

# MAINE STATE LEGISLATURE

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REPORT  
OF  
THE COMMISSIONER  
ON THE  
REVISION AND CONSOLIDATION  
OF THE  
PUBLIC LAWS  
OF THE  
STATE OF MAINE  
UNDER  
RESOLVE OF APRIL 15, 1927

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## TITLE NINE.

Civil Rights and Remedies.  

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## CHAPTER 94.

### Commencement of Civil Actions; Indorsement and Service of Writs; Attachment of Property; Arrests; Limitations of Personal Actions.

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#### Forms and Requisites of Writs.

**Sec. 1. Forms of writs remain until changed by court.** R. S. c. 86, § 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.

62 Me. 165.

**Sec. 2. Actions to be commenced by original writs; framed to be *capias* and attachment, or original summons.** R. S. c. 86, § 2. 1917, c. 94. 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 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.

No blank writ or precept, bearing the seal of said court and the signature of the clerk shall be sold to any person, other than an attorney and counselor at law, duly admitted to practice before the courts of this state.

See c. 90, § 5; 12 Me. 196; 34 Me. 10; 39 Me. 142, 503; 60 Me. 352; 63 Me. 30; 66 Me. 251; 71 Me. 28, 406; 81 Me. 291; 87 Me. 436; \*111 Me. 92.

**Sec. 3. Justice writs.** R. S. c. 86, § 3. 1917, c. 94. Writs issued by a trial justice, or judge of a municipal or police court, shall be signed by him, or by the clerk or recorder of such court, and sealed.

Such writs shall be sold only to attorneys and counselors at law, duly admitted to practice before the courts of this state.

See c. 96, § 7.

**Sec. 4. Attachment and arrest on scire facias.** R. S. c. 86, § 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 arrest, as in writs of attachment.

<sup>71</sup> Me. 406.

**Sec. 5. Unknown defendant may be sued by assumed name.** R. S. c. 86, § 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. Indorsement of writ, petition or bill.** R. S. c. 86, § 6. Every writ original, or scire facias, of error, of audita querela, petition for writ of certiorari, for review, or for partition, and bill in equity shall, when the plaintiff, petitioner, or complainant is not an inhabitant of the state, upon motion filed in court at the first term, as of course, be indorsed by some sufficient inhabitant of the state, or security for costs furnished by deposit in court, in such amount as the court shall direct; and if pending such suit the plaintiff, petitioner, or complainant removes from the state, such an indorser shall be procured or security for costs furnished on motion of the defendant or other party to the suit; but if one of such plaintiffs, petitioners, or complainants is an inhabitant of the state, no indorser or security shall be required except by special order of court.

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; 76 Me. 599; 79 Me. 51; 81 Me. 291; 92 Me. 247.

**Sec. 7. Liability of indorser; must be sued within a year.** R. S. c. 86, § 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, is conclusive evidence of his liability in the suit.

11 Me. 445, 467, 492; 15 Me. 67; 16 Me. 20; 20 Me. 388; 24 Me. 228, 241, 355; 26 Me. 42; 39 Me. 132; 43 Me. 177; 47 Me. 341; \*78 Me. 166.

**Sec. 8. Court may require new indorser or additional deposit.** R. S. c. 86, § 8. If pending such suit, petition, or process, any such indorser or deposit becomes insufficient or such indorser removes from the state, the court may require a new and sufficient indorser or additional deposit, and by consent of the defendant the name of the original indorser may be struck out; and such new indorser shall be liable or such deposit holden for all costs from the beginning of the suit; and if such new indorser is not provided or security furnished within the time fixed by the court, the action shall be dismissed and the defendant shall recover his costs.

