and towns in this state shall have jurisdiction concurrent with the supreme judicial [and superior] court[s] and trial justices in their respective counties, over liens and proceedings relative thereto, for an amount not exceeding the sum which limits the [their] jurisdiction of such courts in civil actions, to be enforced as provided in this chapter.*

PLEDGES.

Pledge for payment of money, notice for sale of. 1875, c. 53, § 1.

Notice of, how served.

SEC. 56. The holder of stocks, bonds or any other personal property in pledge for the payment of money or the performance of any other thing, may, after failure to pay or perform, give written notice to the pledgor that he intends to enforce payment by a sale of the pledge; which notice shall be served by leaving a copy with the pledgor, if he resides within *this* [the] state and his residence is known to the holder, otherwise by publishing it at least once a week for three successive weeks, in one of the principal newspapers in the city or town where the pledgee resides, or if there is no such paper, in one [of] the principal newspapers published in the county, or in the state paper. Such notice, together with an affidavit of service, shall be recorded in the clerk's office of the city or town where the pledgee resides.

—to be recorded.

Pledge, sale of. 1875, c. 53, § 2.

SEC. 57. If the money to be paid or the thing to be done is not paid or performed, or tender thereof made within sixty days after such notice is so recorded, the holder may sell the pledge at public auction, and apply the proceeds to the satisfaction of the debt or demand and the expenses of the notice and sale, and any surplus shall be paid to the party entitled thereto on demand.

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. PROTECTION OF WAYS FROM OVERFLOW AND INSPECTION OF DAMS AND RESERVOIRS.

ERECTION OF MILLS AND DAMS AND RIGHTS OF FLOWAGE.

- SEC. 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. May be inserted in writ and how served.
 7. What may be pleaded in bar.
 8. Mode of trial. Costs for respondent if complainant fails.
 9. Proceedings, if complainant recovers. Commissioners to determine gross damages. If owners do not pay them, then annual damages stand as the order of court.
 10. If owners pay, the judgment is a bar to further complaint, unless dam is raised.
 11. Owners may apply to have damages assessed in gross. Proceedings.
 12. Trial by jury. Commissioners' report to be evidence.
 13. Acceptance of commissioners' report.
 14. Verdict or report to bar any future action.
 15. Yearly damages, how fixed.
 16. Security to be given for yearly damages, if required.
 17. Complainant may sue for damages, if unpaid. Lien upon mill and land for damages.
 18. Mill and land may be seized and sold on the execution after thirty days. Effect of such sale.
 19. Right of redemption, how enforced.
 20. Either party may file a new complaint.
 21. Restriction of this right.
 22. Owner may offer an increased compensation. Consequence.
 23. Injured party may offer to accept a less compensation. Consequence.
 24. Tenants may make such offers, as well as owners.
 25. Restriction of suits for damages.
 26. Double damages if dam is raised higher, kept up longer, or more water diverted than allowed by the judgment.
 27. Agreement of parties binding, if recorded.
 28. Judgment no bar to a new complaint.
 29. Tender of damages, and effect thereof.
 30. Complaint not to abate by death of either party.
 31. If complaint abates, rights may be preserved by new complaint within a year.
 32. Provisions of this chapter apply to streams forming the boundary of the state.
 33. Compensation of commissioners. Costs.
 34. Owner or mortgagee in possession, when liable for acts of tenants.

PROTECTION OF WAYS FROM OVERFLOW.

- SEC. 35. Owners of mills or water power may petition county commissioners for right to raise ways and enlarge vents. Preliminary proceedings.

- CHAP. 92.** SEC. 36. Examination, hearing and decision. Expenses and costs, how borne.
 37. If decision is in favor of petitioners, proceedings.
 38. If decision is against petitioners, proceedings.
 39. Any party may appeal as in case of highways.
 40. Rights of flowage or damage unaffected.

INSPECTION OF DAMS AND RESERVOIRS.

- SEC. 41. Engineer to be appointed by governor and council, on petition, to inspect dams and reservoirs, and to report to them.
 42. If dam or reservoir is reported unsafe, occupants or lessees to make alterations. Proceedings in case of neglect.
 43. Compensation of engineer, how paid.

ERECTION OF MILLS AND DAMS, AND RIGHTS OF FLOWAGE.

Right to erect and maintain mill-dams, and to divert water by a canal for mills.
 R.S., c. 92, § 1.

SEC. 1. Any man may erect and maintain a water mill and dams to raise water for working it, on his own land upon and across any stream, not navigable; or, for the purpose of propelling mills or machinery, may cut a canal and erect walls and embankments upon his own land, not exceeding one mile in length, and thereby divert from its natural channel the water of any stream not navigable, upon the terms and conditions, and subject to the regulations hereinafter expressed. (a)

Not to injure mill or canal previously built.
 R.S., c. 92, § 2.

SEC. 2. No such dam shall be erected or canal constructed to the injury of any mill or canal lawfully existing on the same stream; nor to the injury of any mill site, on which a mill or mill-dam has been lawfully erected and used, unless the right to maintain a mill thereon has been lost or defeated. (b)

Restrictions as to height of dam, &c.
 R.S., c. 92, § 3.
 38 Me., 239.

SEC. 3. The height to which the water may be raised, and the length of time during which it may be kept up in each year, and [the] quantity of water that may be diverted by such canal, shall be liable to be restricted and regulated by the verdict of a jury, or report of commissioners, as hereinafter is provided.

Damages for flowing, recoverable by complaint.
 R.S., c. 92, § 4.

SEC. 4. Any person, whose lands are damaged by being flowed by a mill-dam, or by the diversion of the water by such canal, may obtain compensation for the injury, by complaint to the supreme judicial court in the county where the lands or any part thereof are; but no compensation shall be awarded for damages sustained more than three years before the institution of the complaint. (c)

Complaint.
 R.S., c. 92, § 5.
 16 Me., 412.
 28 Me., 20.
 41 Me., 296.
 42 Me., 69.
 61 Me., 30.

SEC. 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) 5 Me., 14; 28 Me., 20; 36 Me., 43; 39 Me., 250; 42 Me., 155; 50 Me., 433; 61 Me., 29, 30; 62 Me., 456, 497; 65 Me., 194; 68 Me., 542; 69 Me., 19; 70 Me., 246.

(b) 31 Me., 254; 38 Me., 246; 44 Me., 173, 199; 54 Me., 489.

(c) 7 Me., 156; 10 Me., 236; 14 Me., 426; 28 Me., 20; 33 Me., 273, 480; 52 Me., 78; 54 Me., 489; 61 Me., 29; 68 Me., 221.

SEC. 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 its occupant; or the complaint may be inserted in a writ of attachment and served by summons and copy.

SEC. 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. (a)

SEC. 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. (b)

SEC. 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 appraisalment, under oath, of the yearly damages, if any, done to the complainant by the flowing 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 quantity of water shall be diverted. And said commissioners shall also ascertain, determine and report what sum in gross would be a just and reasonable compensation for all the damages, if any, occasioned by the use of such dam, and for the right of maintaining and using the same forever, estimated according to the height of the dam and flash-boards as then existing; and if within ten days after said report is presented to the court, the owners of said dam or mills shall elect to pay the damages in gross, the court, where the judgment is entered, shall fix the time in which said damages shall be paid, and if not paid within that time, the owners of the dam or mills shall lose all benefit of their election, and the annual damages shall stand as the judgment of the court, and, except as herein provided, all proceedings shall be in conformity with the other provisions of this chapter.

CHAP. 92.
Presentment and service; —or complaint may be inserted in writ.
R.S., c. 92, § 6.
64 Me., 367.
65 Me., 563.

What may be pleaded in bar.
R.S., c. 92, § 7.

Respondent prevailing, recovers costs.
R.S., c. 92, § 8.

Proceedings if complainant recovers.
R.S., c. 92, § 9.
39 Me., 460.
48 Me., 462.
65 Me., 563.

Commissioners to determine damages in gross.
1881, c. 88, § 1.

If owners do not elect to pay, annual damages shall stand as the judgment of the court.

(a) 4 Me., 323; 5 Me., 14; 12 Me., 188; 21 Me., 230; 32 Me., 39, 385; 33 Me., 548; 42 Me., 70; 48 Me., 462; 56 Me., 399; 65 Me., 563.

(b) 6 Me., 283; 65 Me., 562, 563.

CHAP. 92.

If damages in gross are paid, judgment to be a bar to further complaint, unless change in dam.
1881, c. 88, § 2.

Owners may apply to have damages assessed in gross.
1881, c. 88, § 3.
—proceedings.

Trial by jury. Commissioners' report to be evidence.
R.S., c. 92, § 10.
36 Me., 44.
42 Me., 70.

Acceptance of comm'rs report.
R.S., c. 92, § 11.

Verdict or report bars any future action.
R.S., c. 92, § 12.
64 Me., 367.

Yearly damages, how fixed.
R.S., c. 92, § 13.
36 Me., 44.
50 Me., 32.

Security to be given for yearly damages, if required.
R.S., c. 92, § 14.

SEC. 10. If the damages in gross are paid within the time fixed, the judgment shall be a bar to any further complaint so long as the dam and flash-boards remain at the same height, but if there-after either is raised, a new complaint may be made by the owner of the lands flowed for any additional damages caused thereby, and the proceedings in said new complaint shall be as hereinbefore prescribed.

SEC. 11. In any case where annual damages have been determined by a judgment of the court, the owners of the dam or mills may apply to the court by a new complaint, to have the damages assessed in gross, and commissioners may be appointed as in other cases, and [to] ascertain, determine and report the damages in gross, and like proceedings shall then be had as are provided in the two preceding sections.

SEC. 12. If either party requests that a jury may be impanelled 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 unfaithfulness on the part of some commissioner is shown.

SEC. 13. If neither party requests a trial by jury, the report of the commissioners may be accepted by the court and judgment rendered thereon.

SEC. 14. The verdict of the jury or the report of the commissioners so accepted, shall be a bar to any action brought for such damages; and the owner or occupant shall not flow the lands nor divert the water during any portion of the period when prohibited, nor divert the water beyond the quantity allowed by the commissioners or jury.

SEC. 15. Such verdict or accepted report of the commissioners, and judgment thereon, shall be the measure of the yearly damages, until the owner or occupant of the lands or the owner or occupant of the mill or canal, on a new complaint to the court, and by proceedings as in the former case, obtains an increase or decrease of such damages.

SEC. 16. When any person, whose lands are so flowed or from whose lands the water is so diverted, files his complaint for ascertaining or increasing his damages, or brings his action of debt as provided in the following section, and moves the court to direct the owner or occupant of such mill or canal to give security for the payment of the annual damages, and the court so orders, the owner or occupant refusing or neglecting to give security shall have no benefit of this chapter; but shall be liable to be sued for the damages occasioned by such flowing, in an action at common law.

CHAP. 92.

SEC. 17. The party entitled to such annual compensation, may maintain an action of debt or assumpsit therefor against any person who owns or occupies *the* said mill, or canal and mills supplied thereby, when the action is brought; and shall therein recover the whole sum due and unpaid, with costs; and shall have a lien for such compensation, from the time of the institution of the original complaint, on the mill and mill-dam, or on the canal and the mill supplied thereby, with the appurtenances and the land under and adjoining them and used therewith, for any sum due not more than three years before the commencement of the complaint.

Complainant may sue for damages, if unpaid.
Lien upon mill and land for damages.
R.S., c. 92, § 15.
15 Me., 243.
30 Me., 251.
34 Me., 403.
65 Me., 561, 562.

SEC. 18. The execution on such judgment, if not paid, may at any time within thirty days be levied on the premises subject to the lien; and the officer may sell the same at public auction, or so much thereof in common with the residue, as is necessary to satisfy the execution, proceeding in giving notice of such sale as in selling an equity of redemption on execution. Such sale shall be effectual against all persons claiming the premises by any title, which accrued within the time covered by the lien.

Mill and land may be sold on execution after thirty days.
Effect of sale.
R.S., c. 92, § 16.
28 Me., 21.

SEC. 19. Any person, entitled to the premises, may redeem them within one year after the sale, by paying to the purchaser, or the person holding under him, the sum paid therefor, with interest at the rate of twelve per cent., deducting therefrom any rents and profits received by such purchaser, or person holding under him; and may have the same process to compel the purchaser to account, as might be had against a purchaser of an equity of redemption.

Right of redemption, how enforced.
R.S., c. 92, § 17.

SEC. 20. When either party is dissatisfied with the annual compensation established as aforesaid, a new complaint may be filed, and proceedings had and conducted substantially as in case of an original complaint.

Either party may file new complaint.
R.S., c. 92, § 18.
16 Me., 412.

SEC. 21. No new complaint shall be brought, until the expiration of one month after the payment of the then last year is due, and one month after notice to the other party; and the other party may within that time make an offer or tender, as hereinafter is provided.

Restriction of this right.
R.S., c. 92, § 19.
50 Me., 33.

SEC. 22. The owner of a mill, dam, or canal, within said month, may offer in writing to the owner of the land injured an increase of compensation for the future; and if the owner of the land does not agree to accept it, but brings a new complaint for the purpose of increasing it, he shall not recover any costs, unless he obtains an increase greater than the offer.

Owner may offer increased compensation. Consequence.
R.S., c. 92, § 20.

SEC. 23. The owner of the land injured may, within said month, offer in writing to the owner of the mill, dam, or canal, to accept a reduced compensation for the future; and if the owner of the mill, dam, or canal, declines to pay it, but brings a new complaint

Injured party may offer to accept less compensation.

CHAP. 92. to obtain a reduction, he shall not recover costs, unless such compensation is reduced to a sum less than was offered.

Consequence.
R.S., c. 92, § 21.

Tenants may make such offers as well as owners.
R.S., c. 92, § 22.

SEC. 24. Such offers may be made by or to the tenant or occupants of the land, and of the mill and dam, or canal, in like manner and with like effect, as if made by or to the owners; but no agreements founded thereon shall bind the owners, unless made by their consent.

Restriction of suits for damages.
R.S., c. 92, § 23.
30 Me., 246.
64 Me., 367.

SEC. 25. No action shall be sustained at common law for the recovery of damages occasioned by the overflowing of lands, or for the diversion of the water as before mentioned, except in the cases provided in this chapter, to enforce the payment of damages after they have been ascertained by process of complaint as aforesaid.

Double damages if dam is raised higher, &c.
R.S., c. 92, § 24.

SEC. 26. If after judgment, the restrictions imposed by the report of the commissioners or finding of the jury, respecting the flowing or diverting of the waters are violated, the party injured thereby may recover of the wrong-doers double damages for his injury in an action at common law.

Agreement of parties binding, if recorded.
R.S., c. 92, § 25.

SEC. 27. When an annual compensation, upon the acceptance by one party of an offer made by the other, is established and signed by the owners of the mill, dam, or canal, and of the land, and recorded in the office of the clerk of the court in which the former judgment was rendered, with a reference on the record *of* [to] the former judgment, and to the book where the agreement is recorded, such agreement shall be as binding as a verdict and judgment on a new complaint.

Judgment no bar to a new complaint.
R.S., c. 92, § 26.

SEC. 28. A judgment against a complainant as not entitled to any compensation shall be no bar to a new complaint for damages, arising after the former verdict, and for compensation for damages subsequently sustained.

Tender of damages, and effect thereof.
R.S., c. 92, § 27.

SEC. 29. In case of an original complaint, the respondent may, with the same advantages to himself, tender and bring money into court, as in an action at common law; and if it is accepted, the judgment shall have the same effect as if rendered on a verdict.

Complaint not to abate by death of either party.
R.S., c. 92, § 28.

SEC. 30. No complaint for so flowing lands or diverting water shall abate by the death of any party thereto; but it may be prosecuted or defended by the surviving complainants or respondents, or the executors or administrators of the deceased.

If complaint abates, rights preserved by new complaint within a year.
R.S., c. 92, § 29.

SEC. 31. If such complaint is abated or defeated for want of form, or if after a verdict for the complainant, judgment is reversed, he may bring a new complaint at any time within one year thereafter, and thereon recover the damages sustained during three years next before the institution of the first complaint, or at any time afterwards.

SEC. 32. *The provisions of* this chapter shall apply to mills and dams erected upon streams forming the boundary line of the state, although a part of the dam is not in the state; and the rights and remedies of all parties concerned shall be ascertained and determined as if the whole of such streams were in the state.

CHAP. 92.

Streams forming boundary of state. R.S., c. 92, § 30. 39 Me., 250.

SEC. 33. The court shall award a suitable compensation to be paid to the commissioners, and taxed and recovered by the prevailing party. The prevailing party shall recover his costs, except where it is otherwise expressly provided.

Pay of commissioners. Costs. R.S., c. 92, § 31.

SEC. 34. The owner or mortgagee in possession, of any mill used for manufacturing lumber, shall be liable for the acts of his tenant in unlawfully obstructing or diverting the water of any river or stream, by the slabs or other mill waste from his mill, as well as the tenant himself, but no action shall be maintained therefor without a demand of damages, at least thirty days prior to its commencement. Such unlawful obstruction or diversion by the tenant, shall, at the election of the owner or mortgagee, and on written notice to the tenant, terminate his tenancy.

Owner or mortgagee in possession, liable for acts of tenants, &c. R.S., c. 92, § 32. 50 Me., 492. 52 Me., 261. 54 Me., 489.

PROTECTION OF WAYS FROM OVERFLOW.

SEC. 35. When the owners of mills carried by the water of a stream, or the owners of water power for operating mills, find or apprehend that the necessary head of water for working or reservoir purposes, cannot be obtained, or when their existing rights in respect to the same cannot be exercised without overflowing some highways or town ways, they may petition the county commissioners for permission to raise said ways and [to] enlarge the water vent thereof. Such commissioners shall appoint a time and place for a hearing on the petition, and give notice thereof to all parties interested, as provided in section two of chapter eighteen, and such notice may be proved in the manner provided in said section.

Owners of mills or water power may petition co. comm'rs for right to raise ways and enlarge water vents. 1879, c. 137, § 1.

Comm'rs to appoint hearing and give notice. Notice, what and how proved.

SEC. 36. On the day appointed, they shall meet, examine the premises described in the petition, and hear the parties present, and thereupon they shall determine whether said ways shall be raised and the water vents enlarged, and to what extent, and [shall] prescribe the manner in which it shall be done, and what portion of the expenses thereof and the costs of the hearing shall be borne by the petitioners, and what portion, if any, by the town where the way is located.

Proceedings of comm'rs. 1879, c. 137, § 2. Their determination and how carried into effect.

Expenses and costs, how borne.

SEC. 37. If the decision is in favor of the petitioners, said commissioners shall direct the town, in writing, to make the alterations prescribed, and fix the time within which the same shall be done, and if not done within the time fixed, the same may be done by the petitioners, and whether done by the town or by the petitioners, it shall be done in a faithful manner and to the acceptance

If decision is in favor of petitioners, — proceedings. 1879, c. 137, § 3.

CHAP. 92. of the commissioners; and whichever party shall make said alterations shall have a claim upon the other party for the proportion fixed by the commissioners for said other party to pay, and if the same is not paid within thirty days after its approval by said commissioners and a demand therefor, it may be recovered in an action on the case.

Proceedings
if decision is
v. pet'rs.
1879, c. 137, §4.

SEC. 38. If the decision of the county commissioners is against the petitioners, they shall pay the costs of the hearing, taxed as in other cases before county commissioners.

Appeal.
1879, c. 137, §5.
See c. 18, § 52.

SEC. 39. Any party *aggrieved* may appeal from the decision of said commissioners, in the same manner and subject to the same conditions as *is provided* in case of highways.

Flowage
rights not
affected.
1879, c. 137, §6.

SEC. 40. Nothing in the five preceding sections shall *be construed to affect* any right of flowage or damage therefor.

INSPECTION OF DAMS AND RESERVOIRS.

Engineer to
be appointed
by governor
and council
to inspect
dams and
reservoirs.
1877, c. 169.

SEC. 41. The governor, by *and with the consent of the council*, shall annually appoint one competent and practical engineer, a citizen of *this* [the] state, *whose duty it* [who] shall *be*, during the months of August, September and October, upon the petition of ten resident tax-payers, the selectmen or assessors of any town, or county commissioners of any county, *to inspect any dam or reservoir located in such town, which now is or may be hereafter erected for the purpose of saving water for manufacturing or any other purposes whatever*, and after personal examination, and hearing testimony of witnesses summoned for the purpose, to report forthwith to the governor his opinion of the safety and sufficiency of said dam or reservoir.

—to report
to governor
and council.

If dam or
reservoir is
reported un-
safe, owners
or occu-
pants to
make alter-
ations, &c.
1877, c. 169.

SEC. 42. If, after such personal survey and inspection, the engineer shall *adjudge, determine and report* that any such dam or reservoir is unsafe or dangerous to the lives or property of persons residing near or below such dam or reservoir, then the owners, occupants or lessees of such dam or reservoir shall immediately make, *or cause to be made*, such alterations, repairs, and additions to said dam or reservoir as such engineer shall *advise and recommend*; and in default thereof, upon application of said engineer to any justice of the supreme judicial court, the said owners, occupants, or lessees shall be enjoined from the use of such dam or reservoir and the water therein contained, until they or either of them shall comply with the requirements of said engineer, and the water contained in said dam or reservoir may be discharged therefrom, by order of said engineer, in such manner as said engineer shall direct as most conducive to the safety of human life, and consistent with the protection of property.

Proceedings
in case of
neglect.

SEC. 43. *The said engineer shall receive as full compensation*

for his services five dollars *per diem* [a day] while actually employed in such service, together with his actual travelling expenses, to be audited, allowed and paid from the state treasury, in all cases where such dam or reservoir shall be by him adjudged to be safe and sufficient; and by the owners, occupants or lessees, of said dam or reservoir, in all cases where said dam or reservoir shall be by him adjudged to be unsafe and insufficient, to be recovered by said engineer in an action *of* [on] the case.

CHAP. 93.
Compensation of
engineer.
1875, c. 30, § 3.
—how paid.

CHAPTER 93.

INQUESTS OF OFFICE, AND INFORMATIONS FOR INTRUSION.

- SEC. 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. Proceedings if it is adjudged that defendant holds too much land.
 8. Such part shall be located by persons appointed by the court.
 9. Cases in which information may be filed, without order of the legislature. Notice, how to be given.
 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 re seized.
 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.

SEC. 1. Where lands have been granted by the colony or province of Massachusetts Bay, the commonwealth of Massachusetts, or by this state, or are hereafter granted, on certain conditions alleged to have been violated; and the state claims to be revested therein, the following proceedings shall be had.

Proceedings to revest in the state, lands granted on condition.
R.S., c. 93, § 1.

SEC. 2. When the legislature directs, the attorney general shall file an information in the supreme judicial court in the county where the lands lie, stating the grant and conditions, breaches, and claims of the state.

Attorney general to file information.
R.S., c. 93, § 2.

SEC. 3. The court shall issue a scire facias against the person stated as holding the lands under such grant, returnable to said court; which shall be served thirty days before the return day.

Scire facias to issue. Service.
R.S., c. 93, § 3.

CHAP. 93.

Judgment on default. R.S., c. 93, § 4.

Consequence of disclaimer by defendant. R.S., c. 93, § 5.

Proceedings, if defendant claims title. R.S., c. 93, § 6.

Proceedings, if it is adjudged that defendant holds too much land. R.S., c. 93, § 7.

Such part shall be located by persons appointed by the court, &c. R.S., c. 93, § 8.

Cases in which information may be filed. R.S., c. 93, § 9. Notice.

Proceedings, judgment and costs. R.S., c. 93, § 10.

Information to recover escheats. Notice. R.S., c. 93, § 11.

Tenant not

SEC. 4. If the defendant does not appear and answer to such information, judgment shall be rendered that the state be reseized of their lands.

SEC. 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.

SEC. 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, to be paid from the state treasury.

SEC. 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 it is so 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 is equal in quantity to what he has a right to hold under the grant, and in such part thereof as is judged reasonable by the court.

SEC. 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 reseized of the residue, and for costs.

SEC. 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.

SEC. 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 seized thereof and recover costs; but if the verdict is in favor of the defendant, he shall recover his costs to be paid from the state treasury.

SEC. 11. The attorney general may file an information as aforesaid for recovering seizin by the state for any real estate supposed to have escheated to the state for want of legal heirs; and the court shall order such notice thereon as they judge proper.

SEC. 12. In such case, the defendant shall not avail himself

of the title of an alien, or subject of another nation or sovereign, or of any other person, unless he shows that he is his tenant or agent. CHAP. 93.

SEC. 13. If on trial he proves that he is such tenant or agent, or the legal owner of such estate, he shall recover his costs, to be paid as aforesaid. to set up title of alien. Exception. R.S., c. 93, §12. Costs, if defendant recovers. R.S., c. 93, §13.

SEC. 14. If it is found that he was not legal owner of such estate, nor had any right as tenant or agent when the process was commenced against him, but afterward acquired a good title, or became tenant or agent, the attorney general shall cease further to prosecute the suit; but when the defendant proves no such title to the estate as owner, or interest therein as tenant or agent, judgment shall be rendered that the state be seized thereof, and recover rents and profits as in case of a writ of entry between private persons. Defendant may hold by title subsequently acquired, &c. R.S., c. 93, §14.

SEC. 15. When judgment on information is rendered that the state be resealed or seized of any lands, the state shall be deemed in law to be so seized, and any judgment so rendered shall conclude all privies and parties, and those claiming under them, so long as it remains in force, subject to the provisions of the following section. Effect of judgment, that the state be resealed. R.S., c. 93, §15.

SEC. 16. If any person appears and by due process of law proves himself to have a legal title to such estate, and recovers it against the state or its grantee or tenant, the estate shall be liable for all expenses of improvements thereon over and above the rents and profits thereof; though the tenant and those claiming under the state had not been in possession six years. Tenant under the state to have betterments, &c. R.S., c. 93, §16.

SEC. 17. For the purpose of ascertaining the amount of such improvements, the attorney general, or the tenant or grantee of the estate, may file a bill in equity in the supreme judicial court for recovering the same; and proceedings shall be had thereon as in other cases in equity to ascertain and adjust the amount. Proceedings by attorney general to obtain betterments. R.S., c. 93, §17.

SEC. 18. The sheriff, by virtue of such execution, shall sell, at public auction, so much of said land as will be sufficient to satisfy the execution and charges, unless otherwise paid. Execution, how levied. R.S., c. 93, §18.

CHAP. 94.

CHAPTER 94.

FORCIBLE ENTRY AND DETAINER. TENANCIES.

- SEC. 1. Forcible entry and detainer, when it may be commenced.
2. Tenancy at will, or sufferance, and tenancies of buildings on land of third party, how terminated.
 3. What magistrates have jurisdiction.
 4. Complaint how made, summons issued and served. If claimant lives out of the county or state, proceedings.
 5. When defendant fails to show sufficient cause or is defaulted, proceedings.
 6. When defendant files a brief statement claiming title in himself or another, proceedings.
 7. Claimant may allege that brief statement is intended for delay, proceedings.
 8. Either party may appeal, proceedings.
 9. When judgment is for claimant, 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 it may be commenced. R.S., c. 94, § 1.

SEC. 1. A process of forcible entry and detainer may be maintained against a disseizor who has not acquired any claim by possession and improvement; and against a tenant holding under a written lease or contract, or person holding under such tenant, at the expiration or forfeiture of the term, without notice, if commenced within seven days from the expiration or forfeiture of the term; and against a tenant at will, whose tenancy has been terminated as provided in the following section. (a)

Tenancy at will, how determined. 1880, c. 219.

SEC. 2. All tenancies at will may be determined by either party, by thirty days' notice in writing for that purpose, given to [or served like any precept upon] the other party, and not otherwise *except* [save] by mutual consent, *and* excepting cases where the tenant *is*, [if] liable to pay rent, *and no rent is due at the time the notice expires*, [shall not be in arrears at the expiration of the notice, in which case the thirty days aforesaid shall be made to expire upon a rent day.] When [the tenancy is] terminated, the tenant is liable to the process *aforesaid*, [of forcible entry and detainer] without further notice and without proof of any relation of landlord and tenant, unless he has paid, after service of the notice, rent that accrued after the termination of the tenancy. These provisions shall apply to tenancies of buildings erected on land of another party. (b)*

Applied to buildings on land of another party.