### Actions, Where to be Brought.

**Sec 9. Personal and transitory actions, where to be commenced; transfer from one county to another.** R. S. c. 86, § 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 no plaintiff lives in the state, in the county where any defendant lives; and when not so brought, they shall, on motion or inspection by the court, be abated and the defendant allowed double costs. 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, it may on motion of either, be transferred to [any court having jurisdiction in] the county where both then live, if the court thinks that justice will thereby be promoted; and be tried, as if originally commenced and entered therein; provided, however, that suits by the assignee of a non-negotiable chose in action, when brought in the supreme judicial court or a superior, municipal, or police court, shall be commenced in the county in which the original creditor might have maintained his action; and when brought before a trial justice, the writ shall be made returnable before a magistrate who would have had jurisdiction had the chose in action not been assigned.

12 Me. 19; \*46 Me. 507; 54 Me. 315; 63 Me. 385; \*65 Me. 169.

**Sec. 10. Sheriff's bond, where to be sued.** R. S. c. 86, § 10. Actions on bonds given by sheriffs and coroners to the treasurer of state, shall be brought in the county for which such sheriff or coroner is commissioned.

**Sec. 11. Actions of debt on judgment.** R. S. c. 86, § 11. Actions of debt, founded on judgment rendered by any court of record in 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. Jurisdiction obtained by attachment.** R. S. c. 86, § 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 the state and attached on the original writ; and service shall be made as provided in section twenty-one.

58 Me. 301; \*65 Me. 254; 68 Me. 272; 89 Me. 177; 99 Me. 422.

**Sec. 13. Local and transitory actions, in which counties, towns and other corporations are parties, where to be brought.** R. S. c. 86, § 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 an 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 an established place of business, or in which the plaintiff or defendant, if a natural person, lives.

53 Me. 420; 58 Me. 536.

**Sec. 14. Actions for forfeitures, where to be brought.** R. S. c. 86, § 14. When a forfeiture is recoverable in a civil action, it shall be brought in the county in which the offense 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.

81 Me. 462.

**Sec. 15. Certain actions in behalf of state may be brought in any county.** R. S. c. 86, § 15. An action in behalf of the state to enforce the collection of state taxes upon any corporation, or to recover of any person or corporation moneys due the state, public funds, or property belonging to the state, or the value thereof, may be brought in any county; provided, that on motion of the defendant, [it may be transferred to any court having jurisdiction, if the court thinks that justice will thereby be promoted,] *any justice of the supreme judicial court holding the term at which such action is returnable, may, for sufficient reasons shown, remove the same to the docket of said court in any other county for trial,* and [the court] may, upon such removal, award costs to the defendant for one term, to be paid by the treasurer of state on presentation of the certificate of the amount thereof, from the clerk of courts of the county from which said action is transferred.

See c. 11, § 13; c. 12, § 76.

**Sec. 16. Justice actions, where brought and how served.** R. S. c. 86, § 16. An 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 only one defendant, such action shall be commenced in the county where he resides.

See c. 96, § 10; 12 Me. 18; 15 Me. 189.

### Service of Writs on Residents.

**Sec. 17. Service by separate summons.** R. S. c. 86, § 17. When goods or estate are attached **on either of said writs**, a separate summons, in form by law prescribed, shall be delivered to the defendant, or left at his dwelling-house or last and usual place of abode, fourteen days before the sitting of the court to which it is returnable, which is sufficient service.

See c. 99, § 3; c. 117, § 1; 16 Me. 370; 31 Me. 495; 37 Me. 51; 43 Me. 402; 59 Me. 291; \*69 Me. 343; 80 Me. 408; \*96 Me. 224; \*101 Me. 346; \*120 Me. 189; 121 Me. 152.

**Sec. 18. Original summons may be served by reading or copy.** R. S. c. 86, § 18. 1919, c. 118. Where the process is by original summons, wherein the law does not require a separate summons to be left with the defendant, service by reading the writ or original summons to the defendant, or by giving him in hand, or leaving at his dwelling-house or last and usual place of abode, a certified copy thereof, fourteen days before it is returnable, is sufficient, except in case of replevin. The writ of replevin shall **not** be served **by reading, but service** by giving the defendant in hand, or leaving at his dwelling-house or last and usual place of abode, a certified copy thereof, fourteen days before it is returnable, **is sufficient.**

47 Me. 304.

**Sec. 19. Service on county, town, or other corporation, how made; service upon any foreign or alien corporation; time of service.** R. S. c. 86, § 19. 1917, c. 191. In actions at law [other than by original summons,] service shall be made by leaving a separate summons, and in all proceedings in equity, an attested copy of the writ, bill, petition, or other process, as follows: Against a county,

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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, agent, or director, [or attorney]; if there is no such officer or, agent, [or attorney] 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 corporation, established by the laws of any other state or county and having a place of business within this state or doing business herein, service of the writ, bill, petition or other process is 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 [unless otherwise ordered by the court,] be served fourteen days before the return day thereof [when made returnable to the supreme judicial or superior courts, and seven days when made returnable to a municipal court or trial justice.]*

See c. 5, § 133; c. 62, § 39; 16 Me. 372; 47 Me. 304; 67 Me. 496; 71 Me. 360; \*91 Me. 434.

Note. This section has been redrafted at the suggestion of several attorneys.

**Sec. 20. Service on domestic corporation, when no officer can be found. R. S. c. 86, § 20.** When no officer, general agent, or member of a domestic corporation, can be found in the county in which the same is located, or in the county in which its last certificate of election of clerk was 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 is sufficient to hold said corporation to answer to such process.

See c. 15, § 18; c. 126, § 18.

### Service on Non-Residents.

**Sec. 21. Service, how made on non-resident defendants; court may order notice. R. S. c. 86, § 21.** If any 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 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.

6 Me. 219; 19 Me. 108; \*36 Me. 303; 51 Me. 586; 54 Me. 380; 55 Me. 552; 56 Me. 341; 58 Me. 301; \*65 Me. 253; 68 Me. 272; 81 Me. 475; 89 Me. 177; \*96 Me. 224; 99 Me. 424; 101 Me. 347; \*108 Me. 255.

**Sec. 22. In actions against foreign insurance and express companies, service how made. R. S. c. 86, § 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 is sufficient if made on the person who signed or counter-signed 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.

See c. 59, §§ 118, 119.

Note. Service of process on towns whose charters have been repealed, c. 5, § 133; on foreign corporations acting as trustee under mortgages made by domestic corporations, c. 55, § 73; on foreign insurance companies, c. 59, § 118; on foreign surety, credit insurance or title insurance companies, c. 59, § 146; on foreign fraternal beneficiary associations, c. 60, § 10.

### How Want or Defect of Service May Be Cured.

**Sec. 23. New service by special order. R. S. c. 86, § 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 fault of the plaintiff or his attorney, the court may order a new service, which, when made, is as effectual as if proper service had been made in the first instance; but no first order for service shall be made at any other than the return term; and no subsequent order, if any person interested objects thereto unless for good cause shown.

\*58 Me. 301; 75 Me. 462; \*77 Me. 404; 101 Me. 346; 106 Me. 114; 127 Me. 170.

### Attachment of Personal Property.

**Sec. 24. Personal property subject to attachment. R. S. c. 86, § 24.** All goods and chattels may be attached, and held as 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 exempt from attachment according to the principles of the common law as adopted and practiced in 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, when directed to the proper officer.

See § 67; 75 Me. 450; 84 Me. 276.

**Sec. 25. Personal property attached, may be kept on premises where found; to remain on premises until owner can give bond. R. S. c. 86, § 25.** Personal property attached may be kept upon the premises where the same is found and the attaching officer may appoint a keeper thereof; but if the owner of said property or the occupant of said premises requests the officer, in writing, to remove said keeper, the officer shall remove the property attached or the keeper without unreasonable delay. If the defendant, in writing, requests the officer making the attachment to allow said property attached to remain upon the premises where found until he may give a bond dissolving said attachment, the officer shall not remove said property until the defendant has had a reasonable opportunity to give said bond.