(a) 18 Me., 268; 25 Me., 285, 290; 30 Me., 180; 35 Me., 217; 37 Me., 109; 46 Me., 278; 57 Me., 390; 67 Me., 266; 69 Me., 482; 70 Me., 209; 72 Me., 29, 30, 45.

(b) 13 Me., 215; 19 Me., 255; 20 Me., 71; 21 Me., 116; 24 Me., 247; 35 Me., 506; 36 Me., 135; 62 Me., 117; 67 Me., 266, 267; 71 Me., 550; 72 Me., 29, 137.

* [NOTE. The commissioner hopes that he has made more intelligible this "awkwardly worded, if not obscure" section. See opinion of Mr. Justice Peters, in *Wilson v. Prescott*, 62 Me., 117.]

SEC. 3. Trial justices and judges of municipal and police courts have jurisdiction of cases of forcible entry and detainer respecting estates within their counties. Such judges have exclusive jurisdiction of *them* [such cases] within their cities or towns, unless interested. (a)

CHAP. 94.
What magistrates have jurisdiction.
R.S., c. 94, § 3.

SEC. 4. The process of forcible entry and detainer shall be commenced by inserting the substance of the complaint, as a declaration, in a writ of attachment, to be indorsed and served like other writs; and when the plaintiff lives out of the state, and a recognizance is required of him, any person may recognize in his behalf and shall be personally liable.

How commenced, indorsed and served; recognizance when pl'ff lives out of state.
R.S., c. 94, § 4.
71 Me., 209.

SEC. 5. When the defendant is defaulted, or fails to show 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 writ of possession to issue and by whom served.
R.S., c. 94, § 5.

SEC. 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 here[in]after provided, recognize in a reasonable sum to the claimant, with sufficient sureties, conditioned to pay all intervening damages and costs and a reasonable rent for the premises; and the claimant shall in like manner recognize to the defendant, conditioned to enter the suit at the next term of the supreme judicial court, and [to] pay all costs adjudged against him. If either party neglects so to recognize, judgment shall be rendered against him as on nonsuit or default.

Proceedings when defendant files a brief statement of title.
R.S., c. 94, § 6.
36 Me., 431.
49 Me., 41.
53 Me., 159.
65 Me., 229.
68 Me., 120.

SEC. 7. But the claimant 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 claimant, [he] may issue a writ of possession for removal of the defendant; but this shall not prevent an appeal as provided in the following section.

Claimant may allege that brief statement is intended for delay; proceedings.
R.S., c. 94, § 7.

SEC. 8. Either party may appeal from a judgment to the supreme judicial court next to be held in the same county. When the claimant appeals, he shall recognize in manner aforesaid to the defendant, except as hereafter provided, conditioned to enter the suit and [to] pay all costs adjudged against him. When the defendant appeals, he shall recognize in like manner to the claimant, conditioned to enter the suit and [to] 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. 94, § 8.
36 Me., 432.
68 Me., 120.

SEC. 9. When judgment is rendered for the claimant, a writ

When judg-

(a) 38 Me., 484; 51 Me., 479; 53 Me., 159.

CHAP. 95. of possession shall issue in all cases, if the claimant recognizes to the defendant in manner before provided, conditioned to pay all such damages and costs as may be awarded against him if final judgment is rendered for the defendant; and if on trial the jury find for the defendant, they shall [also] find the damages sustained by him; *and* in case of nonsuit his damages shall be assessed by the court; and [in either case] the claimant may give evidence of any claim for rent of the premises, to be set off against damages claimed by the defendant. If the defendant prevails, the court may or not, as justice requires, issue a writ to restore to him possession of the premises.

Sums due for rent and damages, how recovered.
R.S., c 94, § 10.

SEC. 10. Sums due for rent on leases under seal or otherwise, and claims for damages to premises rented, may be recovered in an action of assumpsit, on account annexed to the writ, specifying the items and amount claimed.

CHAPTER 95.

WASTE AND TRESPASS ON REAL ESTATE.

- SEC. 1.** Remedy if tenant for life or years commits waste; heir may sue for waste committed in his ancestor's time, as well as in his own.
2. Proceedings in court; jury to assess damages, with or without a view; action on the case may be brought instead of waste.
3. Reversioner and remainder man may sue for damages.
4. The action will lie against the executor or administrator.
5. Part owners not to commit waste without giving thirty days' notice; treble damages 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. Trespases on public buildings or property of county, town, parish or school district.
11. Trespases upon improved or ornamental grounds, penalty for.
12. Trespasers on islands in salt waters after notice, are subjected to actual and exemplary damages. How recovered.
13. Notices, how given. Penalty for injuring sign-boards.
14. Damages and penalties, how recovered.
15. Imprisonment of trespasser, in default of payment.
16. Penalty for waste on lands of a person dying insolvent.
17. Liability of executor or administrator for committing waste.
18. One or more tenants in common may join or sever in actions for damages. Notice to be given to the other co-tenants, who may become plaintiffs.

SEC. 19. Judgment to be rendered for the whole damage, and execution to issue for proportion which plaintiffs have sustained. Scire facias on such judgment by the other co-tenants for their shares.

CHAP. 95.

20. If one or more joint tenant takes the whole rent, the co-tenants may recover their share, after demand.

SEC. 1. If any tenant in dower, by courtesy, for life, or for years, commits or suffers any waste on the premises, the person having the next immediate estate of inheritance, may recover the place wasted and the damages done to the premises, in an action of waste against him; and an heir may recover in the same action for waste done in his own time and the time of his ancestor.

Remedy if tenant commits waste, &c.
R.S., c. 95, § 1.
12 Me., 436.
19 Me., 291.
51 Me., 436.

SEC. 2. Any issue of fact shall be tried by a jury, with or without a view of the premises, as the court orders; and the jury that inquires of the waste shall assess the damages. An action on the case in nature of waste, may be substituted for the action of waste. (a)

Jury assess damages; action on the case instead of waste.
R.S., c. 95, § 2.

SEC. 3. The remainder man, or reversioner for life, or years only, or in fee simple, or fee tail, after an intervening estate for life, may maintain such action, and recover the damages he has suffered by the waste.

Remainder man or reversioner may sue.
R.S., c. 95, § 3.
37 Me., 365.
51 Me., 436.

SEC. 4. Such action may be originally commenced against the executors or administrators of the tenant, or prosecuted against them after his death, if brought against him before death.

Action will lie v. ex'r or adm'r.
R.S., c. 95, § 4.

SEC. 5. If any joint tenant, coparcener, or tenant in common of undivided lands, cuts down, destroys, or carries away any trees, timber, wood or underwood, standing or lying on such lands, or digs up or carries away any ore, stone, or other valuable thing found thereon, or commits any strip or waste, without first giving thirty days' notice in writing, under his hand, to all other persons, or to their agents or attorneys, and to mortgagors and mortgagees, if any there are, interested therein, of his intention to enter upon and improve the land; and if any persons interested are unknown, or their residence is unknown, or out of the state, the notice to them may be published in the state paper three times, the first publication to be forty days before such entry; or if he does any such acts pending a process for partition of the premises, he shall forfeit three times the amount of damages; and any one or more of the co-tenants, without naming the others, may sue for and recover their proportion of such damages.

Part owners not to commit waste without giving notice. Treble damages in such cases, how recovered and appropriated.
R.S., c. 95, § 5.
15 Me., 200.
44 Me., 79.
64 Me., 63.

SEC. 6. If the jury finds that the defendant in such suit has good reason to believe himself the owner of the land in severalty, or that he and those under whom he claims had been in the exclusive possession thereof, claiming it as their own, for three years next before the acts complained of were committed, only single damages shall be recovered.

Defendant to pay only single damages in certain cases.
R.S., c. 95, § 6.

(a) 37 Me., 365; 51 Me., 436; 52 Me., 143.

CHAP. 95.

Injunction to prevent waste pending a process for the recovery of lands, and on lands attached.
R.S., c. 95, § 7.
66 Me., 53.

SEC. 7. If any defendant in an action to recover possession of real estate, or any person whose real estate is attached in a civil action does any act of waste thereon, or threatens or makes preparations so to do, any justice of the supreme judicial court, in vacation or term time, may issue an injunction to stay such waste; but notice shall first be given to the adverse party to appear and answer, unless the applicant files a bond, with sufficient sureties, to respond [to] all damages and costs; and the court may enforce obedience to such injunctions by such process as may be employed in an equity case, and dissolve it when deemed proper.

Treble damages for waste on lands, pending a suit.
R.S., c. 95, § 8.
31 Me., 187.

SEC. 8. If, during the pendency of any action for the recovery of land, the tenant makes any strip or waste by cutting, felling, or destroying any wood, timber, trees, or poles, standing thereon, he shall pay to the aggrieved party treble damages, to be recovered in an action of trespass.

Trespass on lands of another without his consent.
R.S., c. 95, § 9.

SEC. 9. If any person cuts down, destroys, injures, or carries away, any ornamental or fruit trees, timber, wood, underwood, stones, gravel, ore, goods, or property of any kind, from land not his own, without license of the owner, or injures or throws down any fences, bars, or gates, or leaves such gates open, or breaks any glass in any building, he shall be liable in damages to the owner in an action of trespass. (a)

Trespases on property of county, town, parish, or district. Who may sue.
R.S., c. 95, § 10.

SEC. 10. Where any trespases are committed on any buildings, inclosures, monuments, or mile stones, belonging to a county, town, or parish, the treasurer of such corporation may sue for the damages in its name; and if the property injured belongs to a school district, the treasurer of the town may sue in its name.

Penalty for trespass on improved or ornamental grounds.
1878, c. 18.
49 Me., 72.
66 Me., 50, 51.

SEC. 11. *If any person* [Whoever] enters on any grass land, door-yard, ornamental grounds, orchard or garden, and cuts down, defaces, destroys, or takes therefrom, without permission of the owner, any grass, hay, fruit, vegetable, [or] ornamental tree or shrub, *he* shall be liable in an action of trespass to the party injured in *a sum equal to three times the value of the articles so cut down, defaced, destroyed, or taken away.* [treble damages.]

Trespass on islands in salt waters after notice.
1874, c. 252, § 1.

SEC. 12. *Any person* who[-ever] shall knowingly trespass upon any island *in this state situated* within salt waters, for the purpose of shooting or hunting thereon, after notice by the owner, occupant, or lessee thereof, in any of the ways provided in the following section, shall be liable to such owner, occupant or lessee, in exemplary damages to an amount not less than twenty dollars, nor more than fifty dollars, in addition to all actual damage sustained by said owner, occupant or lessee, and shall also *be liable* [forfeit] to said owner, occupant, or lessee, *in the sum of* five dol-

Both exemplary and actual damages to be imposed.

(a) 3 Me., 15; 13 Me., 89; 14 Me., 440; 22 Me., 452; 30 Me., 29; 46 Me., 427; 48 Me., 247; 54 Me., 363; 66 Me., 50.

lars, for each bird of any kind shot, caught, taken, or killed on such island, all said sums to be recovered in an action of debt. The possession of guns, decoys, or other implements of shooting or hunting, shall be presumptive evidence that the purpose of the trespass was for shooting or hunting.

SEC. 13. The notices referred to in the preceding section shall be given by erecting and maintaining sign-boards at least one foot square, in at least two conspicuous places on the premises, one of them to be near one of the usual landing places on said island, such notice to read as follows: 'All persons are forbidden *from shooting or hunting* [to shoot or hunt] on this island;' and *shall have appended thereto* the name of the owner, occupant or lessee [shall be appended thereto]; or said notice may be given, verbally or in writing, by the owner, occupant, or lessee of any such island, to any person, and such verbal or written notice shall be binding on the person so notified, whether the sign-boards herein named are erected and maintained or not; *and any person* who[-ever] shall tear down, or in any way deface or injure any such sign-board, shall *be liable to a penalty of* [forfeit] one hundred dollars, to be recovered by the owner, occupant, or lessee of such island, in an action of debt.

SEC. 14. Actions to recover any of the sums or penalties named in the two preceding sections, may be brought before any supreme, superior, police or municipal court, or any trial justice in the county in which such island is situated, or in any county adjacent thereto, or in the county in which either the plaintiff or defendant resides.

SEC. 15. On *the* non-payment of [any of] the penalties aforesaid, the defendant shall be *committed to the common jail of the county where conviction is had, for a period of* [imprisoned] not less than five days, and at the rate of one day for each dollar of the amount of the judgment, where the sum is over five dollars in amount.

SEC. 16. If an heir or devisee of a person deceased, whose estate is represented insolvent, afterwards and before sale of the real estate for payment of debts, or before all the debts are paid, removes or injures any building or trees, except what is needed for fuel or repairs, or commits any strip or waste on such estate, he shall forfeit treble the amount of damages, to be recovered by the executor or administrator in an action of trespass.

SEC. 17. If such executor or administrator is heir or devisee, and commits such trespass or waste, on proof thereof before the judge of probate, he shall be liable to the same extent as the heirs or devisees; and in both cases, the damages, when recovered by

CHAP. 95.

—how recovered.

—evidence.

Notices,
how given.
1874, c. 252, §2.Penalty for
injuring sign
boards.Damages or
penalties,
how recovered.
1874, c. 252, §3.Imprison-
ment for
non-pay-
ment.
1874, c. 252, §4.Penalty for
waste on
lands of a
person
deceased
insolvent.
R.S., c. 95, §12.
10 Me., 370.
15 Me., 206.Liability of
executor or
administra-
tor for com-
mitting
waste.
R.S., c. 95, §13.

CHAP. 96. the executor or administrator, or adjudged against him by the judge of probate, shall be accounted for in the administration account.

One or more tenants in common may join in actions. Notice to other co-tenants, &c. R.S., c. 95, § 14. 29 Me., 204. 45 Me., 253. 57 Me., 409.

SEC. 18. 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 thereto, setting forth in the declaration the names of all other co-tenants, if known, and the court may order notice to be given in such actions to all other co-tenants 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.

Judg't for the whole damage, &c. Ex'on for pl'ffs share. Scire facias by other co-tenants for their shares. R.S., c. 95, § 15.

SEC. 19. 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; and the remaining co-tenants may afterwards 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.

If one or more joint tenants take the whole rent, others may recover. R.S., c. 95, § 16. 64 Me., 465. 72 Me., 406, 408, 409.

SEC. 20. 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 co-tenants, and refuse, *in* [for] a reasonable time after demand, to pay such co-tenants their share thereof, any one or more of them may have an action of special assumpsit against the refusing co-tenants, to recover their proportion thereof.

CHAPTER 96.

REPLEVIN OF BEASTS AND CHATTELS.

REPLEVIN OF BEASTS.

- SEC. 1. Owner of beasts distrained, may replevy them.
2. The writ may be sued out, served, returned and tried like other cases.
3. Bond to be given before service. When new sureties may be required.
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 and how a cause may be transferred from a trial justice to the supreme judicial court.

REPLEVIN OF GOODS.

- SEC. 8. Any goods, unlawfully detained, may be replevied.
9. In what courts replevin may be brought.

- SEC. 10. Bond to be given before service, and when new sureties may be required. CHAP. 96.
11. If plaintiff fails, defendant to have judgment for return, and for damages and costs. Judgment when property is held as security.
 12. Assessment of damages on judgment for return of property to an attaching officer.
 13. Disposal of the money recovered by the officer for goods attached or taken on execution.
 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.

SEC. 1. Any person, whose beasts are distrained or impounded to recover a penalty or forfeiture supposed to be incurred by their going at large, or to obtain satisfaction for damages alleged to be done by them, may maintain a writ of replevin therefor against the impounder or finder, before any trial justice in the county, in the form prescribed by law. Owners of beasts distrained may replevy them.
R.S., c. 96, § 1.
17 Me., 189.
18 Me., 249.
28 Me., 489.

SEC. 2. The writ shall be sued out, served, and returned, and the cause shall be heard and determined like other civil actions before a trial justice, except as otherwise prescribed. Writ, service and return.
R.S., c. 96, § 2.

SEC. 3. The writ shall not be served, unless the plaintiff, or some one in his behalf, executes and delivers to the officer a bond to the defendant, with sufficient sureties, to be approved by the officer, in a penalty double the actual value of the property to be replevied, conditioned as in the prescribed form of the writ, and to be returned with the writ for the use of the defendant; and if it afterwards becomes insufficient the court may require an additional surety or sureties to be furnished, who shall be held as if they had been original parties thereto; and if not so furnished, [it] may dismiss the action, and order a return of the property replevied, or make such other order as is deemed reasonable. Bond to be given before service.
When new sureties must be furnished.
R.S., c. 96, § 3.

SEC. 4. If it appears that the beasts were lawfully taken or distrained, the defendant shall have judgment for the sum found due from the plaintiff for the penalty or forfeiture, or for damages for which the beasts were impounded, with the legal fees, costs, and expenses occasioned by the distress, and the costs of the replevin suit; or instead thereof, the justice or court, at discretion, may enter judgment for a return of the beasts to the defendant, to be held by him for the original purpose, irrepleviable by the plaintiff, and for the defendant's damages and costs in the replevin suit. The judgment if the beasts are lawfully distrained.
R.S., c. 96, § 4.
28 Me., 491.

SEC. 5. If it appears that the beasts were taken or distrained If unlawfully

CHAP. 96.

distrained.

R.S., c. 96, § 5.

Appeal.

R.S., c. 96, § 6.

22 Me., 558.

In what cases

a cause may

be transfer-

red from a

trial justice

to the su-

preme judi-

cial court.

R.S., c. 96, § 7.

without justifiable cause, the plaintiff shall have judgment for his damages and costs.

SEC. 6. Either party may appeal from the final judgment of the justice, as in other civil actions.

SEC. 7. When it appears that the sum demanded for the penalty, forfeitures, or damages, exceeds twenty dollars, or that the property of the beasts is in question, and their value exceeds twenty dollars, or that the title to real estate is in question, at the request of either party, the case shall be transferred to the supreme judicial [or superior] court, to be there disposed of as provided by law respecting actions brought before a trial justice, in which the title to real estate is brought in question; but the party requesting such transfer shall recognize in such reasonable sum, as the justice orders, to enter the action at the next term of said court, prosecute it with effect, and pay all intervening damages and costs.

REPLEVIN OF GOODS.

Goods un-

lawfully

detained

may be

replevied.

R.S., c. 96, § 8.

SEC. 8. When any goods, unlawfully taken or detained from the owner or person entitled to the possession thereof, or attached on mesne process, or taken in execution, are claimed by any person other than the defendant in the suit, in which they are so attached or taken, such owner or person may cause them to be replevied. (a)

In what

courts re-

plevin may

be brought.

R.S., c. 96, § 9.

12 Me., 262.

40 Me., 581.

SEC. 9. If the value of the goods exceeds twenty dollars, the action shall be brought in the supreme judicial court for the county where the goods are detained; if it does not exceed twenty dollars, before any trial justice of the county where the goods are detained.

Bond to be

given before

service.

New sureties

may be

required.

R.S., c. 96, § 10.

SEC. 10. The officer before serving the writ shall take from the plaintiff, or some one in his behalf, a bond to the defendant, with sufficient sureties, in double the value of the goods to be replevied, conditioned as in the prescribed form of the writ, to be returned with the writ to the court from which the writ issued, for the use of the defendant, and new sureties may be required thereon as provided in section three. (b)

If def't is

entitled to a

return, he

shall have a

writ of re-

turn, with

damage and

cost.

SEC. 11. If it appears that the defendant is entitled to a return of the goods, he shall have judgment and a writ of return accordingly, with damages for the taking and costs. If the plaintiff claims the property replevied as security for a debt, his claim shall be discharged by payment or tender thereof, with interest and

(a) 3 Me., 186; 4 Me., 315; 12 Me., 261; 15 Me., 246, 375; 19 Me., 258, 285; 20 Me., 289; 32 Me., 323; 40 Me., 580; 53 Me., 293, 558; 59 Me., 114; 63 Me., 465.

(b) 11 Me., 132; 16 Me., 35; 20 Me., 97; 27 Me., 447; 28 Me., 251; 34 Me., 88; 37 Me., 27; 39 Me., 517; 54 Me., 119; 63 Me., 464; 72 Me., 375.

costs; and judgment shall be for a return without costs, unless his title has become absolute by a legal foreclosure. (a)

SEC. 12. If the goods, when replevied, were taken in execution, or attached, and judgment is afterwards rendered for the attaching creditor, and if, in either case, the service of the execution is delayed by the replevin, the damages on a judgment for a return shall not be less than at the rate of twelve per cent. *by the* [a] year on the value of the goods while the service of the execution is so delayed.

SEC. 13. All sums recovered by an officer in an action of replevin on account of goods attached or taken in execution by him, or recovered in a suit upon the replevin bond, shall be applied:

First.—To pay the lawful fees and charges of the officer, and the reasonable expenses of the replevin suit, and of the action on the bond, so far as they are not reimbursed by the costs recovered.

Second.—To pay the creditor, at whose suit the goods were attached or taken in execution, the sum, if any, recovered by him in that suit, or what remains unpaid, with interest at the rate of twelve per cent. *by the* [a] year for the time the money was withheld from the creditor, or the service of his execution delayed by reason of the replevin.

Third.—If the attaching creditor in such case does not recover judgment in his suit, or if any balance remains of the money so recovered by the officer, after paying the creditor his due, such balance or the whole amount, as the case may be, shall be applied as the surplus of the proceeds of sale should be applied if such goods had been sold on execution.

SEC. 14. All sums received by such creditor from the sale of goods attached or taken in execution, and afterwards returned, for any of such goods not returned, and of the officer for the insufficiency of the bond, shall be applied in discharge of the creditor's judgment; but all sums received as interest or damages for delay of his execution, shall be retained to his own use, and not go in discharge of the judgment.

SEC. 15. If it appears that the goods were taken, attached, or detained unlawfully, the plaintiff shall have judgment for his damages caused thereby, and for his costs. (b)

SEC. 16. If the goods replevied had been attached, they shall, in case of judgment for a return, be held by the attachment until thirty days after judgment in the suit in which they were attached;

CHAP. 96.

Judg't when property is held, as security. R.S., c. 96, § 11. Damages on judg't for return of property attached or taken on ex' on. R.S., c. 96, § 12. 58 Me., 478. 69 Me., 446. Disposal of money recovered by officer for goods attached or taken on execution. R.S., c. 96, § 13.

Appropriation of the money received by creditor. R.S., c. 96, § 14.

Judgment if plaintiff recovers. R.S., c. 96, § 15.

Continuance of attachment, if goods are

(a) 15 Me., 246, 375; 31 Me., 298; 46 Me., 418; 47 Me., 522; 53 Me., 316; 55 Me., 364; 56 Me., 138; 58 Me., 478; 62 Me., 361.

(b) 6 Me., 262; 12 Me., 54; 15 Me., 21, 246; 20 Me., 88; 21 Me., 509; 40 Me., 286; 56 Me., 173.

CHAP. 96.
replevied.
R.S., c. 96, § 16.

and if such final judgment is rendered before the return of the goods, or if the goods when replevied were seized on execution, they shall be held by the same attachment or seizure for thirty days after the return, liable to be taken and disposed of, as if they had not been replevied.

When writ
of reprisal
may issue.
R.S., c. 96, § 17.

SEC. 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 precept, he shall certify that fact in his return; and the court whence it issued, upon notice, may grant a writ of reprisal, in the form prescribed by law, against the plaintiff in replevin, to take his goods or beasts, not exempt 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.

Defendant's
remedy on
the replevin
bond.
R.S., c. 96, § 18.

SEC. 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 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. (a)

Limitation
of surety's
liability on
replevin
bond.
R.S., c. 96, § 19.

SEC. 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.

(a) 11 Me., 69; 18 Me., 261; 21 Me., 510; 33 Me., 387; 46 Me., 410; 53 Me., 425; 54 Me., 121; 55 Me., 364; 56 Me., 173; 60 Me., 446.

CHAPTER 97.

BASTARD CHILDREN AND THEIR MAINTENANCE.

- SEC. 1. Accusation by a woman pregnant with a bastard child, and her examination.
2. Justice may issue a warrant.
 3. Person arrested to give bond. On refusal, to be committed.
 4. Cause to be continued, if complainant is not delivered, or is unable to attend court. Surrender of principal by his sureties, and proceedings.
 5. Declaration must be filed before trial; form thereof.
 6. On what conditions complainant may maintain her prosecution.
 7. Proceedings if respondent is adjudged guilty. If not guilty, respondent to be discharged.
 8. Complainant not to settle with the father, unless by the written consent of the overseers of the poor.
 9. Town prosecuting, liable for costs, if respondent prevails.
 10. The father may be discharged from imprisonment, on taking the poor debtor's oath; his liability after such discharge to the mother and town, in action of debt.
 11. If complainant dies before trial, her representative may prosecute suit.

SEC. 1. When a woman pregnant with a child, that if born alive, may be a bastard, or who has been delivered of a bastard child, accuses any man of being the father thereof, before any justice of the peace, and requests a prosecution against him, *he* such justice shall take her accusation and examination on oath, respecting the accused, and the time and place when and where the child was begotten, as correctly as they can be described, and all such other circumstances as he deems useful in the discovery of the truth. (*a*)

Accusations by a woman pregnant with a bastard child, and her examination. R.S., c. 97, § 1.

SEC. 2. He may issue his warrant for the apprehension of such person, directed to the sheriff of any county in which the accused is supposed to reside, or [to] either of his deputies, accompanied by such accusation and examination.

Justice may issue a warrant. 1873, c. 106.

SEC. 3. When the person is brought before such or any other justice, he may [be] require[d] *him* to give bond to the complainant, with sufficient sureties, in such reasonable sum as *he* [the justice] orders, conditioned for his appearance at the next supreme judicial court for the county in which she resides, and for his abiding the order of the court thereon; and if he does not give it, he shall [be] commit[-ted] *him* to jail until he does. (*b*)

Justice to take bond or commit. R.S., c. 97, § 3.

(*a*) 8 Me., 164; 16 Me., 40; 36 Me., 488; 39 Me., 471; 70 Me., 418.

(*b*) 2 Me., 160; 3 Me., 433; 19 Me., 411; 26 Me., 382; 36 Me., 488; 37 Me., 548; 56 Me., 416; 66 Me., 271; 70 Me., 418.

CHAP. 96.

Case to be continued, if complainant not yet delivered.
Surrender of principal by his sureties.
R.S., c. 97, § 4.

Declaration must be filed before trial; its form.
R.S., c. 97, § 5.
1 Me., 305.
6 Me., 461.
12 Me., 29.
37 Me., 543.
55 Me., 361.
56 Me., 317.
70 Me., 416,
418.

On what conditions, complainant may maintain her prosecution.
R.S., c. 97, § 6.

Proceedings if respondent is adjudged guilty.
If not guilty, to be discharged.
R.S., c. 97, § 7.
2 Me., 170.
37 Me., 548.
61 Me., 406.
70 Me., 415,
418, 419.
72 Me., 255.

Complainant not to settle with the father, if town objects in writing.
R.S., c. 97, § 8.

Town prosecuting, liable for costs if respondent prevails.

SEC. 4. If at such next or any subsequent court, the complainant is not delivered of her child, or is unable to attend court, or for other good reason, the cause may be continued; and the bond shall remain in force until final judgment, unless the sureties of the accused surrender him in court at any time before final judgment, which they may do, and thereupon they shall be discharged; and he shall be committed until a new bond is given.

SEC. 5. Before proceeding to trial, the complainant must file a declaration, stating that she has been delivered of a bastard child begotten by the accused, the time and place when and where it was begotten, with as much precision as the case will admit; that being put on the discovery of the truth during the time of her travail, she accused the respondent of being the father of the child, and that she has been constant in such accusation.

SEC. 6. When the complainant has made said accusation; been examined on oath as aforesaid; been put upon the discovery of the truth of such accusation at the time of her travail, and thereupon has accused the same man with being the father of the child of which she is about to be delivered; has continued constant in such accusation; and prosecutes him as the father of such child before such court; he shall be held to answer to such complaint; and she may be a witness in the trial. (a)

SEC. 7. If, on such issue, the jury finds the respondent not guilty, he shall be discharged; but if they find him guilty, or the facts in the declaration filed are admitted by default or on demurrer, he shall be adjudged the father of such child; stand charged with its maintenance, with the assistance of the mother, as the court orders; and shall give a bond, with sufficient sureties approved by the court, to the complainant to perform said order, and a bond, with sufficient sureties so approved, to the town liable for the maintenance of such child; and be committed till he gives them. The latter bond to be deposited with the clerk of the court for the use of such town.