**Sec. 26. Attachment of hay and animals, left in hands of debtor. R. S. c. 86, § 26.** When hay in a barn, horses, or neat cattle are attached, and are suffered to remain, by permission of the officer, in the defendant's possession on security given for their safe-keeping and delivery to the officer, they are not subject to a second attachment to the prejudice of the first.

7 Me. 179; 18 Me. 276; 19 Me. 94; 37 Me. 328; 62 Me. 82; 65 Me. 491.

**Sec. 27. Attachment of bulky personal property may be recorded in town clerk's office. R. S. c. 86, § 27.** 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

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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 is as effectual and valid, as if the property had remained in his possession and custody. The clerk shall receive the copy, noting thereon the time, enter it in a suitable book, and keep it on file for the inspection of those interested therein. When the attachment is made in an unincorporated place, such copy shall be filed and recorded in the registry of deeds, for the registry district in which said unincorporated place is located.

19 Me. 94, 439; 45 Me. 62; 65 Me. 491; 74 Me. 49, 551; 76 Me. 437; 77 Me. 422; 81 Me. 302, 601; 84 Me. 276; 89 Me. 233, 299; 91 Me. 70; 93 Me. 492; 102 Me. 123; 103 Me. 203, 276; \*110 Me. 58; \*114 Me. 50; 127 Me. 244.

**Sec. 28. Attachment of shares in a corporation. R. S. c. 86, § 28.** When the share or interest of any person in an 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 is a lien on such share or interest, and on all accruing dividends; and if the officer having the writ 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 wilfully 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.

See c. 51, § 36; c. 97, § 14; 63 Me. 514.

**Sec. 29. Attachment of franchise and other property of corporation. R. S. c. 86, § 29.** The franchise and all right to demand and take toll, 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.

<sup>42</sup> Me. 425.

**Sec. 30. Attachments on same writ may be made in different counties and by different officers. R. S. c. 86, § 30.** Different attachments in one or more counties may be made successively upon the same writ, and by different officers, before service of the summons upon the person whose property is attached; but none after such service. 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, 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. 31. Sale on writ of personal property attached. R. S. c. 86, § 31.** When personal property is attached, the officer, by consent of the debtor and creditor, 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 written consent of the debtor and all attaching creditors; and the proceeds, 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.

<sup>39 Me. 32, 387; 48 Me. 535; 54 Me. 169.</sup>

**Sec. 32. Perishable goods may be sold without consent.** R. S. c. 86, § 32. When 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 entry of the action, as follows:

**Sec. 33. Notice of time and place of appraisal; appointment of appraisers.** R. S. c. 86, § 33. At the request of either party interested, the officer shall give notice of the time and place of 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 the creditor, one by the debtor, and one by himself; and if the creditor or debtor neglects to appoint, he shall appoint one in his behalf.

<sup>31 Me. 154; 36 Me. 166; 39 Me. 32; 48 Me. 535; 49 Me. 62; 61 Me. 531; 69 Me. 388; 75 Me. 444.</sup>

**Sec. 34. Proceedings by appraisers.** R. S. c. 86, § 34. The appraisers shall be sworn by the officer without fee, or by a justice of the peace or trial justice, and shall 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.

<sup>36 Me. 166.</sup>

**Sec. 35. Property 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. 86, § 35. 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.

<sup>31 Me. 155; 36 Me. 166.</sup>

**Sec. 36. Bond may be sued by any creditor.** R. S. c. 86, § 36. 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 costs 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 reimbursed 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. 37. Attaching creditor, not a party to the suit on bond, may avail himself thereof, or of the judgment therein.** R. S. c. 86, § 37. 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, as if he had been a party

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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. 38. Sale after appraisal. R. S. c. 86, § 38.** 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.

48 Me. 535; 61 Me. 531.

**Sec. 39. Proceeds may be further attached in hands of the officer. R. S. c. 86, § 39.** The proceeds of such property sold by consent or after an appraisal, may be further attached by the officer as 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.

48 Me. 538; 69 Me. 388.

**Sec. 40. Right by priority in case of sale, preserved. R. S. c. 86, § 40.** 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. 41. Replevin of property attached and claimed by one not a party to suit; sale. R. S. c. 86, § 41.** When personal property, attached on mesne process, is claimed by a person not a party to the suit, he may replevy it within 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 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.

\*59 Me. 112; 75 Me. 444.

#### How Property of Part Owners, when Attached, May be disposed of.

**Sec. 42. Property of part owner attached, to be appraised and delivered to another owner, on giving bond; bond to be returned with writ. R. S. c. 86, § 42.** 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 to be 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, pay the appraised value of the defendant's share therein, or satisfy all judgments recovered in the attaching suits, if demanded within the time during which 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, like proceedings may be had as are provided in section thirty-six.

50 Me. 397.

**Sec. 43. Part owner so paying, has lien on property, and may sell; but if attachment is dissolved, must restore it. R. S. c. 86, § 43.** If any part of such appraised value is so paid, the defendant's share of the property is thereby

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.

**Attachment of Property Mortgaged or Pledged.**

**Sec. 44. Attachment of personal property mortgaged, pledged, or under lien.**

**R. S. c. 86, § 44.** 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 unencumbered, *if the attaching creditor first tenders or pays to the mortgagee, pledgee or holder, the full amount unpaid on the demand so secured thereon*, [subject to the provisions of the following six sections.]

50 Me. 128, 397; 58 Me. 419; 60 Me. 378; 84 Me. 232; 85 Me. 241; 113 Me. 64.

**Sec. 45. When officer attaching mortgaged property is exempt from suit.**

**R. S. c. 86, § 45. 1917, c. 162, § 1.** 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; (a) 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 the officer or creditor within that time discharges the claim by paying same or tendering the amount due thereon; (c) within that time restores the property;] *Personal property which is subject to a mortgage and is in the possession of the mortgagee may be attached as if unincumbered; and the mortgagee or his assigns may be summoned in the same action in which the property is attached as the trustee of the mortgagor or his assigns to answer such questions as may be put to him or them by the court or by its order relative to the consideration of the mortgage and the amount due thereon.* [(d) or where the property was attached on a writ or seized on execution while in the hands or possession of the mortgagor, the attaching creditor within that time summons the claimant to answer in the same action such questions as may be put to him relative to the consideration, validity, and amount due secured by such mortgage. Such summons may be in substantially the following form:

STATE OF MAINE.

....., ss. To.....  
..... Greeting:  
WE COMMAND YOU, that you appear at our.....Court,  
to be held at....., within and for the County of.....  
aforesaid, on the.....day of....., A. D. 19 , then  
and there to answer unto.....  
in a plea of the case.....as in our writ of attachment,  
dated the.....day of....., A. D. 19 , and made  
returnable to said court on the.....day of.....  
A. D. 19 , is fully set forth, in which.....of  
.....is named defendant and on which writ the following de-  
scribed property, claimed by you as mortgagee, was attached as the property  
of said defendant; viz,.....  
.....  
then and there to answer in such action, such questions as may be put to you

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relative to the consideration, validity, and amount justly due secured by such mortgage, and abide the judgment of court thereon.

FAIL NOT OF APPEARANCE AT YOUR PERIL.

Witness, the HONORABLE.....Justice of the Supreme Judicial Court (Superior Court) (Judge of said Court) at ..... the.....day of..... in the year of our Lord one thousand nine hundred and.....

From the office of ..... Clerk. ....

Such summons shall be made returnable on any day, after ten days and within ninety days, of its date and served by copy, attested by the officer making such service. If said mortgagee fails to appear and answer, as therein directed, the court may estop him from claiming any interest in such attached goods by virtue of such mortgage.]