SEC. 8. No woman, whose accusation and examination on oath, have been taken by a justice of the peace at her request, shall make a settlement with the father, or give him any discharge to bar or affect such complaint, if objected to in writing by the overseers of the poor of the town interested in her support or the child's. (b)

SEC. 9. A town prosecuting in behalf of the complainant, shall be liable to the respondent, if he prevails, for his costs of court to be recovered in an action of the case; or the court may, on his

(a) 8 Me., 164; 18 Me., 307, 374; 23 Me., 574; 33 Me., 481; 34 Me., 238; 35 Me., 434; 39 Me., 471; 44 Me., 351; 56 Me., 317; 57 Me., 491.

(b) 18 Me., 151; 61 Me., 406, 407.

motion, enter judgment against the town for such costs, and issue execution thereon.

SEC. 10. When the father of such bastard child has remained ninety days in jail, without being able to comply with the order of court, he may be liberated by taking the poor debtor's oath, as persons committed on execution; but he shall give fifteen days' notice of his intention to do so, to the mother, if living, and to the clerk of the town where the child has its legal settlement, if in *this* [the] state. The mother and said town may, after such liberation, recover of him by action of debt any sum of money, which ought to have been paid pursuant to the order of court.

SEC. 11. When the complainant dies before trial, her executor or administrator may prosecute her action to final judgment; and in case of judgment against the respondent, the bond for *the* performance of the order of court, required by section seven, shall run to such executor or administrator, who, after payment of the costs of prosecution, shall appropriate to the support of the child the money recovered of the respondent.

CHAP. 98.

R.S., c. 97, § 9.
61 Me., 406.

How and when the father may be discharged from imprisonment. Action of debt to recover sums due after discharge.
R.S., c. 97, § 10.
19 Me., 411.
32 Me., 23.

Complainant dying before trial:

—proceedings.
1879, c. 109.

CHAPTER 98.

PERSONAL PROPERTY SEIZED AND LOST GOODS; AND PROCEEDINGS THEREON.

- SEC. 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. How notice of libel is to be given.
 6. Proceedings and decree thereon. Court may order party signing to give bond.
 7. If libel is not supported, or is discontinued, court shall decree restoration. Damages for seizure without probable cause.
 8. If the value is less than \$20, libel to be filed before a trial justice.
 9. Appeal; decree to be affirmed, if appeal is not prosecuted; depositions may be used in the trial.
 - 10, 11. Duty of finder of goods worth three dollars; also, if worth ten dollars.
 12. Proceedings, if owner appears in one year.
 13. 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.
 14. Penalty, if finder neglects to give notice.

SEC. 1. When any personal property is forfeited for an offence, and no special mode is prescribed for recovering it, any person

Who may seize forfeited personal

CHAP. 98. entitled to the whole or part of it, may seize and keep it *till* [until] final judgment, unless restored on the bond as herein provided.

property.
R.S., c. 98, § 1.
To be re-
stored to
claimant, on
giving bond.
R.S., c. 98, § 2.

SEC. 2. If the person claiming it for himself or another, gives bond to the party seizing, with sufficient surety, to pay the appraised value when it is decreed forfeited, it shall be restored to him.

To be ap-
praised, and
how.
R.S., c. 98, § 3.

SEC. 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 county.

Inventory
and apprais-
al, if no
claimant.
R.S., c. 98, § 4.

SEC. 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 county; which shall be the rule for deciding where the libel shall be filed.

If the value
exceeds \$20,
libel to be
filed in S. J. C.

SEC. 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 offence was committed, stating the cause of seizure, and praying for a decree of forfeiture. The clerk shall thereupon 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, which shall be published in some newspaper printed in the county, if any, if not, in the state paper, at least fourteen days before the time of trial.

How notice
of libel is to
be given.
R.S., c. 98, § 5.
62 Me., 37.

Court may
order party
seizing to
give bond.
Proceedings
and decree
thereon.
R.S., c. 98, § 6.

SEC. 6. When there is a claimant, the court may order the party seizing to give bond to him with sufficient surety for the safe keeping of the property seized, and compliance with the decree of court for restoration, and the payment of costs and damages, if not forfeited, and may hear and determine the cause by a jury, or without, if the parties agree, and may allow costs against the claimant; if there is no claimant, the court shall decree the forfeiture and *disposition* [disposal] of the property according to law, and a sale and distribution of the proceeds, after deducting all proper charges.

If libel is not
supported,
property to
be restored,
with costs
and dam-
ages.
R.S., c. 98, § 7.

SEC. 7. If the libel is not supported, or is discontinued, the court shall decree a restoration of the property, with costs. If the jury or court finds the seizure without probable cause, reasonable damages shall be decreed for the claimant.

If the value
is less than
\$20, libel to
be filed be-
fore trial
justice.
R.S., c. 98, § 8.

SEC. 8. When the property seized does not exceed twenty dollars, the libel shall be filed before a trial justice of the county where the offence was committed; and after notice as aforesaid has been posted at two or more public places in the county, seven days at least before the day of trial, he shall try and decide the cause, and make such decree therein as law requires.

Appeal; if
not prose-
cuted, decree

SEC. 9. Either party may appeal to the next supreme judicial court in the county, recognizing as in other cases of appeal; if the

appeal is not prosecuted, the court, on complaint, may affirm the decree of the justice, with costs; and depositions, duly taken, may be used in the trial of the action.

CHAP. 98.

affirmed.
Depositions.
R.S., c. 98, § 9.

SEC. 10. The finder of money or goods of the value of three dollars or more, if the owner is unknown, within ten days next following, shall give notice thereof in writing to the clerk of the town where they are found, post up a notification thereof in some public place in said town, and cause it to be publicly cried therein on three several days, if there is any public crier in said town. And if the value of said money or goods is ten dollars or more, the same shall be cried and notice given by posting as aforesaid in two towns adjoining, in addition.

Duty of finder of goods worth \$3, or more.
R.S., c. 98, § 10.

SEC. 11. Every finder of lost goods of the value of ten dollars or more, within two months after finding, and before using them to their disadvantage, shall procure a warrant from the town clerk or a justice of the peace, directed to two persons appointed by said clerk or justice not interested, except as inhabitants of the town, returnable within seven days from the date in said clerk's office, to appraise said goods under oath.

Also, if worth \$10 or more.
R.S., c. 98, § 11.

SEC. 12. If the owner of such lost money or goods appears within one year after said notice to the clerk, and gives reasonable evidence of his ownership to the finder, he shall have restitution of them or their value, paying all necessary charges and reasonable compensation to the finder, to be adjudged by a justice of the peace of the county, if the owner and finder cannot agree.

Proceedings, if owner appears within one year.
R.S., c. 98, § 12.

SEC. 13. If no owner appears within one year, such money or lost goods shall belong to the finder, by paying one half their value to the treasurer of said town, after deducting all necessary charges; but if he neglects to pay it on demand, it may be recovered in an action brought by said treasurer in the name of the town.

Proceedings, if no owner appears within one year.
R.S., c. 98, § 13.

SEC. 14. If the finder of lost money or goods, of the value of three dollars or more, neglects to give notice to the town clerk and cause them to be cried and advertised as herein provided, he shall forfeit the full value thereof, one half to the use of the town, and the other half to him who sues therefor, and be liable to the owner for the lost money or goods.

Penalty, if finder neglects to give notice.
R.S., c. 98, § 14.

CHAPTER 99.

HABEAS CORPUS.

- SEC. 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 writ.
4. Supreme 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. When the writ shall not issue.
9. Proceedings, if excessive bail is demanded.
10. If the officer refuses a copy of precept, the writ shall issue forthwith.
11. Form of writ in cases mentioned in section five.
12. Time of service and return. Tender of fees.
13. Officer, when he makes return, to bring body of person restrained. Proceedings, if the person is sick, and cannot be brought.
14. Examination of the causes of restraint.
15. Persons interested to be notified before discharge.
16. Proceedings and decision upon the application. If no legal cause is shown for imprisonment, prisoner shall be discharged.
17. Party detained and imprisoned for any offence which is bailable, shall be admitted to bail, and how.
18. Form of writ, if the restraint is not by an officer.
19. By whom issued, and where served.
20. If the person restraining is unknown, how designated.
21. If the person restrained is unknown, how designated.
22. Form of return in cases mentioned in sections eleven and eighteen.
23. How such return shall be authenticated.
24. Manner of keeping the party before judgment.
25. Penalty for neglect of an officer to give a copy of his precept for detaining a prisoner.
26. Punishment if an officer neglects to serve a writ of habeas corpus.
27. If attachment is issued against a sheriff.
28. Proceedings in such case for release of the person for whose benefit the writ issued, if officer refuses to obey writ.
29. Persons once discharged, not to be re-arrested; exceptions.
30. Conveyance to prison of persons ordered to be committed. Penalty for eluding the service of a writ of habeas corpus.
31. Penalty no bar to action for damages.
32. A third person may appear for the party detained in certain cases.
33. Supreme court or any justice thereof may allow bail, at discretion, except to persons committed by governor, senate, or house.
34. Bail commissioners, appointment of in each county by S. J. C.
35. Commissioners may admit to bail persons committed for not finding sureties, and may issue writs of habeas corpus.

SEC. 36. Commissioners may admit to bail before commitment.

CHAP. 99.

37. Habeas corpus may issue to bring in a prisoner as a witness.

38. Habeas corpus may issue, on application, in behalf of an insane person, committed on mesne process, or execution.

SEC. 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 have writ, as of right. R.S., c. 99, § 1. 48 Me., 127. 72 Me., 202.

SEC. 2. Any minor enlisted within *this* [the] 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 enlisted into army or navy, entitled to writ. R.S., c. 99, § 2.

SEC. 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 him, if he would be entitled to it on his own application.

Parent, master or guardian of minor restrained of liberty. R.S., c. 99, § 3.

SEC. 4. The supreme judicial court, or any justice thereof [, or of either of the superior courts], 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 it on his own application, when from any cause he is incapable of making it.

Courts may grant writ on application in behalf of one incapable of applying. R.S., c. 99, § 4.

SEC. 5. The following persons shall not of right have such writ:

Who are not entitled of right. R.S., c. 99, § 5.

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.

Third.—Persons committed on mesne process in any civil action, on which they are liable to be arrested and imprisoned.

SEC. 6. An application for such writ by any person shall be made to the supreme judicial [or superior] court in the county where the restraint exists, if in session; if not, to a justice thereof; and when issued by the court, it shall be returnable thereto; but if the court is adjourned without day or for more than seven days, it may be returned before a justice thereof, and heard and determined by him.

Application by person not of right entitled, how made. R.S., c. 99, § 6.

SEC. 7. When issued by a justice of the court, it may be made returnable before the court, himself, or any other justice thereof.

How returnable. R.S., c. 99, § 7.

SEC. 8. The application shall be in writing, signed, and sworn to by the person making it, stating the place where, and the person by whom, the restraint is made; the applicant shall produce

To be signed and sworn to.

CHAP. 99. to the court or justice a copy of the precept by which the person is so restrained, attested by the officer holding it; and if, on inspection thereof, it appears to the court or justice that such person is thereby lawfully imprisoned or restrained of his liberty, a writ shall not be granted.

What it must contain. When the writ shall not issue. R.S., c. 99, § 8. 65 Me., 131.

Proceedings, if excessive bail is demanded. R.S., c. 99, § 9. 61 Me., 419.

If officer refuses a copy of precept, writ shall issue. R.S., c. 99, § 10.

SEC. 9. If it appears that he is imprisoned on mesne process for want of bail, and the court or justice thinks excessive bail is demanded, reasonable bail shall be fixed, and on giving it to the plaintiff, he shall be discharged.

SEC. 10. If the prison keeper or other officer having the custody of such person, refuses or unreasonably delays to deliver to the applicant an attested copy of the precept by which he restrains him, on demand therefor, the court or justice, on proof of such demand and refusal, shall forthwith issue the writ of habeas corpus as prayed for.

Form of writ in cases mentioned in section five. R.S., c. 99, § 11.

SEC. 11. When such writ is issued on application in behalf of any person described in section five, it shall be substantially as follows :

“STATE OF MAINE.

C——, ss. To A. B., of —— ;

[L. s.]

Greeting.

We command you, that you have the body of C. D., in our prison, at ——, under your custody,” (or by you imprisoned and restrained of his liberty, as the case may be,) “as it is said, together with the day and cause of his taking and detaining, by whatever name he is called or charged, before our supreme judicial (or superior) court, held at ——, in and for the county of ——, immediately after the receipt of this writ, to do and receive what our said court shall then and there consider concerning him in this behalf, and have you there this writ.

Witness —— —, [Esquire,] at ——, this —— day of ——, in the year ——.

—— —, Clerk.”

The like form shall be used by any justice of said court, changing what should be changed, when such writ is awarded by him.

Time of service, return and tender of fees. R.S., c. 99, § 12.

SEC. 12. When such writ is offered to the officer to whom it is directed, he shall receive it; and on payment or tender of such sum as the court or justice thereof directs, [he] shall make due return thereof within three days, if the place of return is within twenty miles of the place of imprisonment; if over twenty, and less than one hundred miles, within seven days; and if more than one hundred miles, within fourteen days; but if such writ was issued against such officer, on his refusal or neglect to deliver, on demand, to the applicant a copy of the precept by which he restrained the

person of his liberty, in whose behalf application was made, then the officer shall be bound to obey the writ without payment or tender of expenses.

CHAP. 99.

SEC. 13. The person making the return, shall, at the same time, bring the body of the party, as commanded in the writ, if in his custody or power or under his restraint, unless prevented by sickness or infirmity of such party; and in that case that fact shall be stated in the return; and if proved to the satisfaction of the court or justice, a justice of the court may proceed to the place where the party is confined and there make his examination, or may adjourn it to another time, or make such other order in the case as law and justice requires.

Officer, when he makes return, to bring body of person restrained. Proceedings if person is sick, and cannot be brought. R.S., c. 99, § 13.

SEC. 14. On the return of the writ, the court or justice, without delay, shall proceed to examine the causes of imprisonment or restraint; and may adjourn such examination from time to time.

Examination of the causes of restraint. R.S., c. 99, § 14.

SEC. 15. When it appears that the party is detained on any process, under which any other person has an interest in continuing such imprisonment or restraint, the party shall not be discharged until notice has been given to such other person or his attorney, if within the state, or within thirty miles of the place of examination, to appear and object, if he see[s] cause; and if imprisoned on any criminal accusation, he shall not be discharged until sufficient notice has been given to the attorney general, or other attorney for the state, that he may appear and object, if he thinks fit.

Persons interested, to be notified before prisoner is discharged. R.S., c. 99, § 15.

SEC. 16. The party imprisoned or restrained may deny facts stated in the return or statement, and may allege other material facts; and the court or justice may, in a summary way, examine the cause of imprisonment or restraint; hear evidence produced on either side, and if no legal cause is shown for such imprisonment or restraint, the court or justice shall discharge him; except as provided in section nine. (a)

Proceedings in court. If no legal cause for imprisonment, court shall discharge; exception. R.S., c. 99, § 16.

SEC. 17. If the party is imprisoned and detained for a bailable offence, he shall be admitted to bail, if sufficient bail is offered; and if not, he shall be remanded, with an order of the court or justice, expressing the sum in which he shall be held to bail, and the court at which he shall be bound to appear; and a justice of the peace may, at any time before the sitting of the court, bail the party pursuant to such order.

Party detained for any bailable offence, shall be admitted to bail, and how. R.S., c. 99, § 17.

SEC. 18. In cases of imprisonment or restraint of personal liberty by any person not a sheriff, deputy sheriff, coroner, constable, jailer, or marshal, deputy marshal, or other officer of the courts of the United States, the writ shall be in the following form, viz:

Form of writ, if the restraint is not by an officer. R.S., c. 99, § 18.

CHAP. 99.

"STATE OF MAINE.

[L. S.] To the sheriffs of our several counties and their respective deputies, Greeting.

We command you, that you take the body of C. D., of —, imprisoned and restrained of his liberty, as it is said, by A. B., of —, and have him before our supreme judicial court, *holden* [held] at —, immediately after receipt of this writ, to do and receive what our court shall then and there consider concerning him in this behalf; and summon the said A. B. then and there to appear before our said court, to show cause for taking and detaining said C. D., and have you there this writ with your doings thereon.

Witness, — —, Esquire, our —, at —, this — day of —, in the year —. — —, Clerk."

By whom issued and where served.
R.S., c. 99, § 19.

SEC. 19. Such writ may be issued by the supreme judicial court, sitting in any county in which the person in whose behalf application is made, is restrained, or by any justice thereof, the form to be varied so far as necessary, when issued by a justice of the court; and served in any county in the state.

If the person restraining is unknown, how designated.
R.S., c. 99, § 20.

SEC. 20. The person having custody of the prisoner may be designated by the name of his office, if he has any, or by his own name; or if both are unknown or uncertain, he may be described by an assumed name; and any one served with the writ, shall be deemed the person thereby intended.

If the person restrained is unknown, how designated.
R.S., c. 99, § 21.
Form of return in cases mentioned in sections eleven and eighteen.
R.S., c. 99, § 22.

SEC. 21. The person restrained shall be designated by his name, if known; if unknown or uncertain, in any other way, so as to make known who is intended.

SEC. 22. In cases under section eleven, the person who makes the return, and in cases under section eighteen, the person in whose custody the prisoner is found, shall state in writing to the court or justice before whom the process is returned, plainly and unequivocally,—

First.—Whether he has or has not the party in his custody or power, or under restraint;

Second.—If he has, he shall state, at large, the authority and true and whole cause of such imprisonment or restraint, upon which the party is detained; and,

Third.—If he has had the party in his custody or power or under his restraint, and has transferred him to another, he shall state particularly to whom, at what time, for what cause, and by what authority, such transfer was made.

How authenticated.
R.S., c. 99, § 23.

SEC. 23. Such return or statement shall be signed and sworn to by the person making it, unless he is a sworn public officer, and makes and signs his return in his official capacity.

How party

SEC. 24. 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 requires.

SEC. 25. 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.

SEC. 26. 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 therefor, 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.

SEC. 27. 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.

SEC. 28. 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.

SEC. 29. No person, 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 offence.

SEC. 30. A 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 him to the custody of another, or changes his place of confinement, with intent to elude the service of such writ, he shall forfeit four hundred dollars to the party aggrieved.

SEC. 31. No penalty, established by this chapter, shall bar any action at common law for damages for false imprisonment.

SEC. 32. When a person is unlawfully carried out of the state or imprisoned in a secret place, any other person may appear for

CHAP. 99.

to be kept.
R. S., c. 99, § 24.
Neglect of
officer to
deliver copy
of precept.
R. S., c. 99, § 25.
71 Me., 407.

Punishment,
if officer
neglects to
serve writ.
R. S., c. 99, § 26.

If attach-
ment is is-
sued against
a sheriff, to
be served by
coroner.
R. S., c. 99, § 27.

Proceedings
for release of
a person for
whose benef-
it the writ
issued if
officer re-
fuses to obey
writ.
R. S., c. 99, § 28.

Persons dis-
charged on
habeas cor-
pus, not to be
re-arrested
save in cer-
tain cases.
R. S., c. 99, § 29.

Conveyance
to prison of
persons
ordered to
be commit-
ted, and
penalty for
eluding writ.
R. S., c. 99, § 30.

Penalty no
bar to action.
R. S., c. 99, § 31.
Third person
may appear
for party by

CHAP. 99. him in an action therefor in his name, who shall stipulate for the stipulating payment of costs as the court orders.

for costs.
R.S., c. 99, § 32.

Court or justice thereof may allow bail.

Exceptions.
R.S., c. 99, § 33.

Bail com'rs, appointment of in each county by S. J. C.
1873, c. 137, § 1.

Com'rs may admit to bail persons committed for not finding sureties.
1873, c. 137, § 2.
—may issue writs of habeas corpus.

May admit to bail before commitment.
1876, c. 137.

Habeas corpus may issue to bring a prisoner as a witness.
R.S., c. 99, § 35.

Habeas corpus may issue on application in behalf of insane persons.
R.S., c. 99, § 36.

SEC. 33. Nothing in this chapter shall be construed to restrain the supreme judicial [or superior] court[s] in term time, or any justice thereof in vacation, from bailing a person for any offence, when the circumstances of the case require it; except persons committed by the governor and council, senate, or house of representatives, for the causes mentioned in the constitution.

SEC. 34. The supreme judicial court sitting in each county shall appoint from the number of justices of the peace [and of the quorum resident in] *for* that county, one or more [bail] commissioners, who shall hold office during the pleasure of the court.

SEC. 35. When a person is confined in a jail for a bailable offence, or for not finding sureties on a recognizance, any such commissioner, on application, may inquire into the case and admit *any such person* [him] to bail, and exercise the same power as any justice of the supreme judicial court can; and may issue a writ of habeas corpus, and cause such person to be brought before them for this purpose, and may take such recognizance.

SEC. 36. Any person under arrest on criminal process for a bailable offence, before commitment to jail, may, if he so requests, be taken by the officer having him in charge, before such commissioner who may inquire into the case and admit him to bail.

SEC. 37. A court may issue a writ of habeas corpus, when necessary, to bring before them a prisoner for trial in a cause pending in such court, or to testify as a witness, when his personal attendance may be deemed necessary for the attainment of justice.

SEC. 38. When an insane person is arrested or imprisoned on mesue process or execution in a civil suit, a judge of the supreme judicial court, or judge of probate within his county, on application, may inquire into the case; issue a writ of habeas corpus; cause such person to be brought before him for examination; and after notice to the creditor or his attorney, if either is living in the state, and a hearing, if proved to the satisfaction of said judge that the person is insane, he may discharge him from arrest or imprisonment; and the creditor shall have the right to make a new arrest, on the same demand, when the debtor becomes of sound mind. But if he is arrested on the same demand a second time, before he becomes of sound mind, and [is] again discharged for that reason, his body forever after shall be exempted from arrest therefor.

CHAPTER 100.

WRIT OF AUDITA QUERELA.

- SEC. 1. Form of the writ.
2. In what court and county to be sued out.
 3. Proceedings in court if defendant appears, and if not.
 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.

SEC. 1. The writ of audita querela may be sued out in the form of a writ of attachment or summons; and shall be sealed, signed, tested, and indorsed, as other writs.

Form of writ.
R.S., c. 100, § 1.

SEC. 2. When brought to prevent, set aside, or annul proceedings on a judgment or execution, it shall be sued out of the court in which judgment was rendered, but in all other cases in the county and court having jurisdiction of the case according to the provisions of law as to personal actions.

In what court and county to be sued out.
R.S., c. 100, § 2.

SEC. 3. If the defendant does not appear, after being duly served with process, he shall be defaulted; but if he does, a trial shall be had as in other actions.

Proceedings, if defendant appears, and if not.
R.S., c. 100, § 3.

SEC. 4. The complainant may declare in his writ for any special damages he has suffered by the service of such execution; and on proof, he shall have judgment and execution for such damages, instead of recovering therefor in a subsequent suit.

Complainant may recover special damages.
R.S., c. 100, § 4.
24 Me., 306.

SEC. 5. The defendant may plead the general issue of not guilty, with or without a brief statement, or any special matter in bar; and exceptions may be alleged to the rulings, instructions and opinion of the court, as in civil actions.

Pleadings, and filing exceptions.
R.S., c. 100, § 5.

SEC. 6. When the complainant is in prison on execution, the court before which such action is brought may admit him to bail, to be approved by the court; the bond shall be conditioned, that if final judgment is rendered for the respondent, the complainant, within thirty days thereafter, shall surrender himself to the jail keeper to be detained on the execution, or within that time satisfy it and such final judgment as the respondent recovers.

Proceedings if complainant is in prison.
R.S., c. 100, § 6.

SEC. 7. If the complainant surrenders himself to jail, he shall be in lawful custody on such execution, and [shall be] there detained until discharged according to law.

Effect of a surrender to jail.
R.S., c. 100, § 7.

CHAP. 101.

CHAPTER 101.

WRIT FOR REPLEVING A PERSON.

- SEC. 1. Who is entitled to the writ, and from what court.
 2. In what county writ to issue and how served.
 3. Form of the writ.
 4. Bond to be given, before writ issues; officer responsible for sureties.
 5. What judgment, if the action is or is not maintained.
 6. What judgment, if defendant is entitled to custody of plaintiff.
 7. If defendant has eluded the plaintiff, he may be arrested. Defendant may be enlarged by giving bail.
 8. Discharge and costs, if not guilty of eluding. If guilty, to be imprisoned; and discharged on proof of plaintiff's death. Form of writ of reprisal.
 9. Proceedings, if the plaintiff is produced.

Who is entitled to the writ and from what court.
 R.S., c. 101, § 1.

SEC. 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 may have the writ for replevying the person, on application made by himself or any one, in his behalf, to any judge of the supreme judicial court, or in the county[-ies] of Cumberland [and Kennebec], to the judge of the superior court, in term time or vacation, at the discretion of such judge and not otherwise. (a)

In what county writ to issue and how served.
 R.S., c. 101, § 2.

SEC. 2. The writ shall issue from and be returnable to such 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.

Form of writ.
 R.S., c. 101, § 3.

SEC. 3. The form of the writ shall be as follows:

"STATE OF MAINE.

[L. s.] S——, ss. To the sheriff of our county of S——, or his deputy, Greeting.

We command you, that without delay you cause to be replevied, 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 he 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 suffi-

(a) 13 Me., 411; 32 Me., 563; 34 Me., 130; 35 Me., 271; 48 Me., 127; 49 Me., 18.

cient sureties, with condition to appear at said court to prosecute his replevin against the defendant, and to have his body there to be re-delivered, 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 of said court, you are to summon the defendant to appear at said court.

Witness J. S., Esquire, at —, the — day of —, in the year of our Lord —. L. M., Clerk.”

SEC. 4. No person shall be delivered by such writ until a bond is given by the plaintiff or person suing on his behalf, to be returned to the court with the writ, and for the sufficiency of which the officer shall be answerable, as in case of bail in civil actions.

Bond to be given before writ issues. Officer answerable for sufficiency. R.S., c. 101, § 4. 35 Me., 54.

SEC. 5. If the plaintiff maintains his action, he shall be discharged and recover his costs; but if not, the defendant shall recover his costs and such damages as the jury assess; or if the defendant is defaulted, or the parties consent, the court may assess the damages.

What judgment, if action is or is not maintained. R.S., c. 101, § 5.

SEC. 6. If it appears that the defendant is bail for the plaintiff, or that, as his child, ward, apprentice or otherwise, he is entitled to his custody, he shall have judgment for a re-delivery of his body, to be held or disposed of according to law.

What judgment if defendant is entitled to the custody of the plaintiff. R.S., c. 101, § 6.

SEC. 7. If it appears that the defendant has eligned the plaintiff's body, so that the officer cannot deliver him, the court, on motion, shall issue a writ of reprisal to take the defendant's body and him safely keep, so that he may be at the then next term of the court, to traverse the return of said writ for replevying the plaintiff; and he may be enlarged by giving bail for his appearance at court, with two sufficient sureties, in such sum as the officer requires.

If defendant has eligned the plaintiff, he may be arrested and give bail. R.S., c. 101, § 7.

SEC. 8. The defendant may traverse the return on the writ for replevying the plaintiff; and if it appears that he is not guilty of eloigning the plaintiff, he shall be discharged and recover costs; but if he does not traverse it, or if, on such traverse, it appears that the defendant did eloign the plaintiff, an alias writ of reprisal shall issue, substantially in the form heretofore established and used in *this* [the] state, on which he shall be committed to jail to remain irrepleviable, till he produces the body of the plaintiff or proves his death. He may suggest the plaintiff's death, and the court shall impanel a jury to try the fact at the defendant's expense; and if the death is proved, he shall be discharged.

Defendant to be discharged with costs, if not guilty of eloigning; if guilty, to be imprisoned. Form of writ of reprisal. R.S., c. 101, § 8.

SEC. 9. If the defendant after the return of eloignment produces the body of the plaintiff in court, the court shall deliver him from imprisonment, on his giving the defendant such bond as

Proceedings if plaintiff is produced. R.S., c. 101, § 9.

CHAP. 102. before directed to be taken by the officer, when the plaintiff is delivered by him; and for want thereof, he shall be committed to abide the judgment on the writ for replevyng the plaintiff; and, in either case, the suit shall be tried as aforesaid.

CHAPTER 102.

WRITS OF ERROR AND CERTIORARI.

WRITS OF ERROR.

- SEC. 1. Writs may issue from supreme court in vacation or term time.
2. Execution not to stay, unless bond is given. Bond to be approved by a justice of the court, or by the clerk.
3. Filing of the bond deemed a delivery thereof; clerk to issue certificate to stay proceedings.
4. Costs to prevailing party; damages and costs if defendant prevails.
5. Reversal of judgment does not vitiate sale of real estate, but does levy.
6. One co-defendant may bring writ on giving security to others.
7. Form of writ of error.
8. Scire facias to specify the errors of fact and law.
9. Proceedings on writs of error, according to the common law.
10. Writs of error in capital cases not to issue without order of court and notice.
11. Effect of writs of error in other criminal cases. Provisions for keeping plaintiff in error on stay of proceedings.
12. Limitation of writs of error; exceptions.

WRITS OF CERTIORARI.

- SEC. 13. How and by whom writs of certiorari to be issued.
14. Costs on application, or on final decisions.
15. Limitations of applications for certiorari.

WRITS OF ERROR.

Writs of error may issue from S. J. court. R.S., c. 102, § 1. Execution not to be stayed, unless bond is given and approved by court or clerk. R.S., c. 102, § 2. 47 Me., 175.

SEC. 1. Writs of error in civil cases may issue out of the supreme judicial court in vacation or term time, returnable to the same court. (a)

SEC. 2. No writ of error shall stay or supersede execution in any civil action, unless the plaintiff in error, or some person in his behalf, gives bond to the defendant, conditioned, that the plaintiff shall prosecute his suit with effect, and satisfy the judgment rendered therein, in such sum and with such sureties as a justice of the court, or the clerk from whose office the writ issued, approves, according to the rules of court.

(a) 16 Me., 82; 19 Me., 220; 23 Me., 253; 24 Me., 438; 26 Me., 420; 28 Me., 237; 29 Me., 360; 30 Me., 199, 423; 31 Me., 59, 420; 32 Me., 187; 33 Me., 251, 266, 351, 369, 511; 36 Me., 200.

SEC. 3. 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 issue of the writ and filing of the bond; and after notice thereof to the officer holding the execution, all further proceedings thereon shall be stayed.

SEC. 4. The prevailing party in such writ in a civil action 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 the court may allow him double costs.

SEC. 5. When a debtor's property has been sold by virtue of an execution, and the judgment on which it was issued is afterwards reversed on writ of error, the title of the purchaser thereof is not affected thereby; but the defendant in the original suit may maintain an action of assumpsit against the original plaintiff for so much of said judgment as is satisfied. But the levy of an execution upon real estate shall be void, when the original judgment upon which it issued, is reversed by writ of error, brought within a year thereafter.

SEC. 6. When there were several defendants in the original judgment, either may bring a writ of error in the name of all, on furnishing each co-defendant requiring it, such security against all liabilities arising therefrom, as the court deems reasonable; and at any stage of the proceedings, the court shall, on motion of any such co-defendant, require such security.

SEC. 7. 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 held at ———, within and for our said county of ———, on the ——— [day of ——— next,] to answer to ———, of ———, in a plea of error, whereas the said ——— alleges that in the process, proceedings, and judgment had before ———, at ———, on ——— [day of ———, 18—,] wherein the said ——— was plaintiff, and the said ——— 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: ———.

CHAP. 102.

Filing bond deemed delivery, and effects thereof.
R.S., c. 102, § 3.

Costs to prevailing party; damages and costs, if defendant prevails.

R.S., c. 102, § 4.
12 Me., 459.
14 Me., 196.

Levy, but not reversal of judgment vitiates sale of real estate.
R.S., c. 102, § 5.
51 Me., 152, 556.

One co-defendant may bring writ of error on giving security to others.
R.S., c. 102, § 6.

Form of writ of error.
R.S., c. 102, § 7.

CHAP. 102. Hereof fail not, and have you there this writ with your doings thereon.

Witness, — — —, Esq., at — — —, the — — — day of — — —, 18—
— — —, Clerk."

Scire facias to specify the errors of fact and law. R. S., c. 102, § 8. 30 Me., 199. 35 Me., 99. 42 Me., 571. 43 Me., 345. 44 Me., 89. 48 Me., 265.

SEC. 8. 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 of the court or [trial] justice of the peace rendering the judgment, without further authentication, or the introduction of the record, shall be competent evidence in such trial; and in case of mistake in the transcript, the court may grant leave to amend.

Proceedings. R. S., c. 102, § 9. 23 Me., 254. 24 Me., 439.

SEC. 9. The proceedings upon writs of error, not herein provided for, shall be according to the common law as modified by the practice and usage in *this* [the] state, and the general rules of court.

Writ of error in capital cases. R. S., c. 102, § 10.

SEC. 10. *No writ of error upon a judgment for a capital offence shall issue, unless allowed by one of the justices of the supreme judicial court, after notice to the attorney general or other attorney for the state.**

Effect of writ of error in criminal cases. Provision for keeping plaintiff in error on stay of proceedings. R. S., c. 102, § 11.

SEC. 11. Writs of error shall issue of course upon all *other* judgments in criminal cases, but not to stay or delay execution of sentence or judgment, unless allowed by a justice of the supreme judicial court, with an express order to stay all proceedings thereon; and in that case, the judge may make such order as the case requires for the custody of the plaintiff in error or [for] letting him to bail; or, upon a writ of habeas corpus, if entitled, he may procure his enlargement by giving bail.

Limitation of writs of error; exceptions. R. S., c. 102, § 12.

SEC. 12. No writ of error shall be sustained, unless brought within six years next after the entering up of the judgment sought to be reversed or avoided; but if the person entitled to such writ is a minor, [a] married woman, insane, imprisoned, or not in the United States, when becoming so entitled, then he, his heirs, executors, or administrators, may sue out the writ within five years after the removal of such disability.

WRITS OF CERTIORARI.

How and by whom writs of certiorari are to be issued. R. S., c. 102, § 13.

SEC. 13. All writs of certiorari, to correct errors in proceedings that are not according to the course of the common law, shall be issued from the supreme judicial court according to the practice heretofore established, and subject to such further regulations, as are made, from time to time, by such court. (a)

* [NOTE. Capital punishment was abolished by chapter one hundred and fourteen of 1876.]

(a) 8 Me., 293; 19 Me., 48, 343; 23 Me., 11, 514; 25 Me., 73; 26 Me., 356; 28 Me., 123; 29 Me., 290; 30 Me., 24, 271, 305, 352; 31 Me., 509, 580; 32 Me., 452; 33 Me., 238, 261; 35 Me., 378; 36 Me., 70; 37 Me., 502; 38 Me., 494; 39 Me., 53, 356; 42 Me., 400; 43 Me., 258; 49 Me., 145, 418; 51 Me., 110; 56 Me., 186, 546; 67 Me., 433, 434.

SEC. 14. Upon every application for certiorari, and on the final adjudication thereof, the court may award costs against any party, who appears and undertakes to maintain or object to the proceedings. (a)

SEC. 15. No application for a writ of certiorari shall be sustained, unless made within six years next after the proceedings complained of, or within five years from the removal of such disabilities as are described in section twelve.

(a) 67 Me., 435; 72 Me., 18.

CHAP. 103.

Costs on application and on final decision.
R. S., c. 102, § 14.

Limitation of applications for certiorari.
R. S., c. 102, § 15.

CHAPTER 103.

ESTATES IN DOWER, AND BY CURTESY, AND ACTIONS OF DOWER.

ESTATES IN DOWER AND BY CURTESY.

- SEC. 1. Of what lands a woman is dowable.
2. Of what she is not dowable.
3. Special assignment, when it cannot be by metes and bounds.
4. Rights of widow before dower is assigned.
5. Widow of naturalized alien entitled to dower.
6. A married woman may bar her right to dower by deed; how executed. Not deprived by levy or sale on execution.
7. A woman may bar her dower by accepting a jointure before marriage.
8. Also by a provision made for an intended wife in lieu of dower.
9. Widow may waive jointure in certain cases.
10. She may waive provision in her husband's will.
11. Remedy if she is evicted of her dower.
12. When dowable of an equity of redemption.
13. Penalty if she commits waste.
14. Widow may remain in her husband's house 90 days without expense.
15. Tenancy by curtesy. Husband has dower in deceased wife's estate.

ACTION OF DOWER.

- SEC. 16. Right of widow to sue for dower.
17. Previous demand, and time of bringing the action.
18. Demand upon a corporation, and time for bringing the action.
19. Defendant may plead in abatement, but not in bar, that he is not tenant of the freehold.
20. Damages for detaining dower.
21. 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.
22. If defendant dies pending an action for dower, executor or administrator may prosecute for the damages.
23. Writ of seizin, and proceedings in setting off dower.
24. Assignments of rents and profits in certain cases.
25. Costs, when no refusal to set out dower, how apportioned.

CHAP. 103.

ESTATES IN DOWER AND BY CURTESY.

Of what lands a woman is dowable.
R.S., c. 103, § 1.

SEC. 1. Every woman shall be entitled to her dower at the common law in the lands of her husband, with the exceptions hereafter mentioned, to be assigned to her after his decease, unless lawfully barred. (a)

Of what she is not dowable.
R.S., c. 103, § 2.
15 Me., 372.
50 Me., 230.
See c. 65,
§§ 1, 2.

SEC. 2. A widow shall not be endowed of wild lands of which her husband dies seized, nor of wild lands conveyed by him, though afterwards cleared; but she shall be in any wood lot or other land used with the farm or dwelling-house, though not cleared.

Special assignment.
R.S., c. 103, § 3.
27 Me., 391.

SEC. 3. When a division by metes and bounds cannot be conveniently made, dower shall be assigned in a special manner as of a third part of the rents and profits.

Rights of widow, before dower is assigned.
R.S., c. 103, § 4.

SEC. 4. The widow shall be entitled to receive one undivided net third part of the rents and profits of the estate, of which her husband died seized, until her dower is assigned either by the heirs, the judge of probate, or judgment of court. (b)

Widow of naturalized alien entitled to dower.
R.S., c. 103, § 5.
22 Me., 303.

SEC. 5. The widow of a citizen of the United States who was an alien when she married him, shall be entitled to dower in her husband's estate, *which was not conveyed by him or taken from him by execution prior to the twenty-third day of February, eighteen hundred and thirteen.**

How right of dower may be barred.
Not affected by sale or levy on ex'or v. husband.
R.S., c. 103, § 6.
See c. 76, § 49.

SEC. 6. A married woman of any age may bar her right of dower in an estate conveyed by her husband, by joining in the same deed, or a subsequent deed, or by her sole deed, but she shall not be deprived of dower, by a levy or sale of his real estate on execution; but she may, after the right of redemption has expired, release such dower by her sole deed. (c)

A woman may bar her right by accepting jointure before marriage.
R.S., c. 103, § 7.
21 Me., 369.
69 Me., 534.

SEC. 7. A woman may be barred of her dower in her husband's lands, by a jointure settled on her with her consent before marriage; such jointure shall consist of a freehold estate in lands, for the life of the wife at least, to take effect immediately on the husband's death; if of full age, she shall express her consent by becoming a party to the conveyance; if under age, by joining with her father or guardian.

Or by provision in lieu of dower.
R.S., c. 103, § 8.
61 Me., 398.
69 Me., 534.

SEC. 8. A pecuniary provision made for the benefit of an intended wife in lieu of dower, consented to by her as provided in the preceding section, shall bar her right of dower in her husband's lands.

(a) 5 Me., 481; 14 Me., 291; 18 Me., 41; 19 Me., 145; 20 Me., 244; 24 Me., 333; 25 Me., 98, 103; 31 Me., 91, 245, 406; 32 Me., 415, 426; 37 Me., 13; 39 Me., 26; 43 Me., 489; 61 Me., 377; 69 Me., 252, 253, 534, 546.

(b) 19 Me., 69; 34 Me., 429; 62 Me., 295.

* [NOTE BY THE COMMISSIONER. This exception, being 69 years old, must be substantially obsolete.]

(c) 3 Me., 65; 29 Me., 417; 30 Me., 193; 32 Me., 428; 33 Me., 410; 34 Me., 137; 51 Me., 369, 487; 61 Me., 51, 504; 69 Me., 534, 551.

SEC. 9. If such jointure or pecuniary provision is made before marriage, without the consent of the intended wife, or if made after marriage, it shall bar her dower, unless, within six months after the husband's death, she makes her election to waive such provision, and files the same in writing in the probate court.

CHAP. 103.

When widow may waive jointure.
R. S., c. 103, § 9.
61 Me., 398.
69 Me., 534.

SEC. 10. When a specific provision is made in her husband's will for the widow, she shall, within six months after probate thereof, make her election, whether to accept it or claim her dower; but [she] shall not be entitled to both, unless it appears by the will that the testator plainly so intended. (a)

She may waive provision in husband's will.
R. S., c. 103,
§ 10.

SEC. 11. If a woman is lawfully evicted of lands assigned to her as dower, or settled upon her as a jointure, or is deprived of the provision made for her in lieu of dower, by will or otherwise, she may be endowed anew, as though no such assignment or provision had been made.

Remedy if evicted of dower.
R. S., c. 103,
§ 11.
23 Me., 277.
27 Me., 392.

SEC. 12. If the wife has released her right of dower in a mortgage made by her husband, or if her husband is seized of land mortgaged by another person, or by himself before their marriage, she shall be entitled to dower in the mortgaged premises as against every person except the mortgagee and those claiming under him; and if the heirs of the husband, or other person claiming under him, redeems the mortgage, she shall repay such proportion of the money paid by him as her interest in the mortgaged premises bears to the whole value; else she shall be entitled to dower only according to the value of the estate, after deducting the money paid for its redemption.

When dowerable of an equity of redemption.
R. S., c. 103,
§ 12.
7 Me., 42, 103.
20 Me., 113.
24 Me., 334.
34 Me., 51.
45 Me., 390,
495.
53 Me., 141.

SEC. 13. If any woman, endowed of lands, commits or suffers any waste thereon, she shall forfeit the place wasted, and the amount of the damages done to the premises, to be recovered in an action of waste by the person having the next immediate estate of inheritance therein; but taking fuel necessary for her own use, and materials for the repair of buildings, and for fences thereon, from any woodlands of which she is endowed, shall not be considered waste.

Penalty if she commits waste.
R. S., c. 103,
§ 13.
13 Me., 279.

SEC. 14. 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.

Widow may remain in husband's house 90 days without expense.
R. S., c. 103,
§ 14.
59 Me., 441.

SEC. 15. When a man and his wife are seized of lands in fee, in her right, acquired before March twenty-two, eighteen hundred and forty-four, 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. The husband of a deceased wife whose estate is

Tenancy by curtesy.
Dower of husband or wife.
R. S., c. 103,
§ 15.

(a) 1 Me., 150; 32 Me., 133; 36 Me., 215; 69 Me., 534.

CHAP. 103. solvent, shall have the use for life, of one third of her real estate, to be recovered and assigned in the manner and with the rights of dower, and [he] shall have the same right to waive any provision made for him in her will, that a widow has with regard to her husband's will. When a husband or wife dies intestate, leaving no issue, and the estate is solvent, the survivor shall have the use for life of one half of the real estate of the deceased, to be recovered and assigned in the manner and with the rights of dower.

ACTIONS OF DOWER.

Rights of widow to sue for dower. R. S., c. 103, § 16.
39 Me., 423.
69 Me., 546.
Demand, and time of bringing action. R. S., c. 103, § 17.

SEC. 16. 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.

SEC. 17. She must demand her dower of the person who is, at the time, seized of the freehold, if 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)

Demand upon a corporation, how made and when suit may be brought. R. S., c. 103, § 18.

SEC. 18. 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 it may be served; and the time shall be sixty, instead of thirty days, between the demand and the suit; but a second demand may be made as aforesaid.

Plea of non-tenure. R. S., c. 103, § 19.
33 Me., 346.
Damages for detaining dower. R. S., c. 103, § 20.

SEC. 19. The defendant may plead in abatement, but not in bar, that he is not tenant of the freehold.

SEC. 20. If the demandant recovers judgment for her dower, she may recover damage for its detention, in the same action, to the time of its commencement, and the subsequent damages, in a separate action. (b)

Suit to be v. tenant of freehold, but prior tenant liable for damages. R. S., c. 103, § 21.
62 Me., 576.
70 Me., 234.

SEC. 21. 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 afterwards maintain an action on the case against the prior tenant of whom her demand was made, for the rents and profits while he held the premises after the demand.

If demandant dies pending an

SEC. 22. If the demandant dies during the pendency of an action of dower, her executor or administrator may prosecute the

(a) 35 Me., 95; 36 Me., 435; 37 Me., 514; 41 Me., 231; 45 Me., 487; 51 Me., 368; 55 Me., 372; 70 Me., 180, 234.

(b) 28 Me., 510; 41 Me., 531; 69 Me., 518, 519, 547.

action to final judgment, and recover therein the damages to which she would be entitled to the time of her decease. He may commence an action, or prosecute one commenced by her, under the preceding section, and recover the damages to which she would be entitled, if any.

SEC. 23. When judgment for dower is rendered in her favor, a writ of seizin shall be issued, requiring the proper officer to cause her dower to be assigned and set out to her by three disinterested persons, to be appointed by the plaintiff, defendant, and officer, as in the levy of an execution on land; who shall be duly sworn to set it out equally and impartially, as conveniently as may be, and according to their best skill and judgment; and the officer shall make return of the writ and doings thereon to the court, with the assignment of dower indorsed thereon, or annexed thereto; which, being accepted, shall be conclusive.

SEC. 24. When the estate, out of which the dower is to be assigned, consists of a mill or other tenement which cannot be divided without damage to the whole, the dower may be assigned of the rents and profits thereof, to be received by the demandant as tenant in common with the other owners of the estate.

SEC. 25. In all actions of dower, when it appears to the court that there has been no refusal to set out dower, the costs accruing on the assignment of dower shall be apportioned according to the interests of the parties.

CHAP. 104.

action for dower, ex'r or adm'r may prosecute.
R. S., c. 103, § 22.

Writ of seizin and proceedings in setting off dower.
R. S., c. 103, § 23.
16 Me., 81.
27 Me., 394.
38 Me., 449.
45 Me., 30.
69 Me., 519, 546.
72 Me., 313.

Assignments of rents and profits in certain cases.
R. S., c. 103, § 24.

Costs in action of dower, how apportioned.
1881, c. 31.

CHAPTER 104.

REAL ACTIONS.

- SEC. 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.
7. If defendant has ousted demandant, he may be considered a disseizor, though he claims less than a freehold.
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. Tenant not liable for more than six years, unless by set-off.

- CHAP. 104. SEC. 15. Recovery of damages against other persons.
16. Real actions not to abate by death or intermarriage of a party, but to be tried after notice.
 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 may have his execution, and a lien on the premises. When execution or writ of possession may issue.
 30. Tenant's remedy, if he is evicted.
 31. If the demandant does not abandon, he cannot have writ of possession, until he pays for the improvements.
 32. Restriction of the writ 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 value may be estimated. Effect.
 36. Set-off of costs, against the appraised value of improvements, in certain cases.
 37. Jurors disqualified, if interested in similar questions.
 38. What constitutes a possession and improvement.
 39. Proceedings, if either party dies before the cause is disposed of.
 40. How writ of possession shall issue in such case.
 41. Either party may have a view by the jury.
 42. Proceedings if a life estate is demanded.
 43. If tenant is ousted after six years' possession, he may recover for his buildings and improvements. Value how estimated.
 44. Cases in which the defendant may impeach the plaintiff's title deeds.
 45. If tenant, and those under whom he claims, have been in possession forty years, demandant to recover no costs.
 46. Court may appoint and protect surveyors.

Recovery of estates by writ of entry; mode of service. R.S., c. 104, § 1. 6 Me., 439. 7 Me., 238. 17 Me., 220. 20 Me., 279.

SEC. 1. Any estate of freehold, in fee simple, fee tail, for life, or any term of years, may be recovered by a writ of entry; and such writs, and the writ in action of dower, shall be served by attachment and summons, or copy of the writ, on the defendant, but if he is not in possession, the officer shall give the tenant in hand, or leave at his place of last and usual abode, an

attested copy of the writ; and if the defendant is not an inhabitant of *this* [the] state, the service on the tenant shall be sufficient notice to the defendant, or the court may order further notice.

SEC. 2. The demandant shall declare on his own seizin within twenty years then last past, without naming any particular day or averring a taking of the profits, and [shall] allege a disseizin by the tenant.

SEC. 3. He shall set forth the estate he claims in the premises, whether in fee simple, fee tail, for life, or for years; and if for life, then whether for his own life or that of another; but [he] need not state in the writ the origin of his title, or the deduction of it to himself; but, on application of the tenant, the court may direct the demandant to file an informal statement of his title, and its origin. (a)

SEC. 4. He need not prove an actual entry under his title; but proof that he is entitled to such an estate in the premises as he claims, and that he has a right of entry therein, shall be sufficient proof of his seizin. (b)

SEC. 5. No such action shall be maintained, unless, at the time of commencing it, the demandant had such right of entry; and no descent or discontinuance shall defeat any right of entry for the recovery of real estate.

SEC. 6. Every person alleged to be in possession of the premises demanded in such writ, claiming any freehold therein, may be considered a disseizor for the purpose of trying the right; but the defendant may plead in abatement, but not in bar, that he is not tenant of the freehold, or by a brief statement under the general issue, filed within the time allowed for pleas in abatement, unless by leave of court the time therefor is enlarged; and he may show that he was not in possession of the premises when the action was commenced, and disclaim any right, title, or interest therein, and proof of such fact shall defeat the action; and if he claimed, or was in possession of only a part of the premises when the action was commenced, he shall describe such part in a statement, signed by him or his attorney and filed in the case, and may disclaim the residue; and if the facts contained in such statement are proved on trial, the demandant shall recover judgment for no more than such part.

SEC. 7. If the person in possession has actually ousted the demandant or withheld the possession, he may, at the demandant's election, be considered a disseizor for the purpose of trying the right, though he claims an estate therein less than a freehold.

(a) 50 Me., 143; 57 Me., 344; 58 Me., 105; 59 Me., 133; 63 Me., 415; 64 Me., 57.

(b) 23 Me., 419; 24 Me., 526; 38 Me., 70; 58 Me., 335; 59 Me., 450.

CHAP. 104.

24 Me., 527.
32 Me., 175.
51 Me., 366.
66 Me., 250-1.
Declaration.
R.S., c. 104, § 2.
20 Me., 284.
58 Me., 335.

To set forth
the estate he
claims in the
premises.
R.S., c. 104, § 3.

Proof of
seizin.
R.S., c. 104, § 4.

Demandant
must have
right of
entry.
R.S., c. 104, § 5.

Who may be
considered a
disseizor.
Disclaimer
in abate-
ment but not
in bar.
R.S., c. 104, § 6.
17 Me., 16.
22 Me., 317.
24 Me., 303.
34 Me., 174.
43 Me., 281.
44 Me., 48.
49 Me., 103.
58 Me., 335.
71 Me., 543.

If defendant
has ousted
demandant,
he may be
deemed
disseizor.
R.S., c. 104, § 7.
3 Me., 324.

CHAP. 104.

Proof to entitle the demandant to recover.
R.S., c. 104, § 8.

Joinder of demandants.
R.S., c. 104, § 9,
30 Me., 359.

What demandant may recover.
R. S., c. 104,
§ 10.

He may recover damages in same action.
R. S., c. 104,
§ 11.
34 Me., 84.
36 Me., 441.
63 Me., 546.

Estimation of rents and profits.
R. S., c. 104,
§ 12.

Same subject.
R. S., c. 104,
§ 13.

Tenant not liable for rents, &c., more than 6 years, unless by set-off.
R. S., c. 104,
§ 14.

Recovery of damages against other persons.
R. S., c. 104,
§ 15.

Real actions not to abate by death, but to be tried after notice.
R. S., c. 104,
§ 16.

Guardians appointed

SEC. 8. In the trial upon such writ, on the general issue, if the demandant proves that he is entitled to such estate in the premises as he has alleged, and had a right of entry therein when he commenced his action, he shall recover the premises, unless the tenant proves a better title in himself. (a)

SEC. 9. Persons claiming as tenants in common, joint tenants, or co-parceners, may all, or any two or more, join in a suit for recovery of lands; or one may sue alone.

SEC. 10. The demandant may recover a specific part or undivided portion of the premises to which he proves a title, though less than he demanded. (b)

SEC. 11. When a demandant recovers judgment in a writ of entry, he may therein recover damages for the rents and profits of the premises from the time his title accrued, subject to the limitation herein contained; and for any destruction or waste of the buildings or other property, for which the tenant is by law answerable.

SEC. 12. The rents and profits, for which the tenant is liable, is the clear annual value of the premises while he was in possession, after deducting all lawful taxes paid by him, and the necessary and ordinary expenses of repairs, cultivating the land, or collecting the rents and profits.

SEC. 13. In estimating the rents and profits, the value of the use by the tenant of improvements made by himself or [by] those under whom he claims, shall not be allowed to the demandant.

SEC. 14. The tenant shall not be liable for the rents and profits for more *time* than six years, nor for waste or other damage committed before that time, unless the rents and profits are allowed in set-off to his claim for improvements.

SEC. 15. Nothing herein contained shall prevent the demandant from maintaining an action for mesne profits or for damage to the premises, against any person except the tenant in a writ of entry, who has had possession of the premises, or is otherwise liable to such action.

SEC. 16. No real action shall be abated by the death or intermarriage of either party after its entry in court; but the court shall proceed to try and determine such action, after such notice as the court orders has been duly served upon all interested in his estate, personally, or by publication in some newspaper. (c)

SEC. 17. In such case, if any heir is a minor, the court shall

(a) 5 Me., 225; 12 Me., 349; 19 Me., 356; 22 Me., 317; 23 Me., 237; 27 Me., 362; 31 Me., 148, 311, 587; 33 Me., 356, 542; 38 Me., 79; 44 Me., 120; 50 Me., 63; 52 Me., 568; 53 Me., 275; 55 Me., 549; 57 Me., 344; 58 Me., 335; 64 Me., 57.

(b) 56 Me., 96; 63 Me., 542; 64 Me., 57.

(c) 2 Me., 128; 23 Me., 236; 33 Me., 175.

order notice to the guardian, and may appoint a guardian ad litem, if necessary, and direct all necessary amendments in the forms of proceeding.

SEC. 18. If the demandant recovers judgment in any such case, the court may order one or more writs of possession to issue, as *are* [may be] necessary, against all such as have been so notified, whether they appeared and defended or not; and such judgment shall be conclusive on them.

SEC. 19. The prevailing party shall recover full costs in all such cases, and the court may order one or more executions to be issued therefor against the goods and estate of a deceased party in the hands of his executor or administrator, or otherwise, according to the legal rights and liabilities of the parties, and may stay any such execution, if the situation of the estate requires it.

SEC. 20. When the demanded premises have been in the actual possession of the tenant or [of] those under whom he claims, for six successive years or more before commencement of the action, such tenant shall be allowed a compensation for the value of any buildings and improvements on the premises, made by him or [by] those under whom he claims, to be ascertained and adjusted as hereinafter provided. (*a*)

SEC. 21. In such action, the demanded premises shall be clearly described in the declaration, otherwise the court may direct a nonsuit. If the tenant, or person under whom he claims, has been in possession of a tract of land lying in one body, for six years or more before the commencement of the action, and only part of it is demanded, and the tenant alleges that the demandant has as good a title to the whole as to such part, he may request the jury to inquire and decide that fact; and if they so find, they shall proceed no farther; but the court shall enter judgment that the writ abate, unless the declaration is amended so as to include the whole tract, which the court may allow without costs.

SEC. 22. If the tenant enters notice on record in open court, that the demandant may recover a specified part of the demanded premises, by consent of the demandant judgment may be rendered in his favor for such part, and for the tenant for the residue; but if he does not consent, and recovers only such part, he shall recover no costs, but the tenant shall recover his costs from the time of such notice.