58 Me. 31; 59 Me. 114; 60 Me. 378; 63 Me. 465; 72 Me. 71; 73 Me. 199; 78 Me. 81; 82 Me. 420; 83 Me. 351, 381; 84 Me. 232; 100 Me. 289; 113 Me. 62, 64.

Note. This section covering matters included in R. S. 1916, c. 86, § 45 and P. L. 1917, c. 162, § 1, has been extended after consultation with attorneys. The substantial changes are indicated.

Sec. 46. Mortgagee must account within ten days after notice; penalty for false account. R. S. c. 86, § 46. 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.

58 Me. 31, 419; 59 Me. 114; 60 Me. 378; 83 Me. 350; 84 Me. 232; \*113 Me. 61; 125 Me. 57.

Sec. 47. Proceedings when validity of mortgage is established. 1917, c. 162, § 2. If upon such examination [held under the provisions of section forty-five], or upon the verdict of a jury as hereinafter provided, it appears that the mortgage is valid, the court, having first ascertained the amount justly due upon it, may direct the attaching creditor to pay the same to the claimant or his assigns within such time as it orders; and if he does not pay or tender the amount within the time prescribed, the attachment shall be void [vacated] and the property shall be restored. [If the attaching creditor pays or tenders the amount directed to be paid within such time and the mortgagee fails to immediately assign such mortgage to the attaching creditor, the mortgagee shall be estopped from claiming any interest in such attached goods by virtue of his mortgage.]

Sec. 48. Validity of mortgage may be tried before jury; costs. 1917, c. 162, § 3. If the attaching creditor denies the validity of the mortgage, and moves that the validity may be tried by a jury, the court shall order such trial upon an issue which shall be framed under its direction and if, upon such examination or verdict, the mortgage is adjudged valid, the mortgagee or his assigns shall recover his costs.

Sec. 49. Proceedings if creditor redeems and officer sells. R. S. c. 86, § 47. 1917, c. 162, § 4. When the [attaching] creditor has paid to the mortgagee or his assigns the amount ordered by the court, he may retain out of the proceeds of the property attached, when sold, the amount so paid with interest, and the balance shall be applied to the payment of his debt.

Sec. 50. When attaching creditor does not recover judgment. 1917, c. 162,

§ 5. If the attaching creditor, after having paid the amount ordered by the court, does not recover judgment, he may nevertheless hold the property until the debtor has repaid with interest the amount so paid.

#### When Attaching Officer Dies, or is Removed, or Property is Replevied.

**Sec. 51. Goods attached by an officer are not assets of his estate.** R. S. c. 86, § 48. Personal property attached by an officer and in his possession, and his claim for damages when it is taken from him, remain subject to such attachment in case of his death, as if he were alive, and are not assets belonging to his estate.

**Sec. 52. If replevied, are liable to further attachments.** R. S. c. 86, § 52. Such property replevied from the officer, is 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 are liable for the whole property or its value, although some attachments were made after the replevin.

**Sec. 53. If officer dies or is removed, property attached by him is liable to further attachments by other officers; how such attachments may be made.** R. S. c. 86, § 53. 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 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 has been 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 his executors or administrators, or with the plaintiff in replevin; and the attachment shall be considered as made, when such copy is delivered in either of the modes before described.

**Sec. 54. Limitation of right to attach goods replevied.** R. S. c. 86, § 51. Goods, taken by replevin from an attaching officer, shall not be further attached as property of the original defendant in any other manner, than that provided in the 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.

#### Attachments and Actions When a Party Dies.

**Sec. 55. Attachments, when dissolved by death of insolvent.** R. S. c. 86, § 52. 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.

See §§ 72, 73; 1 Me. 333; 46 Me. 353; 73 Me. 421.

**Sec. 56. Liability if property is sold before demand; set-off not allowed.** R. S. c. 86, § 53. If, after such decree and before such demand, the officer has sold the property on execution, he is 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 is so liable;

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and he shall not set off any demand which he has against the executor or the administrator, or against the estate of the deceased.

**Sec. 57. Appraisal of property under attachment. R. S. c. 86, § 54.** 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.