SEC. 23. The tenant shall have the benefit of the provisions in the following sections as to the increased value of premises, when the cause is determined in favor of the demandant upon demurrer, default, or by verdict, including all real actions brought by a reversioner or remainder man, or his assigns, after the termination of a

CHAP. 104.

for minors.
Amendm'ts.
R. S., c. 104,
§ 17.

Writs of possession to issue; judg't conclusive.
R. S., c. 104,
§ 18.

Allowance of costs and stay of execution in such cases.
R. S., c. 104,
§ 19.
51 Me., 394.

Betterments allowed after six years possession.
R. S., c. 104,
§ 20.

Premises to be clearly defined and described.
R. S., c. 104,
§ 21.
61 Me., 367.

Tenant may consent that demandant may recover a specified part; effect thereof.
R. S., c. 104,
§ 22.

Tenant may have betterments upon demurrer or default.
R. S., c. 104,
§ 23.
58 Me., 563.

(*a*) 12 Me., 376; 21 Me., 523; 22 Me., 111; 23 Me., 194; 25 Me., 413.

CHAP. 104.
68 Me., 571.
72 Me., 45.

Request of
either party
for appraisal
of improve-
ments, and
its effect.
R. S., c. 104,
§ 24.

The differ-
ence be-
tween the
appraised
value of the
land when
tenant entered,
and at
the time of
trial, to be
value of the
betterments.
R. S., c. 104,
§ 25.

When and
how de-
mandant
may elect to
abandon.
R. S., c. 104,
§ 26.
1 Me., 314.
3 Me., 377.
4 Me., 297.
16 Me., 127.
50 Me., 322.

Tenant may
pay one third
the value of
land, interest
and costs, the
first year.

tenancy in dower, or any other life estate, against the assignee or grantee of the tenant of the life estate, or against his heirs or legal representatives.

SEC. 24. The tenant may file a written claim to compensation for buildings and improvements on the premises, and a request for an estimation by the jury of the increased value of the premises, by reason thereof; and the demandant may file a request, in writing, that the jury would also estimate what would have been the value of the premises, at the time of trial, if no buildings had been erected, improvements made, or waste committed; both these estimates they shall make, and state in their verdict; and the jury shall allow for no buildings or improvements, except those that they find were made by the tenant, his grantor, or assignor, and were judicious and proper under the circumstances of the case.

SEC. 25. If the tenant, so claiming, alleges and proves that he, and those under whom he claims, have had the premises in actual possession for more than twenty years prior to the commencement of the action, the jury may find that fact; and in estimating the value of the premises, if no buildings had been erected, or improvements made thereon, they shall find, and state in their verdict, what was the value of the premises when the tenant, or those under whom he claims, first entered thereon. The sum so found shall be deemed the estimated value of the premises; and in estimating the increased value by reason of the buildings and improvements, the jury shall find and state in their verdict, the value of the premises at the time of the trial, above their value when the tenant or those under whom he claims, first entered thereon; and the sum, so found and stated, shall be taken for the buildings and improvements.

SEC. 26. If the demandant after such verdict, at the same, or a subsequent term of the court, if the cause is continued, makes his election on record to abandon the premises to the tenant at the value estimated by the jury, and files with the clerk for the use of the tenant a bond, in the penal sum of three times the estimated value of the premises, with sureties approved by the court, conditioned to refund such estimated value, with interest, to the tenant, his heirs or assigns, if they are evicted from the land within twenty years by a title better than that of the demandant, then judgment shall be rendered against the tenant for the sum so estimated by the jury, and costs.

SEC. 27. At the end of one year, execution may issue for such sum, with one year's interest thereon and costs, unless the tenant has then deposited with the clerk of the court, or in his office for the demandant's use, one year's interest of said sum, and one third

of the principal sum, and all the costs, if taxed and filed, and in that case no execution shall issue at the time.

SEC. 28. If within two years after the rendition of judgment, the tenant pays one year's interest on the balance of the judgment due, and one third of the original judgment, execution shall be further stayed; otherwise it may issue for two thirds of the original amount of the judgment and interest thereon.

SEC. 29. If the tenant, within three years after the rendition of judgment, pays into the clerk's office the remaining third and interest thereon, having made the other payments as aforesaid, execution shall never issue; otherwise, it may for the third aforesaid and one year's interest thereon; and the premises shall be held as security for the amount of the judgment, liable to be taken in execution for the amount and interest, until sixty days after an execution might have issued as aforesaid, notwithstanding any intermediate conveyance, attachment, or seizure upon execution; and such execution may be extended on said land or any part of it; or it may be sold on execution like an equity of redemption; and in either case, subject to the right of redemption as in those cases. An execution or writ of possession may issue at any time within three months after default of payment by the tenant, in cases mentioned in this and the two preceding sections, though it is more than a year after the rendition of judgment.

SEC. 30. If the tenant or his heirs are evicted by a better title from the land so abandoned to him, and they notified the demandant or his heirs to aid him in his defence against such title, they, their executors, or administrators, may recover back the money so paid, with lawful interest, of said demandant or his representatives; but if no notice was given, the tenant, in an action against the original demandant to recover the price paid for the premises, may show that he was evicted by a title better than that of the demandant.

SEC. 31. When the demandant does not elect so to abandon the premises, no writ of possession shall issue on his judgment, nor a new action be sustained for the land, unless, within one year from the rendition thereof, he pays into the clerk's office of the court, or to such person as the court appoints, for the use of the tenant, the sum assessed for the buildings and improvements, with interest thereon.

SEC. 32. Nothing contained in this chapter concerning rents and profits, or the estimate and allowance of the value of the buildings and improvements, shall extend to any action between a mortgagor and mortgagee, their heirs and assigns; or to any case where the tenant, or the person under whom he claims, entered

CHAP. 104.

R. S., c. 104,
§ 27.

At the end of two years, another third with interest.

R. S., c. 104,
§ 28.

And at the end of three years, he may pay the balance, and effect thereof.

R. S., c. 104,
§ 29.

Tenant's remedy if he is evicted.

R. S., c. 104,
§ 30.

If demandant does not abandon, he cannot have writ of possession till he pays for improvements.

R. S., c. 104,
§ 31.

Restriction of the right to betterments.

R. S., c. 104,
§ 32.

70 Me., 240.

CHAP. 104. into possession of the premises and occupied under a contract with the owner, which was known to the tenant when he entered.

Tenant not to commit waste after judgment against him. R. S., c. 104, § 33.

SEC. 33. No tenant, after judgment is entered against him for the appraised value of the premises, shall unnecessarily cut wood, take away *any* timber, or make any strip or waste on the land, *till* [until] the amount of such judgment is satisfied.

Parties may agree as to value of improvements. R. S., c. 104, § 34.

SEC. 34. When the parties agree that the value of the buildings and improvements on the land demanded, and the value of the land, shall be ascertained by persons named on the record for that purpose, their estimate, as reported by them and recorded, shall be equal in its effect to the verdict of a jury.

Tenant may propose a value for premises and betterments. Effect thereof. R. S., c. 104, § 35. 2 Me., 355.

SEC. 35. When the tenant, in any stage of such action, files a statement in open court, consenting to a sum at which the buildings and improvements, and the value of the demanded premises, may be estimated, if the demandant consents thereto, judgment shall be rendered accordingly, as if such sums had been found by verdict; but if the demandant does not consent, and the jury does not reduce the value of the buildings and improvements below the sum offered, nor increase the value of the premises above the sum offered, he shall recover no costs after such offer; but the tenant shall recover his costs after such offer, and have judgment and execution therefor, subject to the provisions of the following section.

Set-off of costs against improvements. R. S., c. 104, § 36.

SEC. 36. In all cases where the demandant does not abandon the premises to the tenant, the court may, on the written application of either party during the term when judgment is entered, order the costs recovered by the demandant to be set off against the appraised value of the buildings and improvements on the land; a record of this order shall be made, and the court shall thereupon enter judgment according as the balance is in favor of one party or the other.

Juror disqualified, if interested in similar questions. R. S., c. 104, § 37.

SEC. 37. No person shall sit as a juror in the trial of a cause, when the value of buildings and improvements made on the demanded premises, and the value of the premises, are to be estimated as aforesaid, who, as proprietor or occupant, is interested in a similar question.

What constitutes a possession and improvement. R. S., c. 104, § 38. 2 Me., 281. 31 Me., 345.

SEC. 38. A possession and improvement of land by a tenant are within the provisions of this chapter, [al-]though a portion of it is woodland and uncultivated, and though not wholly surrounded by a fence, or rendered inaccessible by other obstructions, if they have been open, notorious, exclusive, and comporting with the usual management and improvement of a farm by its owner.

Proceedings, if either party dies before the

SEC. 39. After judgment has been rendered for the demandant in a writ of entry, if either party dies before a writ of possession is executed, or the cause [is] otherwise disposed of according to

the foregoing provisions, any money payable by the tenant may be paid by him, his executor, or administrator, or by any person entitled to the estate under him, to the demandant, his executor or administrator, with the like effect as if both parties were living.

CHAP. 104.
cause is disposed of.
R. S., c. 104,
§ 39.

SEC. 40. The writ of possession shall be issued in the name of the original demandant against the original tenant, [al-]though either or both are dead; and when executed, it shall enure to the use and benefit of the demandant, or *whoever* [whomever] is then entitled to the premises under him, as if executed in the lifetime of the parties.

How writ of possession shall issue in such case.
R. S., c. 104,
§ 40.

SEC. 41. Either party may have a view by the jury of the place in question, if in the opinion of the court it is necessary to a just decision; the party moving for it shall advance to the jury such sum as the court orders, to be taxed against the adverse party if the cause is decided against him on the merits, or through his default.

Either party may have a view by the jury.
R. S., c. 104,
§ 41.

SEC. 42. If the demandant claims an estate for life only in the premises, and pays a sum allowed to the tenant for improvements, he, or his executor, or administrator, at the termination of his estate, shall be entitled to receive of the remainder man or reversioner, the value of such improvements, as they then exist; and [shall] have a lien therefor on the premises, as if they had been mortgaged for its payment, and may keep possession *till* [until] it is paid; and if the parties cannot agree on the existing value, it may be settled as in case of the redemption of mortgaged real estate.

Proceedings if a life estate is demanded.
R. S., c. 104,
§ 42.

SEC. 43. When any person makes entry into lands or tenements, of which the tenant in possession, or those under whom he claims, have been in actual possession for six years or more before such entry, and withholds their possession from such tenant, he shall have a right to recover of him so entering, or of his executor, or administrator, in an action of assumpsit for money laid out and expended, the increased value of the premises by reason of the buildings and improvements made by the tenant, or those under whom he claims, to be ascertained by the principles hereinbefore provided; and these provisions shall extend to the grantee or assignee of the tenant in dower and of any other life estate; and a lien is hereby created on the premises in favor of such claim, to be enforced by an action commenced within one year after such entry; and it shall be no bar to such action, if the tenant, to avoid cost, yields to the superior title.

If tenant is ousted after six years possession, he may recover for improvements.
R. S., c. 104,
§ 43.

SEC. 44. In all actions respecting lands or any interest therein, a 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.

Cases in which defendant may impeach plaintiff's title deeds.
R. S., c. 104,
§ 44.

CHAP. 105.

If tenant and his grantors have been in possession forty years, no costs for plaintiff.
R. S., c. 104, § 45.
Court may appoint and protect surveyors.
R. S., c. 104, § 46.

SEC. 45. 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, and the jury so find, the demandant shall recover no costs.

SEC. 46. 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; and if he 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 be prevented; and in the execution of such warrant, he may exercise all the power pertaining 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.

- SEC. 1. Rights of entry and of action barred in twenty years.
2. From what time right begins to run.
- 3, 4, 5. When such right shall be deemed to accrue.
6. When 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.
13. Right of way, or other easements, acquired by adverse user; the owner, by notice, may prevent such acquisition.
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.

Rights of entry and action barred in twenty years.
R.S., c. 105, § 1.

SEC. 1. No person shall commence any real or mixed action for the recovery of lands, or make an entry thereon, unless within twenty years after the right to do so first accrued; or unless within twenty years after he, or those under whom he claims, were seized or possessed of the premises; except as hereinafter provided. (a)

(a) 20 Me., 211; 21 Me., 204; 25 Me., 471; 35 Me., 463.

SEC. 2. If such right or title first accrued to an ancestor, predecessor, or other person under whom the demandant claims, said twenty years shall be computed from the time when the right or title first accrued to such ancestor, predecessor or other person.

SEC. 3. The right of entry, or of action to recover land, as used in this chapter, first accrues at the times hereinafter mentioned.

First.—When a person is disseized, at the time of such disseizin.

Second.—When he claims as heir or devisee of one who died seized, at the time of such death, unless there is a tenancy by the curtesy or other estate intervening after the death of the ancestor or devisor; in that case, his right accrues when such intermediate estate expires, or would expire by its own limitation.

Third.—When there is such an intermediate estate, and in all cases, when the party claims by force of any remainder or reversion, his right accrues when the intermediate estate would expire by its own limitation, notwithstanding any forfeiture thereof for which he might enter at an earlier time.

SEC. 4. The preceding clause shall not prevent any person from entering, when so entitled by reason of any forfeiture or breach of condition; but if he claims under such a title, his right accrues when the forfeiture was incurred, or the condition broken.

SEC. 5. In all cases not otherwise provided for, the right of entry accrues when the claimant, or the person under whom he claims, first became entitled to the possession of the premises under the title on which the entry or action is founded.

SEC. 6. If a minister, or other sole corporation is disseized, any of his successors may enter upon the premises or bring an action for their recovery, at any time within five years after the death, resignation, or removal of the person disseized, notwithstanding twenty years after disseizin have expired.

SEC. 7. When such right of entry or action first accrues, if the person thereto entitled is a minor, married woman, insane, imprisoned, or absent from the United States, he, or any one claiming under him, may make the entry or bring the action at any time within ten years after such disability is removed, notwithstanding twenty years have expired.

SEC. 8. If the person first entitled to make the entry or bring the action dies during the continuance of the disability, and no determination or judgment has been had on his title or right of action, the entry may be made or action brought by his heirs, or other person claiming under him, at any time within ten years after his death, notwithstanding the twenty years have elapsed; but no such further time for bringing the action or making the entry, beyond what is hereinbefore prescribed, shall be allowed by reason of the disability of any other person.

CHAP. 105.

When right begins to run.
R.S., c. 105, § 2.
14 Me., 105.
21 Me., 374.

When such right shall be deemed to accrue.
R.S., c. 105, § 3.

58 Me., 557.

Any person may enter for condition broken.
R.S., c. 105, § 4.

Cases not specially provided for.
R.S., c. 105, § 5.

When action may be brought by a minister, or other sole corporation.
R.S., c. 105, § 6.

Saving in favor of minors and other disabled persons.
R.S., c. 105, § 7.
13 Me., 402.

Further saving, if the person first entitled dies during such disability.
R.S., c. 105, § 8.

CHAP. 105.

Consequence, if tenant in tail or remainder man dies before expiration of the limitation.
R. S., c. 105, § 9.

What shall constitute a disseizin to bar right of recovery.
R. S., c. 105, § 10.
13 Me., 135.
29 Me., 131.
57 Me., 269.
61 Me., 419.

Limitation of actions by the state.
R. S., c. 105, § 11.
69 Me., 78.

Limitation not to take effect in certain cases, when first suit fails.
R. S., c. 105, § 12.

Right of way, or other easement, acquired by adverse use, and how prevented by notice.
R. S., c. 105, § 13.

How such notice is to be given.
R. S., c. 105, § 14.

SEC. 9. When a tenant in tail, or a remainder man in tail, dies before the expiration of the period hereinbefore limited for making any entry or bringing an action for lands, no person, claiming any estate which such tenant in tail or remainder man might have barred, shall make an entry or bring an action to recover such land, except within the period during which the tenant in tail or remainder man, if he had so long lived, might have done it.

SEC. 10. To constitute a disseizin, or such exclusive and adverse possession of lands as to bar and limit the right of the true owner thereof to recover them, it shall not be necessary for such lands to be surrounded with fences or rendered inaccessible by water; but it shall be sufficient, if the possession, occupation, and improvement are open, notorious, and comporting with the ordinary management of a farm; although that part of the same, which composes the woodland belonging to such farm and used therewith as a woodlot, is not so inclosed.

SEC. 11. No real or mixed action for the recovery of any lands shall be commenced in behalf of the state, unless within twenty years after the time its title accrues.

SEC. 12. When a writ in [a] real or mixed action fails of sufficient service or return by unavoidable cause; or by the default or negligence of any officer to whom it was delivered or directed for service, the writ is abated; [or] the action [is] defeated for any matter of form, or by the death or other disability of either party; or the demandant's judgment is reversed on writ of error, the demandant may commence a new action at any time within six months after the abatement or determination of the first suit, or the reversal of the judgment.

SEC. 13. No person shall acquire a right of way, or other easement from, in, upon, or over, the land of another by the adverse use and enjoyment thereof, unless it is continued uninterrupted for twenty years; and the owner of such land, to prevent such right, may give notice, in writing, to the person claiming it, of his intention to contest such right or easement, which, being served and recorded as hereinafter stated, shall be deemed an interruption of such use, and prevent the acquisition of a right thereto.

SEC. 14. Such notice may be given by the agent or guardian of the owner of the land, or by an officer, by giving to the claimant, his agent, or guardian, if in the state, an attested copy thereof, or by leaving it at his dwelling house, or, if not in the state, a copy may be left with the tenant or occupant of the estate, if any; if not, such copy shall be affixed to the house or a conspicuous part of the premises. The officer shall make his return on the original notice; and the whole shall be recorded in the registry

of deeds in the registry district where the land lies, within three months from the time of such service. CHAP. 106.

SEC. 15. No real or mixed action, for the recovery of any lands, shall be commenced or maintained against any person in possession thereof, when such person or those under whom he claims have been in actual possession for more than forty years, claiming to hold them by adverse, open, peaceable, notorious, and exclusive possession, in their own right.

No action, for recovery of land, after 40 years possession. R. S., c. 105, § 15.

CHAPTER 106.

THE SELECTION AND SERVICE OF JURORS.

LIST OF JURORS, HOW AND WHEN PREPARED.

- SEC. 1. Board for preparing list of jurors; towns may make alterations.
2. How and when the lists are to be prepared. Indorsements on old tickets transferred to new.
3. Persons exempted from serving.
4. Tickets of names to be kept in jury box; liable to be drawn once in three years.
5. What number of names must be kept in a jury box; names may be withdrawn for scandalous crime, &c.
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 venires.

ISSUE AND SERVICE OF VENIRES.

- SEC. 8. When venires for grand jurors to issue. Grand jurors to serve for a year. When venires for trial jurors shall issue.
9. Distribution of venires and notice of meetings to draw jurors.
10. Grand jurors irregularly drawn or incompetent, discharged, and when number is reduced, how new ones may be drawn to serve the year out.

DRAFT OF JURORS, AND WHEN THEY ARE TO ATTEND.

- SEC. 11. Mode of drawing jurors.
12. Same subject.
13. Date of draft to be indorsed on the ticket.
14. Constable to notify jurors and to return venires.
15. Jurors to attend the first day of term, or when ordered.

PENALTIES.

- SEC. 16. Penalty for neglect of municipal officers and 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. Penalty for fraud by town officers.
21. Recovery and appropriation of fines.

CHAP. 106.

LIST OF JURORS, HOW AND WHEN PREPARED.

Board for preparing lists of jurors. Alteration by town. R.S., c. 106, §1.

SEC. 1. The municipal officers, treasurer and clerk of each town, 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.

Lists of persons qualified to serve as jurors, how prepared. 1878, c. 4.

SEC. 2. Such board, at least once in every three years, shall prepare a list of persons, under the age of seventy years, qualified to serve as jurors; and in preparing such list they shall take the names of such persons only as are of good moral character, of approved integrity, of sound judgment and well informed, and qualified as the constitution directs to vote for representatives in such town. When a new list is made, the municipal officers shall transfer from the old tickets to the new [tickets] of the same persons, the minutes of the draft made within the three preceding years.

Indorsement on old tickets transferred to new.

Persons exempted from serving. R.S., c. 106, §3. 26 Me., 360.

SEC. 3. The following persons shall be exempted from serving as jurors, and their names shall not be placed on the lists: the governor, councillors, 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 colleges, preceptors of incorporated academies, physicians and surgeons, cashiers of incorporated banks, sheriffs and their deputies, coroners, counsellors and attorneys at law, county commissioners, constables, and constant ferrymen.

Tickets of names to be kept in jury box, liable to be drawn once in three years. R.S., c. 106, §4.

SEC. 4. After the list of jurors is approved by the town, the board shall write their names upon tickets, and place them in the jury box, to be kept by the town clerk; and the persons whose names are in the box shall be liable to be drawn and to serve on any jury, at any court for which they are drawn, once in every three years and not oftener, except as herein provided.

What number is required to be kept in jury box; for what causes names may be withdrawn. R.S., c. 106, §5.

SEC. 5. Each town shall provide, and constantly keep in the box, a number of names ready to be drawn when required, not less than one nor more than two for every hundred persons in the town, according to the census taken next before preparing the box; and the board shall withdraw from it the name of any person convicted of any scandalous crime, or guilty of any gross immorality.

Commissioners to divide the county into jury districts, and give copy of division to clerk of court.

SEC. 6. Within one year after every new census, and oftener if a considerable change of population renders it proper, the county commissioners shall divide their county into not less than four, nor more than twelve districts numerically designated; and they shall place as many adjoining towns in each district, as will make the number of inhabitants in each, according to the last census,

as nearly equal as may be, without dividing a town; and shall deliver a copy of such division immediately to the clerk of the courts in their county. CHAP. 106.
R.S., c. 106, §6.
65 Me., 161.

SEC 7. The grand and traverse jury shall be drawn from each jury district in such manner as to cause jurors, at each term of the court, to come from every part of the county as equally as may be, and as far as practicable, from every town in rotation, having regard to the number of its inhabitants, taking not more than two grand jurors and two traverse jurors from the same town at the same time, unless from necessity, or some extraordinary cause, or to equalize the service; and the clerk of the courts shall issue venire to the constables accordingly. Rule by which the clerk shall issue venires. R.S., c. 106, §7. 38 Me., 201. 65 Me., 161. 67 Me., 332.

ISSUE AND SERVICE OF VENIRES.

SEC. 8. Venires for grand jurors to serve at the supreme judicial [and superior] court[s], shall be issued forty days at least, before the second Monday of September annually; and they shall serve at each term, for the transaction of criminal business during the year. Venires for traverse jurors, shall be seasonably issued before each term of the court, and at such other times, as the court orders. When venires for grand jurors to issue. Grand jurors serve a year; venires for traverse jurors. R.S., c. 106, §8. 67 Me., 332.

SEC. 9. The sheriff on receiving such venires, shall immediately send them to the constables of the towns where directed; and each constable, on receipt thereof, shall notify the inhabitants of the town, qualified to vote for representatives, and especially the municipal officers and town clerk, by posting notices in two public and conspicuous places therein, at least four days before such meeting, to assemble and be present at the draft of jurors called for, which shall be six days at least before the time when the jurors are ordered to attend court. Distribution of venires and notice of meetings to draw jurors. R.S., c. 106, §9. 64 Me., 553.

SEC. 10. When any judge of the court in term time or vacation, is satisfied that any persons returned or acting on [the] grand jury, are irregularly drawn, or are otherwise incompetent to act thereon, he shall discharge them, [and] send a certificate stating their names, to the clerk of court[s] for such county, which shall be recorded by him, and ordering him to issue venires for the number of new jurors, the judge deems necessary. The clerk shall issue venires as directed, which shall be served four days at least before the time such jurors are ordered to attend court, and the jurors thus drawn shall serve, with those not discharged, the remainder of the year. When the number of grand jurors is reduced by death or otherwise, such judge shall direct venires to be issued and served as aforesaid, for the additional number he deems necessary to serve for the remainder of the year. Grand jurors irregularly drawn or incompetent, discharged, and when number is reduced, how new ones shall be drawn to serve the year out. R. S., c. 106, § 10.

CHAP. 106.

DRAFT OF JURORS AND WHEN THEY ARE TO ATTEND.

Mode of drawing jurors, &c.
R. S., c. 106, § 11.
69 Me., 77.

SEC. 11. The town clerk, or, in his absence, one of the municipal officers, shall carry the jury box into the meeting, which shall there be unlocked, and the tickets mixed by a majority of said officers present; and one of them shall draw out as many tickets as there are jurors required; and the persons whose names are drawn shall be returned as jurors, unless they have served on the jury within three years, or from sickness, [or] absence beyond sea, [or] without the limits, or in distant parts of the state, they are considered by the town unable to attend.

Same subject.
R. S., c. 106, § 12.
69 Me., 77.

SEC. 12. In either of said cases, or if a person is drawn who has been appointed to an office exempting him from serving, others shall be drawn in their stead; but any person thus excused, or returned and attending court, and there excused, shall not be excused on another draft, though within three years; and when all the persons, whose names are in the box, have served within three years, or are not liable to serve, the selectmen shall draw out the required number of those who have not served for eighteen months; and the clerk shall certify on the venire, that all persons whose names are in the box have served within three years, or are not liable to serve.

Date of draft to be indorsed on ticket.
R. S., c. 106, § 13.

SEC. 13. When a juror is drawn and not excused by the town, the municipal officers who drew his ticket shall indorse thereon the date of the draft and return it into the box.

Constable to notify jurors and return venires.
R. S., c. 106, § 14.
6 Me., 335.

SEC. 14. *The* [A] constables shall notify the persons thus drawn four days at least before the sitting of the court, by reading the venire and indorsement thereon to them, or leaving at their usual place of abode a written notice that they have been drawn, and of the time and place of the sitting of the court where they are to attend; and make a seasonable return of the venire with his doings thereon.

Jurors to attend first day of term, or when ordered.
R. S., c. 106, § 15.

SEC. 15. The grand and traverse jurors shall attend on the first day of the term for which they are drawn and summoned, unless the court designates a different day; and if so, the venire shall specify such day.

PENALTIES.

Penalty for neglect of town officers and clerk.
R. S., c. 106, § 16.

SEC. 16. If the municipal officers or town clerk neglect to perform their duties herein required, so that the jurors called for from their town are not returned, they shall be fined not less than ten, nor more than fifty dollars each.

Penalty for neglect of constable or town.
R. S., c. 106, § 17.

SEC. 17. Any constable, neglecting to perform his duties herein required, shall be fined not exceeding twenty dollars; and any town for a like neglect of its duties shall be fined not exceeding one hundred dollars.

SEC. 18. If the clerk of the court, or sheriff, neglects to perform his duties so as to prevent a compliance with any of the provisions of this chapter, he shall be fined not exceeding fifty dollars.

CHAP. 107.

Neglect of clerk or sheriff.

R. S., c. 106, § 18.

SEC. 19. Any juror, who, after being notified and returned, unnecessarily fails in his attendance, shall be fined as for contempt, not exceeding twenty dollars, unless he resides in Portland, and then, not exceeding forty dollars.

Neglect of juror to attend.

R. S., c. 106, § 19.

SEC. 20. Any town clerk or municipal officer, who commits a fraud on the box previous to the draft, in drawing a juror or in returning a name into the box, which had been fairly drawn and drawing another in its stead, or in any other mode, shall be fined not exceeding two hundred dollars, half to the use of the state and half to the prosecutor.

Penalty for fraud of town officers.

R. S., c. 106, § 19.

SEC. 21. All fines imposed by sections sixteen, seventeen, eighteen and nineteen, shall be recovered by indictment, information, or action by the county treasurer to the use of the county where the offence is committed.

Recovery and appropriation of fines.

R. S., c. 106, § 21.

CHAPTER 107.

DEPOSITIONS.

DEPOSITIONS IN GENERAL.

- SEC. 1. In what cases depositions may be used.
2. Before whom they may be taken.
3. When case is deemed pending, for the purpose of taking depositions.
4. Reasons for which they may be taken and used.
5. On application of the party, a justice or notary may issue summons to deponent; deposition of adverse party, to be taken by commissioner.
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.
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. No deposition to be closed until one hour after time appointed.
15. Form of caption.
16. Depositions to be delivered in court, or sealed up and directed.

- CHAP. 107. SEC. 17. Not to be used if the reason for taking no longer exists.
18. Objections to competency of witness or to 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.

- SEC. 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, and where.
25. When it may be used in evidence.
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 written interrogatories; application may be filed in vacation, and notice given.

PENALTY FOR REFUSING TO APPEAR, OR TO GIVE DEPOSITIONS.

- SEC. 29. Proceedings to compel a deponent to appear and depose. Adjournment if he refuses to appear. Capias may then issue. Who may serve it and where. Punishment if he refuses to depose.

DEPOSITIONS IN GENERAL.

In what cases depositions may be used.
R.S., c. 107, § 1.

SEC. 1. Depositions taken for the causes, and in the manner hereinafter mentioned, may be used in all civil suits or causes, petitions for partition of land, libels for divorce, prosecutions for the maintenance of bastard children, petitions for review, and in trials before arbitrators, referees, and county commissioners; and in cases of contested senatorial or representative election. Depositions or affidavits may also be taken in application for pensions, bounties, or arrears of pay under any law of the United States.

Before whom taken.
R.S., c. 107, § 2.

SEC. 2. A justice of the peace or notary public may take depositions to be used in a pending cause, in which he is not interested, nor then nor previously counsel. (a)

When a cause is deemed pending.
R.S., c. 107, § 3.
15 Me., 451.
16 Me., 258.
37 Me., 413.
69 Me., 338.

SEC. 3. No suit, petition, libel or prosecution, for the purposes of this chapter, shall be considered pending, *till* [until] the process therein has been duly served on the respondent, or such notice as is required by law, or ordered by the court, has been duly given; and no such deposition shall be used in the trial of any cause, except by consent of parties, unless the notice hereinafter mentioned is duly given to the adverse party.

Reasons for taking.
R.S., c. 107, § 4.
53 Me., 180.

SEC. 4. Depositions may be taken for any of the following causes.

First.—When the deponent is so aged, infirm, or sick, as not to be able to attend at the place of trial.

(a) 25 Me., 439; 66 Me., 352; 68 Me., 219.

Second.—When the deponent resides out of, or is absent from the state. CHAP. 107.

Third.—When the deponent, before the session of the court where the deposition is to be used, is bound to sea on a voyage [or] is about to go out of the state, or more than sixty miles from the place of trial, and [is] not expected to return in season to attend it. 21 Me., 215.

Fourth.—When the deponent is judge of the supreme judicial court, [superior court] or court of probate, and is prevented by his official duty from attending the trial.

Fifth.—When the deponent resides in a town other than that in which the trial is to be had; and also when he resides in the same town; but in the latter case, the deposition shall not be used, unless, at the trial, the party offering it shows the deponent's death or permanent removal from that town.

Sixth.—When the deponent is confined in prison, and such imprisonment is continued until after the trial.

SEC. 5. On application of either party to a justice of the peace or notary public, he may issue a summons to any deponent, except the adverse party, to appear at a designated time and place to give his deposition, and [shall issue] a notice to the adverse party to be then and there present; and the deposition may then and there be taken by him or any other justice or notary, but the deposition of such adverse party may be taken by commission *in like manner* as is now provided for taking depositions of other witnesses by commission. On application, justice or notary may issue summons to deponent, and notice to adverse party. 1881, c. 66. 41 Me., 600.

SEC. 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 place of last and usual 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 notice, how made. R.S., c. 107, §6. 37 Me., 413. 72 Me., 471.

SEC. 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 to be considered attorney of the adverse party. R.S., c. 107, §7.

SEC. 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 [the] time appointed for taking the deposition. Verbal notice to the adverse party by a justice or Notice to one of adverse party sufficient; time of notice; when verbal notice may be given. Notice to take deposition out of state. R.S., c. 107, §8.

(*a*) 29 Me., 69; 33 Me., 423; 36 Me., 359; 52 Me., 480.

CHAP. 107. notary shall be sufficient; and when a deposition is taken out of the state, and not under a commission, the adverse party or his attorney shall have due notice thereof. (a)

Form of
notice to ad-
verse party.
R. S., c. 107, § 9.
22 Me., 353.

SEC. 9. The notice to the adverse party, if in the state, shall be in substance as follows:—

“—, ss. To —, of —, in the county of —,

Greeting.

Whereas A. B., of —, has requested, that the deposition of C. D., of —, may be taken to be used in an action of —, pending between you and the said A. B., and the — of —, in —, and the — day of —, [18—,] at — of the [o’]clock in [the] — noon, are the place and time appointed therefor; you are hereby notified to be present and put such questions as you think fit. Dated this — day of —, 18—.

—, Justice of the Peace.”

Form of
summons to
deponent.
R. S., c. 107,
§ 10.

SEC. 10. The justice or notary, when requested, shall issue a summons to the deponent in substance as follows, viz:—

“—, ss. To C. D., of —, in the county of —.

Greeting.

Whereas A. B., of —, in the county of —, has requested that your deposition be taken, to be used in an action now pending between him and E. F., of —, in the county of —, and the — of —, in the town of —, and the — day of —, [18—] at — of the [o’]clock in the — noon, are the place and time appointed therefor; you are therefore required, in the name of the state of Maine, there and then to appear and testify what you know relating to said action. Dated this — day of —, in the year —.

—, Justice of the Peace.”

The summons may be served and the service thereof proved as in section six.

Witness may
be compelled
to give
deposition.
R. S., c. 107,
§ 11.
36 Me., 283.

SEC. 11. A witness may be compelled to attend and give his deposition in like manner and under the same penalties as a witness is compelled to attend and testify in court; but not to travel more than thirty miles to give his deposition; and such deposition shall not be used in any trial, except for the causes mentioned in section four, unless the adverse party uses the witness at such trial.

How depon-
ent is to be
sworn and
examined.
R. S., c. 107,
§ 12.

SEC. 12. The deponent shall be first sworn to testify the truth, the whole truth, and nothing but the truth, relating to the cause or matter for which the deposition is to be taken; and he shall then be examined, first by the party producing him, on verbal or

(a) 16 Me., 43; 36 Me., 283; 61 Me., 509; 62 Me., 52, 53; 64 Me., 533; 72 Me., 471.

written interrogatories, and then by the adverse party, and by the justice or the parties afterwards, if they see cause. (a) CHAP. 107.

SEC. 13. The deposition shall be written by the justice or notary, or by the deponent or some disinterested person, in the presence and under the direction of such justice or notary; and after it has been carefully read to or by the deponent, it shall be subscribed by him. Who may write the deposition. R. S., c. 107, § 13. 66 Me., 353.

SEC. 14. If the adverse party is notified to take depositions in the same cause at two places at the same time, or any deceptive means are used to prevent his attendance at the taking of any depositions, the court for such reason may reject them; and no deposition shall be closed till the expiration of one hour after the time appointed for the taking. If deception is used in taking, it may be rejected. When it may be closed. R. S., c. 107, § 14.

SEC. 15. The justice or notary shall make out a certificate and annex it to the deposition, therein stating the following facts: (b) Form and requisites of caption. R. S., c. 107, § 15.

First.—That the deponent was first sworn according to law, and when.

Second.—By whom the deposition was written; if by the deponent or some disinterested person, he must name him, and that it was written in his presence and under his direction.

Third.—Whether the adverse party was notified to attend, and did or did not attend.

Fourth.—The cause in which the deposition is to be used and the names of the parties thereto.

Fifth.—The court or tribunal in which it is to be tried, and the time and place of trial.

Sixth.—The cause of taking the deposition.

SEC. 16. The deposition shall be delivered by the justice to the court or referees before whom the cause is to be tried, or inclosed and sealed up by him, and directed to such court or referees, and kept sealed till opened by their order. To be delivered in court, or sealed up and directed. R. S., c. 107, § 16. 70 Me., 292.

SEC. 17. When a deposition is so taken, it shall not be used on trial, if the adverse party shows that the cause for taking it no longer exists. (c) When not to be used. R. S., c. 107, § 17.

SEC. 18. Objections to the competency of a deponent, or to the questions or answers, may be made when the deposition is produced, as if the witness testified on the trial; but if a deposition is taken on written interrogatories, all objection to an interrogatory shall be made before it is answered; and if it is not withdrawn, it shall be noted thereon, otherwise it shall not afterwards be allowed. Objections to competency, when to be made. R. S., c. 107, § 18. 14 Me., 153. 37 Me., 215. 45 Me., 468. 47 Me., 253.

(a) 24 Me., 173; 34 Me., 71; 35 Me., 133, 372, 511; 38 Me., 144; 44 Me., 75.

(b) 5 Me., 15; 28 Me., 33; 31 Me., 587; 33 Me., 381; 34 Me., 71, 210; 36 Me., 73, 283, 468; 38 Me., 146; 41 Me., 335; 44 Me., 75; 45 Me., 470; 68 Me., 219.

(c) 20 Me., 259; 28 Me., 41; 63 Me., 419.

CHAP. 107.

SEC. 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.

When depositions may be used in second suit. R. S., c. 107, § 19. 55 Me., 172. 65 Me., 13.

Depositions taken out of state. R. S., c. 107, § 20. Court may issue commissions to take such depositions out of state. R. S., c. 107, § 21. 32 Me., 179.

Application for taking a deposition in perpetuum, and notice to persons interested. R. S., c. 107, § 22. 4 Me., 90, 486. 17 Me., 354. 72 Me., 471.

How such a deposition is to be taken and certified. R. S., c. 107, § 23. 16 Me., 256.

To be recorded and where. R. S., c. 107, § 24. 19 Me., 153.

When it may be used in evidence, &c. R. S., c. 107, § 25.

SEC. 20. The court may admit or reject depositions taken out of the state by a justice, notary, or other person lawfully empowered to take them. (a)

SEC. 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.

SEC. 22. When any person wishes to perpetuate the testimony of a 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 a judge or register of probate, notary public, clerk of the supreme judicial court, or justice of the peace and quorum, requesting him to take the deposition of such witness; and he shall thereupon cause notice to be given, of the time and place for taking such deposition, to all persons so named in the statement, which may be given and proved as in case of other depositions.

SEC. 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 certificate, as near as the case will admit, and also state therein that it was taken in perpetual remembrance of the thing, and the name of the person at whose request it was taken, and of all who were notified, and all who attended.

SEC. 24. The statement, deposition, and certificate, within ninety days after the taking, shall be recorded in the registry of deeds in the county where the land or any part of it lies, if the deposition relates to real estate; if not, in the county where the parties or some of them reside.

SEC. 25. All such depositions, recorded as aforesaid, or a copy thereof attested by the register of deeds, may be used in the trial of any cause pending when the deposition was taken, or commenced afterwards, between the person at whose request it was

(a) 29 Me., 167; 31 Me., 506; 32 Me., 180; 41 Me., 107; 50 Me., 421; 52 Me., 480; 63 Me., 52.

taken, and either of the persons named in the statement and duly notified, or those claiming under either, concerning the title, claim, or interest set forth in the statement, subject to the same objections as if originally taken for the suit.

SEC. 26. Depositions, to perpetuate the testimony of witnesses living out of the state, may be taken in any other state, or foreign country, upon a commission issued by the supreme judicial court; and the persons desirous to procure such depositions may apply to said court and file a statement as aforesaid; and if it relates to real estate in this state, the statement shall be filed in the county where it lies; if not, in the county where some of the parties reside.

SEC. 27. The court shall order notice to be served on each of the persons named in the statement living in the state, fourteen days before the time appointed for hearing the parties, and on hearing the parties, or the applicant, if no adverse party appears, may issue a commission for taking such deposition as in a cause pending.

SEC. 28. The deposition shall be taken on interrogatories filed by the applicant, and cross interrogatories by any party adversely interested, substantially as when taken to be used in pending causes. Or the person wishing to take the deposition may file his statement in the clerk's office in vacation, and cause notice to be given to the persons named therein as interested, fourteen days at least before the next term of the court, at which time the parties may be heard.

PENALTY FOR REFUSING TO APPEAR OR TO GIVE DEPOSITIONS.

SEC. 29. When a magistrate, duly authorized, has summoned a person before him to give his deposition or affidavit in any case authorized by this chapter, pending in this or any other state; the summons has been served and returned by a proper officer or other person, and proof thereof is entered on the summons; legal fees have been tendered him a reasonable time before the day appointed for taking the deposition; and he refuses to attend, the magistrate may adjourn the time of taking his deposition, and issue a *capias*, directed to a proper officer, to apprehend and bring such person before him; and if, at the time of the adjournment, he is not apprehended, the magistrate may adjourn from time to time, until he is brought before him; and if he then 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. The *capias* may be served by the sheriff, deputy sheriff, or any constable of the county, in which such person resides; and if he escapes into another county, either of said officers may arrest him there, and bring him before said magistrate.

CHAP. 107.

How such depositions may be taken out of the state.
R. S., c. 107, § 26.
72 Me., 470.

Court to order notice, and after hearing, to issue commission.
R. S., c. 107, § 27.
72 Me., 470-1.
To be taken on interrogatories.
Application may be filed in vacation, and notice given.
R. S., c. 107, § 28.
72 Me., 470-1.

Proceedings to compel a deponent to appear and depose.
Adjournment if he does not.
Capias may then be issued.
Who may serve it and where.

Punishment if he refuses to depose.
R. S., c. 107, § 29.
22 Me., 358.
68 Me., 219.

Escaping, he may be arrested anywhere.

CHAPTER 108.

REFERENCE OF DISPUTES BY CONSENT OF PARTIES.

- SEC. 1. What controversies may be referred; powers of referees; form of submission; not to be revoked but by consent.
2. Submission of all demands, and of a specific demand.
3. All referees must hear; a majority may decide; may allow costs or not; may swear witnesses.
4. How and when report is to be returned to court.
5. Report accepted, rejected or recommitted; exceptions; notice of new hearing; judgment on report; writ of error to review it.

What controversies may be referred; powers of referees; not to be revoked.
 R.S.c.108, § 1.
 5 Me., 41.
 18 Me., 253, 257.
 22 Me., 241.
 23 Me., 130.
 32 Me., 79.
 34 Me., 161.
 36 Me., 21, 594.
 41 Me., 357.
 47 Me., 425.
 55 Me., 245.
 59 Me., 129.
 60 Me., 102.
 62 Me., 50, 51, 120.
 64 Me., 367.
 Form.

SEC. 1. All controversies which may be the subject of a personal action, may be submitted to one or more referees, who shall have the same powers as those appointed by the court; and the parties personally, or by attorney, may sign and acknowledge an agreement before a justice of the peace, though he is one of the referees 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 — —, — — [and] — —; and judgment rendered on their report, or that of a majority of them, made to the supreme judicial court for the county of — —, within one year from this day, shall be final. And if either party neglects to appear before the referees, after proper notice given to him of the time and place appointed for hearing the parties, they may proceed in his absence.

Dated this — — day of — —, A. D., 18—.”

Such agreement shall not be revoked without mutual consent; but the parties may agree when the report shall be made, and vary the form accordingly.

Submission of all demands, and of a specific demand.
 R.S.c., 108, § 2.

SEC. 2. If all demands between the parties are so submitted, no specific demand need be annexed to the agreement; but if a specific demand only is submitted, it shall be annexed to the agreement and signed by the party making it, and so stated as to be readily understood. (a)

All referees must hear; majority may decide;

SEC. 3. All the referees must meet and hear the parties; but a majority may make the report, which shall be as valid as if signed by all, if it appears by the report, or certificate of the dis-

(a) 9 Me., 15; 22 Me., 241; 30 Me., 114; 35 Me., 358; 45 Me., 375; 55 Me., 246; 68 Me., 324.

senting referee that all attended and heard the parties. They may allow costs or not to either party unless special provision is made therefor in the submission, but the court may reduce their compensation; and any referee may swear witnesses. (*a*)

SEC. 4. The report shall be made to the court and within the time specified in the submission; one of the referees shall deliver it into court, or it shall be sealed up and sent sealed to the court, and [be] opened by the clerk.

SEC. 5. The court may accept, reject, or recommit the report, and either party may file exceptions thereto; if recommitted, the referees shall notify the parties of the time and place of a new hearing; and when the report is accepted, judgment shall be entered thereon as in case of submissions by rule of court; and either party may bring a writ of error to reverse such judgment. (*b*)

(*a*) 1 Me., 66; 30 Me., 553; 35 Me., 284; 50 Me., 65.

(*b*) 6 Me., 25; 8 Me., 290; 23 Me., 437; 27 Me., 123; 29 Me., 70; 31 Me., 41, 116; 32 Me., 79; 36 Me., 109; 37 Me., 506; 40 Me., 196; 41 Me., 409, 511; 51 Me., 31; 55 Me., 537; 56 Me., 145; 59 Me., 235.

CHAP. 109.

may allow costs or not; may swear witnesses. R.S., c. 108, § 3.
Report how and when returned. R.S., c. 108, § 4.
36 Me., 595.
37 Me., 505.
59 Me., 235.
60 Me., 102.
Report accepted, rejected, or re-committed. Exceptions. Notice of new hearing; judgment on report; writ of error to reverse it. R.S., c. 108, § 5.

CHAPTER 109.

TIMBER AND CORD WOOD; HOW IT MAY BE DISPOSED OF IN CERTAIN CASES.

- SEC. 1. On application of 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.

SEC. 1. Any person seized of a freehold estate, or of a remainder or reversion in fee simple, or fee tail, in a tract of woodland 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 cut and 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 cut and sold, and the proceeds brought into court, subject to further orders.

On application of the owners of certain interests in woodlands, court may grant leave to sell wood. R.S., c. 109, § 1.

CHAP. 110. **SEC. 2.** The court shall appoint one or more commissioners to superintend the cutting and sale of such trees, who shall account for the proceeds to the court, and be under bond to the clerk for the faithful performance of their trust.

Appoint-
ment of com-
missioners.
R.S., c. 109, § 2.

Proceeds,
how invest-
ed, income
how appro-
priated.
R.S., c. 109, § 3.

SEC. 3. The court may cause the net proceeds of sale to be invested in other real estate in *this* [the] 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.

Court to ap-
point trus-
tees of such
funds.
Bond.
R.S., c. 109, § 4.

SEC. 4. The court may appoint one or more trustees, remov-able at *their* [its] pleasure, to hold such estates or stocks for said uses, who shall give bond, with sufficient sureties, to said clerk, for the faithful discharge of their duty.



CHAPTER 110.

COMMISSIONERS TO TAKE ACKNOWLEDGMENT OF DEEDS AND OTHER CONTRACTS, AND DEPOSITIONS IN OTHER STATES.

- SEC. 1.** Appointment of commissioners; their power to authenticate deeds.
2. Legal effect of their official acts and certificates.
 3. May administer oaths, and take depositions.
 4. Qualification and seal.

Appoint-
ment of com-
missioners;
their power
to authenti-
cate deeds.
R.S., c. 110, § 1.
72 Me., 548.

SEC. 1. The governor may appoint one or more commissioners in any other of the United States, and in any foreign country, who shall continue in office during his pleasure; and have authority to take the acknowledgment and proof of the execution of any deed, other conveyance, or lease of any lands lying in this state; and of any contract, letter of attorney, or any other writ, under seal or not, to be used or recorded in this state.

Legal effects
of their
official acts.
R.S., c. 110, § 2.

SEC. 2. Such acknowledgment or proof, taken according to the laws of this state, and certified by any such commissioner under his seal of office, annexed to or indorsed on such instrument, shall have the same force and effect, as if done by an officer authorized to perform such acts [with-]in this state.

May admin-
ister oaths
and take
depositions.
R.S., c. 110, § 3.

SEC. 3. Every commissioner thus appointed may administer any oath, lawfully required in this state, to any person willing to take it; and take and duly certify all depositions, to be used in any of the courts in this state, in conformity to the laws thereof, on interrogatories proposed under commission from a court of this

state, by consent of parties, or on legal notice given to the opposite party; and all such acts shall be as valid as if done and certified, according to law, by a magistrate in this state.

CHAP. 111.

SEC. 4. Every such commissioner, before performing any duty or exercising any power in virtue of his appointment, shall take and subscribe an oath or affirmation, before a judge or clerk of one of the superior courts of the state or country in which he resides, well and faithfully to execute and perform all his official duties under the laws of Maine; which oath, and a description of his seal of office, shall be filed in the office of the secretary of this state.

Qualification and seal.
R.S., c. 110, § 4.
See act of 1862, chap. 83.

CHAPTER 111.

PREVENTION OF FRAUDS AND PERJURIES IN CONTRACTS, AND ACTIONS FOUNDED THEREON.

- SEC. 1. Cases in which promises must be in writing, but the consideration need not be expressed therein.
2. No action to be maintained on a contract made by a minor, unless ratified after becoming of age.
 3. Representation of another's ability or character, to be in writing.
 4. What contracts for sale of goods must be in writing.
 5. Agreement that goods sold and delivered and note taken therefor, shall remain the payee's, void, except as between the parties, unless in the note and recorded; clerk's fees for recording.
 6. Assignment of wages must be recorded by town clerk. His fee.
 7. Accounts against state, counties, towns, &c., must be sworn to, if required.
 8. When specific performance of a contract may be enforced by bill in equity.
 9. What decree shall be made; the conveyance to be good.
 10. Enforcement of the decree by writ of seizin.
 11. Provision in case of the death of the obligee before conveyance.
 12. Administrator of contractor may petition for authority to convey.

SEC. 1. No action shall be maintained in any of the following cases:—

First.—To charge an executor or administrator upon any special promise to answer damages out of his own estate.

Cases in which promises must be in writing; but the consideration

CHAP. 111. *Second.*—To charge any person upon any special promise to answer for the debt, default, or misdoings of another. (*a*)

need not be expressed therein.
R.S., c. 111, § 1.

Third.—To charge any person upon an agreement made in consideration of marriage.

Fourth.—Upon any contract for the sale of lands, tenements, or hereditaments, or of any interest in or concerning them. (*b*)

Fifth.—Upon any agreement that is not to be performed within one year from the making thereof. (*c*)

Sixth.—Upon any contract to pay a debt after a discharge therefrom under the bankrupt laws of the United States, or assignment [or insolvent] laws of this state.

Unless the promise, contract, or agreement, on which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith, or by some person thereunto lawfully authorized; but the consideration thereof need not be expressed therein, but may be proved otherwise. (*d*)

No action on a contract made by a minor, unless ratified after age.
R.S., c. 111, § 2.

SEC. 2. No action shall be maintained on any contract made by a minor, unless he, or some person lawfully authorized, ratified it in writing after he arrived at the age of twenty-one years, except for necessaries, or real estate of which he has received the title and retains the benefit.

Representation of another's ability, to be in writing.
R.S., c. 111, § 3.

SEC. 3. No action shall be maintained to charge any person by reason of any representation or assurance, concerning the character, conduct, credit, ability, trade or dealings of another, unless made in writing, and signed by the party to be charged thereby or by some person by him legally authorized.

What contracts for sale of goods must be in writing.
R.S., c. 111, § 4.

SEC. 4. No contract for the sale of any goods, wares, or merchandize, for thirty dollars or more, shall be valid, unless the purchaser accepts and receives part of the goods, or gives something in earnest to bind the bargain, or in part payment thereof, or some note or memorandum thereof is made and signed by the party to be charged thereby, or by his agent. (*e*)

Agreement that goods sold and delivered, and note taken,

SEC. 5. No agreement that personal property bargained and delivered to another, for which a note is given, shall remain the property of the payee *till* [until] the note is paid, is valid unless it is

(*a*) 7 Me., 360; 21 Me., 412, 550; 22 Me., 397; 26 Me., 349; 36 Me., 114; 41 Me., 559; 46 Me., 145; 58 Me., 442.

(*b*) 12 Me., 509; 15 Me., 16, 63, 203; 16 Me., 214; 18 Me., 18; 22 Me., 397; 23 Me., 134; 35 Me., 220; 38 Me., 240; 41 Me., 301; 48 Me., 345; 53 Me., 147, 394; 54 Me., 199, 407; 55 Me., 106; 71 Me., 484, 532.

(*c*) 10 Me., 35; 15 Me., 204; 20 Me., 121; 31 Me., 556; 46 Me., 157; 56 Me., 193, 380; 65 Me., 306; 71 Me., 508.

(*d*) 3 Me., 415; 4 Me., 9, 263; 53 Me., 24; 66 Me., 343.

(*e*) 9 Me., 81; 12 Me., 476; 13 Me., 427; 19 Me., 139; 26 Me., 399; 39 Me., 101; 41 Me., 69, 528; 48 Me., 211, 380; 53 Me., 510; 54 Me., 110; 57 Me., 163; 60 Me., 273; 62 Me., 355; 64 Me., 449; 66 Me., 341-4.

made and signed as a part of the note, *nor when it is* [and no such agreement although] so made and signed in a note for more than thirty dollars, [is valid,] except as between the original parties to said agreement, unless it is recorded like mortgages of personal property, and on receipt of twenty-five cents, each town clerk shall record such notes in a book kept for that purpose. (a)

SEC. 6. No assignment of wages shall be valid against any other person than the parties thereto, unless such assignment is recorded by the clerk of the city, town or plantation organized for any purpose in which the assignor is commorant, while earning such wages; [and the clerk's fee] *The fee to be paid the clerk for any such record* shall be twenty-five cents.

SEC. 7. Every person presenting an account or claim against any town, village corporation, city, county, or the state, for services rendered, articles furnished, or expenses incurred, shall cause said account or claim to be verified by oath, when required to do so, by any person whose duty it is to audit the same; and if said claimant refuses so to verify, his claim shall be rejected.

SEC. 8. If a person, who has contracted in writing to convey real estate, dies before making the conveyance, the other party may have a bill in equity in the supreme judicial court to enforce specific performance thereof, against his heirs, devisees, executors or administrators, if commenced within three years from the grant of administration, or [from] the time when he is entitled to such conveyance, but not exceeding four years after the grant of administration, if written notice of the existence of the contract is given to the executor or administrator within one year after the grant of administration.

SEC. 9. If it appears that the plaintiff is entitled to a conveyance, the court may authorize and require the executor or administrator to convey the estate as the deceased ought to have done; and if any of the heirs or devisees are in the state and competent to act, the court may direct them, instead of the executor or administrator, to convey the estate or join with either in such conveyance; which shall pass the estate as fully as if made by the contractor.

SEC. 10. If the defendant neglects or refuses to convey according to the decree, the court may render judgment for the plaintiff for possession of the land, to hold according to the terms of the intended conveyance, and [may] issue a writ of seizin as in a real action, under which the plaintiff, having obtained possession, shall hold the premises as effectually as if conveyed in pursuance of the

CHAP. 111.

shall remain payee's, void, unless in the note and recorded.

1874, c. 181.

—fee.

See c. 91, § 7. Assignment of wages not valid unless recorded.

1876, c. 93, § 1.

68 Me., 428.

—clerk's fee for recording.

1876, c. 93, § 2.

Accounts and claims against

towns, how

verified.

1877, c. 214.

When specific performance of contract to convey real estate may be enforced after death of contractor. R.S., c. 111, § 6.

What decree is to be made. R.S., c. 111, § 7.

—conveyance valid.

Decree may be enforced by writ of seizin. R.S., c. 111, § 8.

(a) 59 Me., 394; 62 Me., 254; 65 Me., 491; 70 Me., 59.

CHAP. 112. decree; or the court may enforce their decree by any other process according to chancery proceedings.

Provision in case of the death of the obligee before conveyance.
R. S., c. 111, § 9.

SEC. 11. If the person, entitled to such conveyance, dies before bringing his suit, or before the conveyance is completed, or such seizin and possession are obtained, his heir, devisee, or other person entitled to the estate under him, may bring and prosecute such suit, and shall be entitled to the conveyance, or seizin and possession, in like manner as the obligee.

Administrator may petition for authority to make conveyance.
R. S., c. 111, § 10.

SEC. 12. If the party to whom any such conveyances was to be made, or those claiming under him, do not commence a suit as before provided, and the heirs of the deceased party are under age, or otherwise incompetent to convey the lands contracted for, the executor or administrator of the deceased may file a bill in equity in the supreme judicial court, setting forth the contract, and circumstances of the case; whereupon the court, by their decree, may authorize such executor or administrator to convey the estate as the deceased should have done; and such conveyance shall be deemed a performance of the contract on the part of the deceased, so as to entitle his heirs, executors, or administrators, to demand a performance thereof on *his* [the] part. [of the other party.] *



CHAPTER 112.