**Sec. 58. Actions by officers for goods attached and taken from them, do not abate by party's death. R. S. c. 86, § 55.** An action, brought by an officer for taking from him personal property attached by him, does 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 were alive; but if he fails to recover, he shall return the property or pay the damages awarded in full, although the estate of the deceased is insolvent.

**Sec. 59. If officer dies pending suit and no administrator is appointed, party in interest may carry on suit. R. S. c. 86, § 56.** If an 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.

**Sec. 60. Real estate and interests subject to attachment; officer need not view. R. S. c. 86, § 57.** All real estate liable to be taken in execution as provided in chapter eighty-nine; 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.

See c. 89, §§ 1, 32; c. 108, § 7; 10 Me. 119; 14 Me. 34; 19 Me. 52; 23 Me. 166, 172; 27 Me. 451; 28 Me. 414; 35 Me. 523; 39 Me. 344; 42 Me. 286, 325; 46 Me. 437, 481; 52 Me. 357; 55 Me. 571; 77 Me. 296; 88 Me. 292; 95 Me. 250; \*97 Me. 495; \*126 Me. 49.

**Sec. 61. Real estate may be attached on writs from certain municipal or police courts. R. S. c. 86, § 58.** If a municipal or police court has a regular seal, 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 court, where the amount of the debt or damage, exclusive of costs, exceeds twenty dollars.

**Sec. 62. When attachment of right of redemption, holds premises free. R. S. c. 86, § 59.** When a right of redeeming real estate mortgaged or taken on execution, is attached; and such estate is redeemed or the encumbrance removed before the levy of the execution, the attachment holds the premises discharged of the mortgage or levy, as if they had not existed.

39 Me. 24; 43 Me. 249.

**Sec. 63. No attachment of real estate is valid, unless recorded in registry of deeds and claim is specified in writ; seizure on execution creates no lien on real**

**estate, unless filed in registry of deeds; seizure takes effect from time of filing. R. S. c. 86, § 60.** No attachment of real estate on mesne process creates 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 some 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 takes effect from the time it is filed, if before the entry of the action, although it is after service on the defendant. *No seizure of real estate on execution where there is no subsisting attachment thereof made in the suit in which such execution issues, creates any lien thereon, 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 some 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 takes 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 chapter fifteen. Provided, however, that all recorded deeds take precedence over unrecorded attachments and seizures.

18 Me. 302; 29 Me. 271; 39 Me. 344; \*42 Me. 341; 48 Me. 413, 567; 51 Me. 168, 322; 52 Me. 410; \*54 Me. 420; 55 Me. 451, 571; 59 Me. 438; 60 Me. 249; \*65 Me. 586; 69 Me. 502, 543; 72 Me. 222; 73 Me. 218, 405; 74 Me. 293; 78 Me. 518; 83 Me. 499; 84 Me. 536; 85 Me. 400; 88 Me. 292; \*94 Me. 436; 107 Me. 107, 190; 124 Me. 104.

Note. The part in italics has been transferred to the chapter on levy of executions, c. 89, § 46.

**Sec. 64. Action not effectual against person not party thereto, until attachment is made and recorded. R. S. c. 86, § 61.** No action commenced, either by original writ or bill in equity inserted in a writ of attachment, in which the title to real estate is involved, is effectual against any person not a party thereto or having actual notice thereof, until an attachment of such real estate is duly made and recorded in the registry of deeds in and for the county or district in which such real estate is situated, in the same manner as attachments of real estate in other cases are now recorded.

See c. 90, §§ 12, 13, 31; 94 Me. 322.

**Sec. 65. When right of redemption or to a deed by contract, is attached, the creditor may redeem or pay. R. S. c. 86, § 62.** When a right to redeem real estate under 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 sale on execution, may pay or tender to the person entitled thereto, the amount required to discharge such encumbrance or fulfil such contract; and thereby the title and interest of such person vest in the plaintiff, subject to the defendant's right to redeem; 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 encumbrance as against it, shall be deemed discharged.