RECOGNIZANCE FOR DEBTS.

- SEC. 1.** Who may enter into recognizance, and the form thereof.
2. The justice to certify, record, and deliver to creditor, to be filed and recorded with the clerk of the courts; who may issue and renew execution thereon, to be executed by all proper officers.
 3. When not to run against the lands or body of the debtor.
 4. Administrator of creditor may renew execution; if debtor dies, or after three years, action of debt may be brought as on judgment.
 5. Consequence, if one of several debtors or creditors dies.
 6. Remedy, if execution is wrongfully issued.

Who may enter into recognizance, and

SEC. 1. Any person legally capable, may recognize to pay a debt by signing, sealing and acknowledging a recognizance before a justice of the peace, in substance as follows:—

* [NOTE. The grammatical inaccuracy of this line was brought to the commissioner's attention by Ex-Judge Henry C. Goodenow, of Bangor.]

“I, A. B., of —, in the county of —, *do* owe unto C. D., of —, in the county of —, the sum of \$—.—, to be paid to the said C. D., on the — day of —, 18—; and if I fail to pay said debt at the time aforesaid, I will and grant that the said debt be levied of my goods and chattels, lands, and tenements, and in want thereof upon my body.

CHAP. 112.

the form thereof.
R.S., c. 112, § 1.

In testimony whereof, I have hereto set my hand and seal, this — day of —, A. D., 18—.”

SEC. 2. The justice shall annex his certificate to it, record it and deliver it to the creditor; and if the debt is not paid at the time appointed, the creditor may deliver the recognizance to the clerk of the court of the county where taken, who shall record it in a book kept for that purpose, and place it on the files of the court; and at any time within three years after the debt becomes due, without any order of court, he may issue an execution thereon, including all interest due by the terms of the recognizance, varying the form of the execution accordingly, to be renewed by the clerk, served, and executed by all proper officers, as any other execution.

May be filed and recorded with clerk of the courts, and executions issued and renewed thereon.
R.S., c. 112, § 2.
69 Me., 218.

SEC. 3. If the sum originally due on such recognizance does not exceed twenty dollars, execution shall not be issued against the lands of the debtor; and if the sum is less than ten dollars, it shall not be issued against his body.

When not to run against the lands or body of the debtor.
R.S., c. 112, § 3.

SEC. 4. If the creditor dies before the debt is fully paid, his executor or administrator may renew such execution in his own name; and if the debtor dies, no execution shall issue of course, but the creditor in that case, and also after the expiration of three years from the time of payment in the recognizance, may have an action of debt as in case of judgment.

Administrator may renew execution, &c.
R.S., c. 112, § 4.
1 Me., 161.

SEC. 5. Where there are several debtors or creditors, and one or more of them dies before the debt is paid, the rights of the surviving creditors, and the obligations of the surviving debtors, shall be the same as in case of a judgment.

If one of several debtors or creditors dies, consequence.
R.S., c. 112, § 5.

SEC. 6. Any person, injured by the suing out or service of such execution, shall have his remedy by writ of *audita querela* or otherwise, as in case the execution had been sued out upon a judgment.

Remedy, if ex'on is wrongfully issued.
R.S., c. 112, § 6.
5 Me., 379.

CHAP. 113.

CHAPTER 113.

RELIEF OF POOR DEBTORS.

ARRESTS ON MESNE PROCESS.

- SEC. 1. No arrest on mesne process on contract, except where specially provided. Arrests allowed in actions not founded on contract.

ARRESTS AND DISCLOSURES ON LEAVING THE STATE.

- SEC. 2. Debtor about to leave the state, may be arrested in certain cases.
 3. Disclosure on such arrest, how made.
 4. Notice thereof to be given to the plaintiff.
 5. Justices may adjourn.
 6. Mode of making disclosure; adjudication of justices; effect of discharge.
 7. Lien on property disclosed, how preserved. Provisions of section fourteen applicable.

DISCLOSURES ON MESNE PROCESS BEFORE JUDGMENT.

- SEC. 8. Defendant may in all cases disclose on return of writ. Notice, how to be given.
 9. Effect thereof; lien on property disclosed.
 10. Certificate of real estate disclosed to be filed in registry of deeds.
 11. How to preserve lien on personal estate.
 12. Disclosure on mesne process by consent of parties, how to be made.
 13. Execution to issue against body, unless there is a disclosure and discharge.
 14. Certain property, which cannot be come at to be attached, to be delivered up on disclosure, or assigned.

BONDS IN MESNE PROCESS AND DISCLOSURES AFTER JUDGMENT.

- SEC. 15. Persons arrested may give bond to disclose in a certain time after judgment.
 16. Proceedings if debtor has given bond on mesne process.
 17. Debtor in such case may go at large thirty days during the lien on the property disclosed.
 18. Effect of creditor's election to arrest on execution or otherwise.

ARRESTS AND BONDS ON EXECUTION, AND DISCLOSURES THEREON.

- SEC. 19. No arrest on execution if debt is less than ten dollars.
 20. Arrests in other cases, and mode of release. Proceedings if not discharged.
 21. Debtor may disclose without giving bond, when and how. Officer's fees to be first paid.
 22. Debtor in jail may also disclose, and how. Notice how served. What fees to be first paid.
 23. If not discharged, remanded; otherwise oath administered and certificate given, and effect of it.
 24. Bond may be given on such arrest; condition and effect thereof.
 25. Valid statute bond if not double the amount.
 26. Application by a debtor bonded or imprisoned, to a justice, for privilege of poor debtor's oath. Justice to appoint time and place, and cite creditor.
 27. Citation, how served on any one creditor, his attorney or agent.

- SEC. 28. Examination before two justices of the quorum; proceedings. CHAP. 113.
29. Creditor may put questions, have them answered in writing and sworn to, and may have a copy.
30. When the justices may administer the oath. Form thereof.
31. Certain property disclosed, which cannot be come at to be attached, may be appraised and set off to the creditor, and how.
32. Creditor may accept it within thirty days; if not, returned to debtor.
33. Form of justice's certificate of discharge.
34. Effect of such certificate.
35. Effect of voluntary release by creditor, from arrest on execution.
36. Officer may indorse such release on the execution, and then levy the execution on property.
37. Preservation of creditor's lien on real estate disclosed.
38. Lien on personal estate disclosed; consequences if debtor or any person transfers or conceals it.
39. Bond taken on execution to be returned therewith, for benefit of creditor.
40. Amount recoverable thereon, if forfeited.

ARRESTS FOR TAXES.

- SEC. 41. Persons arrested for taxes entitled to the privileges of this chapter. Variation in form of oath and certificate.

GENERAL PROVISIONS.

- SEC. 42. Manner of selecting the justices to take the disclosure; if two do not agree, they may select a third; if they cannot agree on a third, the officer may choose him; majority may decide.
43. Judges of municipal or police courts may act as justices.
44. Persons incompetent as witnesses not to be precluded from taking poor debtor's oath.
45. Costs for creditor if debtor is not discharged.
46. Debtor twice refused a discharge may apply to court for a commissioner to disclose again; who shall give notice, proceedings.
47. After debtor is examined, other evidence or depositions may be introduced; and same depositions may be used in subsequent disclosures.
48. Bond valid though not taken for exact amount; officer not responsible beyond actual damage.
49. Suits on bond to be brought within one year after forfeiture; except as provided in sections 90 and 92 of chapter 81.
50. Creditors not to be cited to disclosures on islands. Exceptions.

DISCLOSURE COMMISSIONERS.

- SEC. 51. Supreme court shall appoint commissioners of disclosure.
52. Owners of judgments may have a disclosure before a commissioner.
53. Creditor to apply to commissioner in writing; his statement and prayer.
54. Commissioner shall issue subpoena to debtor.
55. Service of subpoena. Length of notice.
56. Debtor shall disclose on oath, and may be examined by petitioner.
57. Coin, currency, and other property to be delivered by debtor to petitioner. In case of disagreement as to value, remedies.
58. By filing certificate, petitioner creates a lien on real estate disclosed.
59. Debtor forbidden to dispose thereof during lien. Penalty.

- CHAP. 113. SEC. 60. Persons suffered to hold property of debtor may be subpoenaed. Proceedings. Such property subject to a thirty days' lien. To be assigned to creditor, when parties do not agree, if creditor gives bond.
61. Commissioner may compel debtor to appear.
62. Penalty for refusing to make full disclosure.
63. Proceedings may be adjourned from day to day.
64. Fees of commissioner and of officer; how paid and taxed.
65. Former remedies against debtors not affected. Commissioner shall certify disclosure on the execution.
66. After debtor's examination, other evidence may be introduced.

FALSE DISCLOSURES AND AIDING IN FRAUDULENT CONVEYANCES.

- SEC. 67. Liability of debtor if he discloses falsely. Proceedings of creditor in such case. Effect if creditor prevails.
68. Liability of persons aiding in fraudulent concealment and transfer of property; double damages.

DAMAGES ON BONDS.

- SEC. 69. In all actions upon a debtor's bond, if debtor has taken poor debtor's oath, only actual damages can be recovered.
70. The new judgment on any such bond, to operate as a discharge of the old judgment, so far as it goes. Costs.

WILLFUL TRESPASS.

- SEC. 71. Disability of persons committed for willful trespass.

SUPPORT OF DEBTORS IN JAIL.

- SEC. 72. Prison keeper shall require the creditor to advance one week's board of debtor. Special provision in case of several executions.
73. Adjustment of price of board.

PROVISIONS RELATING TO DEBTORS TO THE STATE.

- SEC. 74. Such debtor may apply to a justice of the supreme court. Notice to be given to county attorney, or attorney general.
75. Proceedings and power to release the debtor.
76. Justice may discharge him or the debt, on payment or security for a part.
77. Jailer to comply with decision of judge.
78. Adjudication to be entered on the record.
79. Same power vested in the county commissioners.
80. Application by such debtor to take the poor debtor's oath, and citation to the county attorney. County attorney to attend. Oaths and certificates in such cases.

ARRESTS ON MESNE PROCESS.

- No arrest on mesne process, on contract, unless going out of the state, except in action of tort. R.S., c. 113, § 1. 66 Me., 251. 71 Me., 28, 232.
- SEC. 1. No person shall be arrested on mesne process in a suit on contract, express or implied, or on a judgment on such contract, except as provided in the following section; and the writ or process shall be varied accordingly; but in all other actions, the original writ or process may run against the body of the defendant, and he may be arrested and imprisoned thereon, or give bail as provided in chapter eighty-five.

ARRESTS AND DISCLOSURES ON LEAVING THE STATE.

- Debtor about SEC. 2. Any person, a resident within *this* [the] state or

not, may be arrested and held to bail, or committed to prison on mesne process on [a] contract express or implied, if the sum demanded amounts to ten dollars, or on a judgment on contract, if the debt originally recovered and remaining due is ten dollars or more, exclusive of interest, when he is about to depart and reside beyond the limits of *this* [the] state, with property or means of his own exceeding the amount required for his immediate support, if the creditor, his agent, or attorney makes oath before a justice of the peace, to be certified by such justice on said process, that he has reason to believe and does believe that such debtor is about so to depart, reside, and take with him property or means as aforesaid, and that the demand, or principal part thereof, amounting to at least ten dollars, is due to him.

SEC. 3. A debtor arrested or imprisoned, on request to the officer or jailer who has him in custody, may be taken before two disinterested justices of the peace and quorum, to be selected as provided in section forty-two, to disclose the actual state of his affairs.

SEC. 4. Previous to the disclosure, he shall give to the creditor or one of them, if more than one, his agent, or attorney, due notice of his intention, and of the time and place for said disclosure, that he may be present and select one of the justices and be heard thereon; such notice shall not be less than one day for every twenty miles travel, exclusive of Sundays.

SEC. 5. The justices may adjourn from time to time, if they see cause; and if either of them is not present at the adjournment, the other may adjourn to another time; but no such adjournments shall exceed three days in the whole, exclusive of Sundays.

SEC. 6. If the debtor at the appointed time and place makes a full disclosure of the actual state of his affairs and of all his property, rights and credits, and answers all proper interrogatories in regard to the same, to the satisfaction of said justices, and they are satisfied that the disclosure is true, and do not discover anything therein inconsistent with his taking the oath prescribed in section thirty, they may administer it to him and certify the fact on the writ; and the debtor shall thereupon be discharged from arrest; and no execution issuing on the judgment in the suit, shall run against his body, but against his property only.

SEC. 7. All attachable property disclosed by the examination, or so much as the creditor designates to satisfy his demand, shall be held as attached from the time of the disclosure until thirty days after final judgment, like other attachments; the officer shall make return thereof on the writ or process, certifying the fact that the property was so disclosed; if it is real estate, he shall certify it to the register of deeds, like other attachments; and if the creditor

CHAP. 113.

to leave the state, may be arrested in certain cases
R.S., c. 113, §2.
5 Me., 293.
16 Me., 399.
20 Me., 80, 467.
28 Me., 48.
38 Me., 129.
52 Me., 591.
57 Me., 411.
61 Me., 277.
62 Me., 525.
63 Me., 50,
58, 60, 62.
65 Me., 146.
68 Me., 257.
71 Me., 406.

Disclosure on such arrest, how made.
R.S., c. 113, §3.
15 Me., 56.

Notice to be given to the plaintiff.
R.S., c. 113, §4.

Justices may adjourn.
R.S., c. 113, §5.
18 Me., 144.
28 Me., 460.

Mode of making disclosure; adjudication of justices; effect of discharge.
R.S., c. 113, §6.
14 Me., 477.

Lien on property disclosed, how preserved.
R.S., c. 113, §7.
65 Me., 556.

CHAP. 113. requires it, at any time before final judgment, he shall take into his custody any part of the personal property so disclosed, sufficient to secure the demand and hold it as in other cases; and the provisions of section fourteen are also applicable to this class of disclosures.

DISCLOSURES ON MESNE PROCESS BEFORE JUDGMENT.

Defendant may in all cases disclose on return of writ. notice, how given. R. S., c. 113, §§. 14 Me., 477. 65 Me., 556.

SEC. 8. When a person is served with an original writ, or other mesne process, founded on such contract or judgment, in any other manner than by arrest of the body, he may, at any time before final judgment, appear before the court or justice, before whom such writ or process is pending, or a disinterested commissioner or commissioners appointed by said court or justice, and submit himself to examination; and such court, justice, or commissioner shall give notice, and proceed to take his disclosure as provided in sections four, five, and six, and with like effect.

Effect thereof; lien on property disclosed. R. S., c. 113, §9.

SEC. 9. On such examination, the court, justice, or commissioner, except as provided in section fourteen, may determine that the execution on the judgment recovered in the suit, shall run against the property only of the defendant, or otherwise, as justice requires, on the facts so disclosed and proved; and all attachable property so disclosed, from the time of the disclosure, shall be held attached as provided in section seven, *and* subject to the provisions of the two following sections.

Certificate of real estate disclosed, to be filed in registry of deeds. R. S., c. 113, § 10.

SEC. 10. If the disclosed property is real estate, the court, justice, or commissioner, shall deliver to the plaintiff a certificate thereof, stating the names of the parties, and the amount of the claim in the writ, which the plaintiff shall file with the register of deeds for the county or district where the estate lies, within five days after its date; and the register shall enter and file it as returns of officers making attachments on real estate, and [shall] be entitled to the same fees from the plaintiff.

How to preserve lien on personal estate. R. S., c. 113, § 11. 20 Me., 221.

SEC. 11. If personal estate liable to attachment is disclosed, and the plaintiff states that he is apprehensive that it may be removed or concealed, so that it cannot be taken on execution, the court in term time, or any justice thereof in vacation, or the trial justice before whom the suit is pending, may issue an order duly signed and sealed, directing any officer authorized to serve processes in the suit, to take such property into his custody, and hold it as if originally attached; and he shall execute it accordingly.

Disclosure on mesne process by consent of parties. R. S., c. 113, § 12.

SEC. 12. At any time before or after the return day of any such writ or process, the parties to the suit, by a written agreement, may appear before a justice of the peace and quorum in the county where the suit is pending; and the defendant shall make the disclosures, and submit to the examinations and proceedings

required in section eight, and the record thereof shall be returned to the court or justice before which the suit is pending, before final judgment, where the proceedings shall be the same as if the disclosure had been before a commissioner appointed for the purpose.

SEC. 13. If no such disclosure and examination are made before final judgment, or if the result thereof is adverse to the defendant's right to exemption from arrest, the execution shall run against his body.

SEC. 14. If, on any disclosure and examination before judgment, it appears that the debtor possesses, has in his power, or, with intent to protect the same from his creditors, has assigned, secreted, or otherwise disposed of any bank bills, notes, accounts, bonds, other contracts, or property not exempted from attachment, but which cannot be reached to be attached from its nature or otherwise, the debtor, if under arrest, shall not be released; nor shall he be exempted from arrest on execution on judgment in such suit, unless he assigns and delivers to such person as the examining magistrate, court, or commissioner appoints, all such property, or so much of it as they adjudge sufficient security for the creditor, to be held by him, under the direction of the court or justice before which the suit is pending, in trust for the parties, that it may be applied and appropriated as provided in sections thirty-one and thirty-two.

BONDS ON MESNE PROCESS AND DISCLOSURES AFTER JUDGMENT.

SEC. 15. When a person is arrested or imprisoned on mesne process in a civil action, he may be released, by giving bond to the plaintiff in double the sum for which he is arrested or imprisoned, with surety or sureties, approved by him, or by two or three justices of the peace and quorum of the county where the arrest or imprisonment is made, selected and proceeding as prescribed in section forty-two, conditioned that within fifteen days after rendition of judgment, or after the adjournment of the court in which it is rendered, he will notify the creditor, his agent, or attorney, to attend at a certain place in the county, at a time not more than thirty, nor less than fifteen days after such notice, for the purpose of disclosure and examination; that he will then and there submit himself to examination; make true disclosure of his business affairs and property on oath; and abide the order of the justices thereon; and if the officer serving the writ takes such bond, he shall return it to the court or justice where the suit is pending.

SEC. 16. After judgment, he may apply in writing to a justice of the peace of the county where he was arrested, who shall issue a citation to the creditor, his agent or attorney; and an examination and disclosure may be had before two justices of the peace

CHAP. 113.

Ex'on to issue v. the body, unless discharged. R. S., c. 113, § 13.

Certain property which cannot be come at to be attached, to be delivered up or assigned. R. S., c. 113, § 14.

Debtor arrested may give bond to disclose within a certain time after judgment.

R. S. c. 113, § 15.

4 Me., 13.

15 Me., 57.

22 Me., 485.

36 Me., 242.

40 Me., 133.

52 Me., 258.

53 Me., 63.

56 Me., 182,

544.

57 Me., 364.

71 Me., 232.

Proceedings if debtor has given bond on mesne process. R. S., c. 113, § 16.

CHAP. 113. and quorum, within the time specified in the bond; and the same proceedings shall be had, and the same results [shall] follow, as in disclosures on bonds given on execution, except as provided in the following section. (a)

Debtor may go at large thirty days, during lien on property disclosed.
R. S., c. 113, § 17.
20 Me., 468.

SEC. 17. If the debtor, on such examination, does not entitle himself, in the opinion of the justices, to the benefit of the oath hereinafter provided, and it appears that at that time he has any real or personal estate, liable to attachment, or any such property as is described in section thirty-one, they shall permit him to go at large on his bond, during the thirty days [that] the creditor's lien exists on the property disclosed; and during that time, the creditor may elect to arrest him on execution, or [to] enforce his lien on the property.

Effect of creditor's election to arrest on execution or otherwise.
R. S., c. 113, § 18.

SEC. 18. If the creditor elects to so arrest him, and the officer having the execution, returns that he is not found, his bond shall be forfeited, and on judgment thereon, execution shall issue for the amount of judgment in the original suit, and interest. If the debtor is not arrested within that time, and does not avoid arrest, no execution, issued or founded on such judgment, shall run against his body, but against his property only.

ARRESTS ON EXECUTION, AND DISCLOSURES THEREON.

No arrest on execution if debt is less than \$10.
R. S., c. 113, § 19.
63 Me., 58,
60, 61, 62.

SEC. 19. No person shall be arrested on an execution issued on a judgment founded on a contract, express or implied, where the debt is less than ten dollars, exclusive of costs; or on a prior judgment on contract, where the amount of the original debt remaining due is less than ten dollars, exclusive of costs; and the form of the process shall be varied accordingly.

Arrests in other cases, and mode of release.
R. S., c. 113, § 20.
63 Me., 61.
71 Me., 407.

SEC. 20. In all other cases, except where express provision is by law made to the contrary, an execution shall run against the body of the judgment debtor; and he may be arrested and imprisoned thereon for the purpose of obtaining a discovery of his property wherewith to satisfy it, as hereinafter stated.

Debtor may disclose without bond; when and how.
—officer's fees to be first paid.
1878, c. 59, § 1.
66 Me., 124.

SEC. 21. When so arrested, he may, without giving bond, disclose as provided in section twenty-six and the following sections, by serving the citation provided for in said section *twenty-six* upon the creditor or his attorney, at least twenty-four hours for every twenty miles travel from his residence thereto. The debtor shall pay the officer for serving the notice and keeping him from the arrest to the disclosure, before he can be discharged.

Disclosure in jail; fees to be first paid.
R. S., c. 113, § 22.

SEC. 22. A debtor committed on execution, may disclose thereon at the jail, in the manner and on the notice aforesaid, which may be served by the jailer or other officer; and besides

(a) 10 Me., 335; 15 Me., 338; 21 Me., 442; 22 Me., 401; 48 Me., 103; 51 Me., 109.

the other fees, [he] shall pay the jailer's fees before he can be discharged. CHAP. 113.
66 Me., 124.

SEC. 23. If the debtor, in either case, is not permitted to take the oath, he shall be remanded; but if [he is] permitted, the justices shall administer the oath prescribed in section thirty, and give him the certificate provided in section thirty-three; and the officer shall make return thereof on the execution; and no subsequent execution shall authorize his arrest. If not discharged, remanded; otherwise oath allowed and certificate given, and effect. R. S., c. 113, § 23.

SEC. 24. When a debtor is arrested or imprisoned on execution, he may be released by giving bond to the creditor, in double the sum due thereon, with surety or sureties approved in writing by the creditor, or by two or three justices of the peace and quorum, of the county where he is arrested or imprisoned, selected and proceeding as provided in section forty-two, conditioned that he will, within six months thereafter, cite the creditor before two justices of the peace and of the quorum; submit himself to examination, and take the oath prescribed in section thirty; pay the debt, interest, costs, and fees, arising in said execution; or deliver himself into the custody of the keeper of the jail to which he is liable to be committed under said execution. (a) Bond may be given on such arrest; condition and effect thereof. R. S., c. 113, § 24.

SEC. 25. Such bond is a valid statute bond though the penalty varies not exceeding five per cent. from the sum aforesaid; and judgment in a suit thereon shall be rendered according to section forty. When valid. R. S., c. 113, § 25. See § 48.

SEC. 26. A debtor who has given such bond may apply in writing within the time limited in his bond to a justice of the peace in the county where he was arrested, claiming the benefit of the oath authorized in section thirty; or if he is committed or has delivered himself into the custody of the jailer, he may apply to a justice of the same county, or, at his request, the jailer shall apply in his behalf, and in either case the justice shall appoint a time and place for his examination and issue a citation to the creditor, under his hand and seal, which citation may be in substance as follows: (b) Application by a debtor under bond or imprisoned, to disclose. 1874, c. 108, § 1.
Justice to cite the creditor.

"STATE OF MAINE.

—, ss. To ——. You are hereby notified of the desire of the debtor as expressed in the foregoing application, and that I have appointed —, the — day of —, A. D., 18—, at — of *the* [o']clock in the — noon, and the — of — in —, in said county, as the time and place Form of citation to creditor.

(a) 5 Me., 355; 6 Me., 232; 10 Me., 125; 15 Me., 131; 20 Me., 408; 21 Me., 388, 432; 24 Me., 124, 167, 212, 451, 547, 553; 29 Me., 482; 36 Me., 421; 44 Me., 24, 98; 48 Me., 40, 297; 49 Me., 18, 99; 57 Me., 591; 65 Me., 220; 68 Me., 77, 376; 71 Me., 405, 578.

(b) 10 Me., 335; 15 Me., 35, 338; 17 Me., 97, 400; 18 Me., 121; 32 Me., 28, 452; 35 Me., 159; 48 Me., 81; 51 Me., 109; 71 Me., 188.

CHAP. 113. for said examination. And you are hereby notified to be present and elect one of the justices, and be heard in said examination.

Give[n] under my hand and seal at —, in said county, the day of —, A. D., 18—.

— —, Justice of the Peace.”

Citation how served on any one creditor, his attorney or agent.
R. S., c. 113, § 27.
22 Me., 401.
48 Me., 103.
51 Me., 109.
61 Me., 72.
71 Me., 188.

SEC. 27. The citation shall be served on the creditor, or one of them if more than one, or on the attorney of record in the suit, or any known authorized agent of the creditor, by any officer qualified to serve civil process between the same parties, by reading it to him, or leaving an attested copy of it at his place of last and usual abode, or by giving it to him in hand fifteen days at least before the time appointed for the examination, if the creditor is alive; otherwise it shall be so served on his executor or administrator, if to be found in the state, and if not, such copy shall be left in like time with the clerk of the court or magistrate who issued the execution.

Examination to be before two justices.
1878, c. 59, § 2.

SEC. 28. The examination shall be before two disinterested justices of the peace and quorum for the county, who may adjourn as provided in section five, and shall examine the citation and return, and if found correct, [shall] examine the debtor on oath, concerning his estate and effects, their disposal, and his ability to pay the debt for which he is committed. No citation shall be deemed incorrect for want of form only, or for circumstantial errors or mistakes, when the person and case can be rightly understood. Such errors and defects may be amended on motion of either party. (a)

Remedy for errors and defects in citation.

SEC. 29. The creditor may propose to the debtor any interrogatories pertinent to the inquiry, and if he requires it, they shall be answered in writing, and the answers signed and sworn to by the debtor; and the creditor may have a copy thereof certified by the justices, on paying therefor twelve cents a page.

Creditor may put questions and have sworn answers in writing, and have copy.
R. S., c. 113, § 29.

SEC. 30. If, on such examination and hearing, the justices are satisfied that the debtor's disclosure is true, and they do not discover any thing therein inconsistent with his taking the oath, they may administer it to him as follows:—

When justices may administer oath.
Form.
R. S., c. 113, § 30.
21 Me., 55, 111,
24 Me., 512.
25 Me., 426.
26 Me., 201.
27 Me., 426.
39 Me., 356.
57 Me., 413.
61 Me., 36, 37.
66 Me., 483,
484.
67 Me., 44.
68 Me., 376.

“I— —, do solemnly swear” (or affirm) “that I have *not any* [no] real or personal estate, or interest in any, except what is exempted by statute from attachment and execution, and what I have now disclosed; and that since any part of this debt or cause of action accrued, I have not directly or indirectly sold, conveyed, or disposed of, or intrusted to any person, any of my real or personal property, to secure it, or [to] receive any benefit from

(a) 12 Me., 416; 16 Me., 387; 18 Me., 144; 23 Me., 150; 24 Me., 167, 199; 25 Me., 425; 39 Me., 269; 50 Me., 335; 54 Me., 338; 56 Me., 545; 68 Me., 376; 72 Me., 486.

it to myself or others, with an intent to defraud any of my creditors. So help me God ;” (or, “this I do under the pains and penalties of perjury.”)

CHAP. 113.

SEC. 31. When, from such disclosure, it appears that the debtor possesses or has under his control any bank bills, notes, accounts, bonds, or other contracts, or property, not exempted by statute from attachment, which cannot be come at to be attached, and the creditor and debtor cannot agree to apply the same towards the debt, the justices hearing the disclosure shall appraise and set off enough of such property to satisfy the debt, cost, and charges ; and the creditor or his attorney, if present, may select the property to be appraised. If the creditor accepts it, it may be assigned and delivered by the debtor to him, and applied towards the satisfaction of his demand. If any particular article of such property, necessary or convenient to be applied in satisfaction of the execution, exceeds the amount due thereon, and is not divisible in its nature, the creditor may take it, by paying the overplus to the debtor, or securing it to the satisfaction of the justices.

Certain property disclosed, which cannot be come at to be attached, may be appraised off to the creditor, and how.

R. S., c. 113, § 31.
21 Me., 193.
28 Me., 313.
29 Me., 369.
32 Me., 459.
36 Me., 495, 592.
38 Me., 215.
47 Me., 182.
49 Me., 101, 355.
57 Me., 413.
60 Me., 269.
61 Me., 36.

SEC. 32. If the creditor is absent, or does not so accept it, the debtor shall deposit with the justices a written assignment to the creditor of all the property thus appraised and set off ; and they shall make a record of such proceedings, and cause such property to be safely kept and secured for *the term of* thirty days thereafter, to be delivered to the creditor with the assignment, on demand, within that time. If not so demanded, they shall be returned to the debtor.

Creditor may accept it within thirty days ; if not, it is to be returned to debtor.

R. S., c. 113, § 32.

SEC. 33. After the oath is administered and the property disclosed is duly secured, the justices shall make out and deliver to the debtor a certificate under their hands and seals in the form following :

Form of justice's certificate of discharge.

R. S., c. 113, § 33.

“STATE OF MAINE.

—, ss. To the sheriff of the county of —, or his deputy, and to the keeper of the jail at —,” (or to any coroner or constable.)

11 Me., 240.
18 Me., 342.
19 Me., 453.
20 Me., 436.
23 Me., 492.
24 Me., 199.
26 Me., 447.
27 Me., 154, 178.
30 Me., 349.
33 Me., 501.
34 Me., 231.
39 Me., 505.
51 Me., 195.
66 Me., 483.

[L. s.] “We, the subscribers, two disinterested justices of the [L. s.] peace and quorum in and for said county of —, hereby certify, that — —, a poor debtor arrested on a certain execution issued by” (here insert the name and style of the court, or of the [trial] justice *of the peace*, and the amount of the judgment, and date of the judgment and execution,) “and committed to the jail at — aforesaid,” (or, “enlarged on giving bond to the creditor,” as the case may be,) “has caused — —, the creditor, to be notified, according to law, of his desire to take the benefit of the one hundred [and] thirteenth chapter of the revised statutes ; that in

CHAP. 113. our opinion he is clearly entitled to the benefit of the oath prescribed in section thirty thereof; and that we have, after due caution, administered it to him.

Witness our hands and seals, this — day of —, A. D., 18—.

— —, chosen by [the] —.

— —, chosen by [the] —.”

Effect of such certificate.
R. S., c. 113, § 34.
20 Me., 75.
24 Me., 452.

SEC. 34. The debtor, on delivering the certificate to the prison keeper, or filing it in his office if imprisoned, shall be set at liberty, so far as relates to this execution; and his body forever after shall be free from arrest thereon, and on every subsequent execution issued on the judgment, or on any other judgment founded thereon, except as provided in sections thirty-eight and sixty-seven.

Effect of voluntary release by creditor from arrest.
R. S., c. 113, § 35.

SEC. 35. A creditor may discharge his debtor from arrest, or imprisonment on execution, by giving to the officer or jailer having him in custody a written permission to go at large; and it shall have the same effect as a discharge or disclosure.

Officer may indorse release on the execution and proceed to levy on property.
R. S., c. 113, § 36.

SEC. 36. A certificate of a discharge on execution in any of the modes hereby authorized, and of the cause of it, shall, at any time, at the creditor's request, be indorsed on the execution by the officer who had such debtor in custody; and if it is before the return day of the execution, it may still be levied on his property; if after, it may be renewed like other executions, against his property only; and the judgment may be revived or kept in force, with said execution, as judgments in other cases.

Preservation of creditor's lien on real estate disclosed.
R. S., c. 113, § 37.
31 Me., 57.

SEC. 37. If an execution debtor discloses any real estate liable to be seized on execution, the justices shall give the creditor a certificate thereof, stating the names of the parties, and the amount of the execution; and the creditor shall have a lien thereon for thirty days thereafter, if he files the certificate with the register of deeds of the county or district where the real estate lies within five days from the date of the disclosure; and the register shall enter and file it like officers' returns of attachments.

Lien on personal estate disclosed.
Effect if debtor or any person conceals it.
R. S., c. 113, § 38.
20 Me., 468.

SEC. 38. If he discloses personal estate liable to be seized on execution, the creditor shall have a lien on it, or so much of it as the justices, in their record, judge necessary for thirty days; and if the debtor transfers, conceals, or otherwise disposes of it within said time or suffers it to be done, or refuses to surrender it, on demand, to any proper officer having an execution on the same judgment, the debtor shall have no benefit from the certificate described in section thirty-three; and the creditor may recover, in an action on the case against him, or any person fraudulently aiding in such transfer, concealment, or disposal, double the amount due on said execution; and any execution on a judgment in such action shall run against the *body* [bodies] of the debtor and other

persons so aiding; but the payment thereof shall be a satisfaction of the original debt. CHAP. 113.

SEC. 39. Every officer, taking a bond on an execution, shall return it with the execution for the benefit of the creditor, who may receive it on filing a copy with the clerk of court, judge or justice to whom it is returned. He may also receive from the jailer any such bond in his hands on the like terms. Bond taken on ex'on to be returned therewith, and creditor to have copy. R. S., c. 113, § 39.

SEC. 40. If the debtor fails to fulfil the condition of such bond, judgment in a suit thereon shall be rendered for the amount of the execution, costs, and fees of service, with interest thereon, against all the obligors; and a special judgment against the principal, for a sum equal to the interest on said amount, at the rate of twenty per cent. [a] *by the* year, after the breach of the bond. (a) Amount recoverable thereon, if forfeited. R. S., c. 113, § 40.

ARRESTS FOR TAXES.

SEC. 41. Any person arrested or imprisoned *by virtue of* [on] a warrant for the collection of a public tax, or any constable, collector, or deputy sheriff, arrested or imprisoned for default in collecting taxes committed to him, shall have the privileges, and be subject to the obligations of this chapter, as if arrested or imprisoned on execution for debt; and for all purposes relating thereto, the assessors of the town for the time being where the tax was assessed, shall be deemed the creditors, and corresponding verbal alterations shall be made in the oath and certificate of discharge; but nothing herein shall exempt any property from distress for taxes, except those implements, tools, and articles of furniture which are exempt by law from attachment for debt. Persons arrested on tax warrants, and officers for default in collecting taxes, have privileges and are subject to obligations, as if arrested for debt. 1878, c. 79. 19 Me., 326. 39 Me., 346. Assessors of towns deemed creditors. Property exempt.

GENERAL PROVISIONS.

SEC. 42. One of the justices to hear a disclosure, may be chosen by the debtor, and the other by the creditor, his agent, or attorney; and if at the time appointed, he refuses, or unreasonably neglects to appoint, or to procure his attendance, the other may be chosen by an officer who has the debtor in charge, or if not in charge, who might serve the precept on which he was arrested; and in that case, the justice chosen by the debtor, if he deems it necessary, may adjourn once, not exceeding twenty-four hours, Sundays excluded, to enable the debtor to procure the attendance of another justice. If the justices do not agree, they may choose a third; if they cannot agree on a third, such officer may choose him; and a majority may decide. (b) Manner of selecting the justices to take the disclosure. R. S., c. 113, § 42.

(a) 15 Me., 340; 16 Me., 356; 18 Me., 122; 20 Me., 376; 22 Me., 162; 23 Me., 27, 103, 246; 24 Me., 124; 27 Me., 104; 39 Me., 435; 44 Me., 78; 63 Me., 166; 68 Me., 484; 72 Me., 262.

(b) 21 Me., 209; 23 Me., 27, 494; 24 Me., 200; 26 Me., 104; 27 Me., 468, 555; 28 Me., 460; 29 Me., 107; 30 Me., 102, 258; 32 Me., 336; 33 Me., 333; 39 Me., 506; 47 Me., 30, 150; 49 Me., 437; 50 Me., 335; 54 Me., 206, 338; 56 Me., 183; 60 Me., 268; 61 Me., 37; 65 Me., 220; 71 Me., 578.

CHAP. 113. SEC. 43. The judge of a municipal or police court shall have the same powers, duties and obligations under this chapter, as a justice of the peace and quorum of his county.

Municipal judges.
R. S., c. 113,
§ 43.

No one precluded from oath.
R. S., c. 113,
§ 44.

Costs for creditor if debtor is not discharged.
R. S., c. 113,
§ 45.

Debtor twice refused discharge, may apply to court for a commissioner to disclose again, who shall give notice how, and proceedings.
R. S., c. 113,
§ 46.
48 Me., 74.

After debtor is examined, other evidence or depositions. Same may be used in subsequent disclosures.
R. S., c. 113,
§ 47.

Bond when valid.
R. S., c. 113,
§ 48.
See § 25.

Limitation of suits on bonds.
R. S., c. 113,
§ 49.
10 Me., 402.

Creditors not to be cited to hear disclosures on islands, except in certain cases.
1875, c. 22.

SEC. 44. No criminal conviction, or other disqualification to be a witness, shall preclude a debtor from relief under this chapter.

SEC. 45. If a debtor falls in any application for a discharge from arrest or imprisonment, the creditor shall recover his costs as in actions before a trial justice, and the justices shall issue execution therefor; but no such failure shall prevent his obtaining a discharge at any future examination, except as provided in sections thirty-eight and sixty-seven.

SEC. 46. A debtor who has been twice refused a discharge, shall not again disclose before such justice; but may apply to a judge of the supreme judicial court, who in term time or vacation, after notice to the creditor or his attorney, and a hearing of the parties, may appoint a commissioner to take his examination and disclosure; and shall then fix his compensation, which shall be paid by the debtor, before commencing his disclosure. The commissioner shall give to the creditor or his attorney, seven days' notice of the time and place appointed by him for such hearing; and all the proceedings relating to such disclosure, oath, discharge and *disposition* [disposal] of the property disclosed shall be the same as in disclosure before such justices, and [shall] have the like effect.

SEC. 47. In any disclosures on mesne process or execution, after the examination of the debtor, other competent evidence may be introduced, and the debtor [may] then be further examined by either party. Depositions may be used in such disclosure; and in any subsequent disclosure or proceeding on that or another arrest or imprisonment for the same cause of action, the same depositions may be used.

SEC. 48. If by mistake or accident, the penalty of a bond taken by an officer under this chapter, varies from the sum required by law, it is still valid; and the officer is not responsible to either party beyond the actual damage. (a)

SEC. 49. No suit, on any bond herein authorized to be given, shall be sustained unless commenced within one year after the forfeiture; except that the provisions of sections ninety-one and ninety-two of chapter eighty-one are applicable to such suits.

SEC. 50. In no case of disclosure by virtue of *any of the provisions of* this chapter, shall a creditor be cited or notified to attend for the purpose of hearing a disclosure upon any island *in this state, except such island is* [not] connected with the main land by a bridge *or bridges*, unless at the time of

(a) 23 Me., 103; 24 Me., 547; 31 Me., 351; 35 Me., 275; 40 Me., 99, 439, 453; 68 Me., 376.

said disclosure, the debtor so disclosing resides upon such island, and was arrested in the county where the same is situated; and all disclosures made in violation of this section shall be void. CHAP. 113.

DISCLOSURE COMMISSIONERS.

SEC. 51. The supreme judicial court in any county, from time to time shall appoint such number of commissioners, and in such localities in the county, as the court shall determine to be necessary for the purposes of the fifteen following sections, which commissioners shall be sworn and hold office during the pleasure of the court. S. J. court shall appoint commissioners of disclosure. 1878, c. 67, § 1. 71 Me., 76.

SEC. 52. The owner of any judgment remaining unsatisfied in any part may have a disclosure of the judgment debtor's business affairs at any time by proceeding as hereinafter mentioned. Owners of unsatisfied judgment may have a disclosure. 1878, c. 67, § 2.

SEC. 53. Such owner shall make application in writing to a commissioner of the county in which the judgment debtor resides, stating the amount of said judgment, the court and term at which it was rendered, the names of the original parties, the title of the petitioner, and the amount remaining due on the judgment, and praying for a subpoena to issue to the debtor to appear and make disclosure. Application to be made in writing to a comm'r. 1878, c. 67, § 3. —statement. —prayer.

SEC. 54. The commissioner, upon such application, shall issue under his hand and seal a subpoena to the debtor, commanding him to appear before said commissioner at a time and place within said county named in the subpoena, to make full and true disclosure on oath of all his business and property affairs. The application shall be annexed to the subpoena. Commissioner shall issue subpoena to debtor to appear and disclose. 1878, c. 67, § 4.

SEC. 55. The subpoena may be served by any officer qualified to serve civil process in said county, and as other subpoenas are served. The debtor shall have twenty-four hours' notice for every twenty miles travel from his home or place of abode at [the] time of service, to the place of the disclosure. Subpoena, by whom and how served. 1878, c. 67, § 5. —notice.

SEC. 56. At the time and place named in the subpoena, the debtor shall make on oath, before *the* said commissioner, a full and true disclosure of all matters *relating to* [touching] the condition of his property, and means and resources, *to* transfers, conveyances and gifts by him made or suffered, *to* claims against him, *to* his accounts with others, and *to* the *disposition* [disposal] of his property and earnings. He may be examined by the petitioner upon all such matters, and shall produce all books and papers pertaining thereto. The disclosure shall be reduced to writing if the petitioner require[s], and [be] signed by the debtor. Debtor shall make disclosure on oath. 1878, c. 67, § 6. —may be examined by petitioner.

SEC. 57. If it shall satisfactorily appear to said commissioner from said disclosure, that the debtor has in his possession or under his control any coin, or United States or national bank note cur- Commissioner may require of debtor, deliv-

CHAP. 113.

ery of coin,
currency,
and other
unexempted
property.
1878, c. 67, § 7.

Remedies for
disagree-
ment upon
value of
property.

Petitioner
to have lien
on real estate
and personal
property dis-
closed, by
filing certi-
ficate.
1878, c. 67, § 8.

Penalty for
debtor's dis-
posing of
property
during con-
tinuance of
lien.
1878, c. 67, § 9.

Commission-
er to issue
subpœna to
other per-
sons suppo-
sed to hold
property of
debtor.

Testimony
may be re-
duced to
writing and
signed.

Creditor to
have lien up-
on property
or credits
held by such
person for

rency, or any personal property, that cannot be reached *to be taken* on execution and is not exempt therefrom, he may require *the* said debtor to deliver to said petitioner enough of said coin or currency at its par value, or of said other property at its appraised value, to satisfy the amount due on said judgment with the costs of the disclosure proceedings. If the petitioner and debtor cannot agree upon the value of such property, the same shall be delivered by the debtor to any officer holding the execution, to be sold thereon. If such property consists of choses in action, and the parties cannot agree upon their value, they shall be assigned by the debtor to the petitioner, if he shall give the debtor a bond with sufficient surety, accepted by said commissioner, to account for and pay over to said debtor the surplus of the proceeds of such choses in action, after satisfying said judgment and costs.

SEC. 58. The petitioner shall have a lien on real estate disclosed, by filing within five days after said disclosure is completed, in the registry of deeds of the *county* [district] where such real estate is situated, a certificate stating the names of the parties, the amount due on the judgment, and the fact of the disclosure. Such lien shall continue ten days from the filing of *the certificate* aforesaid. He shall have a similar lien on personal property disclosed, by filing a similar certificate in the office of the clerk of the town in which such debtor resides.

SEC. 59. During the continuance of said lien the said debtor shall not sell, give away, transfer, eloin, nor conceal any of such property, under penalty of a fine not exceeding five hundred dollars or imprisonment less than one year. Any person aiding the debtor in such sale, gift, transfer, eloinment, or concealment shall be similarly punished.

SEC. 60. If *there shall satisfactorily appear* to said commissioner [finds] reasonable cause to believe that any other person holds any property or credits of the debtor in trust for him, or in fraud of his creditors, or if the petitioner shall make oath that he believes that such other person so holds property of the debtor, the commissioner shall issue a similar subpœna to such person to appear and testify in relation thereto, *such subpœna* [the same] to be served as subpœnas in civil suits. The testimony of such witness may be reduced to writing, and signed by him, and if it shall satisfactorily appear to the commissioner, from all the evidence in the case, that such person so holds property or credits of the debtor, he shall so certify upon the execution; and the creditor shall have a lien upon said property or credits for thirty days succeeding such disclosure, to be enforced by bill in equity or trustee process, and if upon such bill in equity or trustee process, the court find[s] such property or credits so held as aforesaid, it may order *such property or credits*, [the

same,] or so much of them as may be necessary to satisfy the judgment and all costs, to be conveyed, transferred or assigned to the creditor; and if the parties cannot agree upon the value of such property or credits, they shall be assigned to the creditor, if he shall give such trustee a bond with sufficient surety, accepted by the court, to account for and pay over to said trustee the surplus of the proceeds of such property or credits, after satisfying said judgment and costs.

SEC. 61. If the debtor, or any other person duly served with subpœna as above provided, shall refuse or neglect to appear, the commissioner shall issue a *capias* to bring said debtor or other person before him, and may impose a fine not exceeding ten dollars and costs of *capias*, and service thereof, for such neglect; and in default of payment may commit him to jail until paid.

SEC. 62. If the debtor, or other person duly served with subpœna, shall refuse to testify in obedience thereto, or shall refuse to answer any proper question, or if the debtor shall refuse to make full disclosure upon all matters named in section fifty-six, or if *the* said debtor shall refuse to comply with any proper order of the commissioner, or perform the duty imposed upon him by section fifty-seven, he shall be adjudged to be in contempt, and be committed to jail until he purge[s] himself of such contempt by compliance, or *be* [is] otherwise discharged by due process of law. The warrant of commitment shall state specifically the contempt of which the prisoner is guilty.

SEC. 63. The commissioner, for cause shown by either party, may adjourn the proceedings before him from time to time, not exceeding five days.

SEC. 64. The commissioner shall be entitled to fifty cents for subpœnas to debtor, twenty-five cents for each extra subpœna, twenty-five cents for *capias*, fifty cents for warrant of commitment, and three dollars for each day in hearing the disclosure and other testimony. The fees of officers shall be the same as for service of other process of similar nature. The petitioner may, if the commissioner authorize[s] it, procure an officer to be in attendance during the proceedings, and the fees for such attendance shall be seventy-five cents *per* [a] day. These fees shall be paid by the petitioner, and may be added to the costs on the judgment and execution. They shall be taxed by the justice and certified in detail on the back of the execution.

SEC. 65. Nothing herein contained shall affect any other remedy *now existing* for the enforcement of judgments and executions; but any debtor making a disclosure before a commissioner shall not be arrested on any execution upon said judgment, nor shall any debtor who has disclosed upon arrest on any execution be

CHAP. 113.
thirty days.
1879, c. 91, § 1.
Property or
credits to be
assigned to
creditor if
parties do
not agree.
Creditor to
give bond.

Commissioner may compel debtor to appear.
1878, c. 67, § 11.

Penalty for refusal to testify or to make full disclosure.
1878, c. 67, § 12.

Proceedings may be adjourned from day to day.
1878, c. 67, § 13.

Fees of commissioner.
1878, c. 67, § 14.

—of officers.

—how paid and taxed.

Former remedies for enforcement of judgments and executions, not affected.
1878, c. 67, § 15.

CHAP. 113. required to disclose on the same judgment before a commissioner. The commissioner shall make on the execution a certificate of the fact of the disclosure.

Commissioner to make certificate of disclosure.

After examination of debtor, other evidence may be introduced.

1879, c. 91, § 2. Depositions to be used and commissioner to issue subpoenas.

SEC. 66. In any disclosure before a commissioner, after the examination of the debtor, other competent evidence may be introduced by either party, and the debtor [may] be then further examined by either party. Depositions may be used in such disclosures, and the commissioner shall have power, at the request of either party, to issue subpoenas to witnesses, *and witnesses* [who] shall be entitled to the same fees as witnesses before a trial justice, which shall be taxed by the commissioner and certified in detail on the back of the execution and shall be paid by the debtor.

FALSE DISCLOSURES AND AIDING IN FRAUDULENT CONVEYANCES.

Liability of a debtor if he discloses falsely.

R. S., c. 113, § 50.

41 Me., 91.
57 Me., 414.
71 Me., 77.

SEC. 67. When a debtor, herein authorized or required to disclose on oath, willfully discloses falsely, withholds, or suppresses the truth, the creditor of record or in interest may bring a special action on the case against him, whether he is criminally prosecuted or not, particularly alleging the false oath and fraudulent concealment of his estate or property; and, on oath, before a justice of the peace, [he] may declare his belief of the truth of the allegations in the writ; such justice shall certify the oath on the writ; and thereupon the debtor shall be held to bail, or in default thereof, committed to jail to abide the judgment in the suit; and if the creditor prevails in the suit, judgment shall be rendered against the debtor, for double the amount of the debt and charges on the former judgment; and the debtor may be arrested and committed to prison on any execution issued on the judgment last recovered, without the privilege of release or discharge, except by payment or consent of the creditor.

Persons aiding in fraudulent concealment or transfer, liable to double damages.

R. S., c. 113, § 51.

SEC. 68. Whoever knowingly aids or assists a debtor or prisoner in a fraudulent transfer or concealment of his property to secure it from creditors, and [to] prevent its attachment or seizure on execution, shall be liable to any creditor suing therefor in an action on the case, in double the amount of property so fraudulently, transferred or concealed, not exceeding double the amount of such creditor's demand. (a)

DAMAGES ON BONDS.

In action on bond, if debtor has taken oath, only actual damages

SEC. 69. In all actions on any bond given by a debtor to obtain his release from arrest on mesne process, execution, or warrant of distress for taxes, if it appears that, prior to the breach of any of its conditions, the principal had legally notified the creditor, or

(a) 25 Me., 254; 57 Me., 412, 414, 418; 59 Me., 240; 60 Me., 228; 67 Me., 368; 71 Me., 179, 216.

the assessors who issued such warrant, and had been allowed by two justices of the peace and of the quorum of the county where the arrest was made, having jurisdiction and legally competent to act in the matter, to take, and had taken the oath prescribed in section thirty, the damages shall be assessed by the jury, at the request of either party; otherwise, by the court. The amount assessed shall be the real and actual damage, and any legal evidence on that point may be introduced by either party. In any such action, evidence may be received to show that no legal service of the citation was made on the creditor or assessors, though it may contradict the record and certificate of the magistrates who administered the oath. (a)

SEC. 70. If the whole amount due on the execution or warrant of distress is recovered in any such action, the new judgment shall be a discharge of said execution or warrant of distress; if only a part is recovered it shall be a discharge of such part. If the penalty in the bond in such action *be* [is] more than twenty dollars, the plaintiff shall recover full cost[s al-]though the amount of damages recovered *be* [is] less than twenty dollars. If the verdict or judgment is that the creditor has sustained no damage, neither party shall recover cost.[s.]

CHAP. 113.
recovered.
R. S., c. 113,
§ 52.

The new judgment on such bond to operate as discharge of old judgment as far as it goes. 1874, c. 220. 25 Me., 113. 34 Me., 24. Costs.

WILLFUL TRESPASS.

SEC. 71. When, in the trial of an action of trespass on property, the court, jury, or magistrate, determines that such trespass was committed willfully, and the fact is recorded, and noted on the margin of the execution on such judgment, and the debtor is thereon arrested and committed to prison, he shall not be entitled to give any bond for his liberation; and if he applies to take the oath described in section thirty, no notice shall be issued to the creditor *till* [until] at least thirty days after his commitment.

Disability of persons committed for willful trespass. R. S., c. 113, § 54.

SUPPORT OF DEBTORS IN JAIL.

SEC. 72. When a person delivers himself into the custody of the jailer to save the condition of a bond given on execution, and makes a written complaint, by him signed and sworn to, stating that he is unable to support himself in jail, and has not sufficient property to furnish security for his support, the jailer may require of any one of the creditors, their agent or attorney, security for his support; and unless it is satisfactorily furnished within eight days after the request, or money is paid in advance therefor from time to time, he may release him; [and] when a debtor is committed to prison

Prison keeper may require creditor to support debtor, and how and when. R. S., c. 113, § 55. 29 Me., 557. 36 Me., 403. 63 Me., 258. 66 Me., 125. 71 Me., 407.

(a) 15 Me., 35; 27 Me., 426; 28 Me., 50, 324; 30 Me., 349, 457; 32 Me., 459; 33 Me., 358, 389, 391, 501; 35 Me., 107; 36 Me., 243; 42 Me., 345; 44 Me., 55, 98; 47 Me., 33, 151, 182; 48 Me., 81; 49 Me., 99, 102, 436, 453; 51 Me., 109; 52 Me., 258; 56 Me., 183, 517; 61 Me., 33, 35, 37; 66 Me., 484.

CHAP. 113.

Creditor to advance pay for one week's board of debtor committed to prison. 1876, c. 139, 66 Me., 125.

Adjustment of price of support. R. S., c. 113, § 56.

State debtor may apply to a justice of the supreme court. Notice to attorney general, or county attorney. R. S., c. 113, § 57.

Proceedings and power to release debtor. R. S., c. 113, § 58.

Judge may discharge him or the debt, on payment or security of part. R. S., c. 113, § 59.

Jailer to comply with decision. R. S., c. 113, § 60.

Adjudication to be recorded. R. S., c. 113, § 61.

on mesne process or execution, the creditor committing said debtor shall advance to the jailer pay for one week's board of said debtor ; but when a debtor is committed on more than one execution at the same time, the jailer shall be entitled to pay for board only on the first execution, to be paid for equally by all the creditors on whose executions he is committed ; and the first creditor may have an action against the other committing creditors for their proportion thereof ; and if such debtor is discharged on the first [execution], the jailer shall notify the next committing creditor of his liability to pay for his support, as on the first execution.

SEC. 73. In case of dispute about the price of such support, the county commissioners may determine it, not exceeding two dollars and twenty-five cents a week.

PROVISIONS RELATING TO DEBTORS TO THE STATE.

SEC. 74. Any person committed to jail in any county on execution, warrant of distress, or other final civil process for debt, penalty, or costs, due to the state, may make application in writing to a justice of the supreme judicial court for relief, whether the court is in session or not ; who shall appoint a convenient time and place to inquire into the circumstances of the petitioner ; [and] give such notice thereof as he thinks proper to the attorney general, or county attorney for the county where the commitment is made, to attend the hearing in behalf of the state.

SEC. 75. The justice shall consider all proper evidence offered on either side, and may require the oath of the petitioner to all or any of the facts by him stated ; and if satisfied that the prisoner is unable to pay any part of the amount due on such process, may order his discharge from imprisonment, having first administered to him, if he thinks proper, an oath substantially in the form prescribed by section thirty.

SEC. 76. If, on examination, it appears to the justice that the prisoner is able to pay only a part of the amount due, he shall order his release from imprisonment, and, if he thinks it more for the interest of the state, [he] may order the whole debt to be discharged, upon his paying or securing such sum of money, or assigning to the state such securities or other property, at such time and in such manner, to be deposited with such public officer, as he directs.

SEC. 77. The jailer having charge of the debtor shall thereupon release him from confinement, or give him a full discharge from the demand on the terms prescribed.

SEC. 78. If such proceedings are had when the supreme judicial court is not in session for the county, the justice shall cause his adjudication and discharge to be entered of record as of the last preceding term of the court therein.

SEC. 79. The county commissioners, at a regular session, or a majority of them in vacation, on application, may exercise the powers, and their proceedings shall have the *like* effect, provided in the five preceding sections.

SEC. 80. A person committed on execution as mentioned in section seventy-four, desiring to take the oath provided in section thirty, may apply to the jailer, who shall apply in writing to a justice of the peace in his behalf, and he shall issue a citation as herein before prescribed, to be served on the county attorney for the same county, who shall by himself or a competent substitute, attend at the time and place, as attorney to the state, and a disclosure may thus be had, and all the proceedings and the effect shall be the same as in the disclosures of execution debtors to individual creditors; and the justices of the peace and quorum hearing it, may, if they see cause, administer an oath and grant a certificate to the debtor as herein before provided, with verbal alterations to conform to the case.

CHAP. 113.

Same powers vested in co. com'rs. R. S., c. 113, § 62.

Application by such debtor to take the poor debtor's oath.

Notice to county attorney. Oath and certificate. R. S., c. 113, § 63.