72 Me. 515; 84 Me. 285.

**Sec. 66. Mortgagee or contractor to state, on demand, the sum due him; and on payment, to release his interest in premises. R. S. c. 86, § 63.** Such person, on written demand, shall give the plaintiff a true written statement of the

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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 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 until after one year from the termination of said suit, or from the sale of the equity on any execution recovered therein.

72 Me. 515; 84 Me. 285.

### Property Exempt from Attachment and Execution.

**Sec. 67. Personal property. R. S. c. 86, § 64.** The following personal property is exempt from attachment and execution:

I. The debtor's apparel; household furniture necessary for himself, wife and children, not exceeding one hundred dollars in value, and one bed, bedstead, and necessary bedding for every two such persons.

See c. 56, §§ 24, 25; c. 76, § 48; c. 88, § 21; 16 Me. 265.

II. All family portraits, Bibles, and schoolbooks in actual use in the family; one copy of the statutes of the state, and a library not exceeding one hundred and fifty dollars in value.

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

IV. 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 dollars' worth of lumber, wood, or bark.

74 Me. 100.

V. All produce of farms until harvested; one barrel of flour; corn and grain necessary for himself and family, not exceeding thirty bushels; all potatoes and other provisions raised or bought, and necessary 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.

41 Me. 80.

VI. The tools necessary for his trade or occupation, materials and stock designed and procured by him and necessary for carrying on his trade or business and intended to be used or wrought therein, not exceeding fifty dollars in value, and one sewing machine not exceeding one hundred dollars in value for actual use by himself or family.

10 Me. 136; 28 Me. 178; 106 Me. 447; 108 Me. 265.

VII. 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 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 exempt. 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.

45 Me. 72; 46 Me. 360; 55 Me. 107; 58 Me. 418; 75 Me. 397; 82 Me. 164.

VIII. 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 are

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.

<sup>14</sup> Me. 315; \*<sup>17</sup> Me. 70; 38 Me. 136.

IX. One plough, one cart or truck wagon, or one express wagon, one harrow, one yoke with bows, ring, and staple, two chains, one ox sled, and one mowing machine.

\*<sup>71</sup> Me. 164; 84 Me. 85; 88 Me. 304; 108 Me. 265.

X. One boat not exceeding two tons burden, usually employed in fishing business, belonging wholly to an inhabitant of the state.

XI. The personal property of any copartnership, or the interest of any copartner therein shall be exempt from attachment on mesne process or seizure on execution for any individual debt or liability of such copartner, but such copartner's interest in the partnership property may be reached and applied in payment of any judgment against him in the manner provided in section nine of chapter ninety.

Note. Additional exemptions; shares of stock in cemetery corporations, c. 24, § 19; two shares of stock in loan and building associations, c. 56, § 100; life and accident policies and money due thereon, c. 59, §§ 143, 169; money due from policies in fraternal beneficiary associations, c. 60, § 17; personal baggage while held under innkeeper's lien, c. 35, § 15; outfit furnished members of active militia and officers, c. 18, § 66; teachers' pensions, c. 19, § 220; claims under "Workmen's Compensation Act," c. 54, § 24.

### Homesteads.

**Sec. 68. Homestead. R. S. c. 86, § 65.** A lot of land and dwelling-house and outbuildings thereon, the property of a householder in actual possession thereof and not the owner of an exempted lot purchased from the state, is exempt from attachment and levy on execution as provided in the following sections.

See c. 11, §§ 11, 12; c. 24, §§ 5, 6, 7, 13, 19; 73 Me. 238; 97 Me. 424.

**Sec. 69. Claim for homestead exemption to be recorded in registry of deeds; amount of exemption. R. S. c. 86, § 66.** 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 for such exemption, and describing the land and buildings; and the register shall record it in a suitable book; and so much of such property as does not exceed five hundred dollars in value, is 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 is prima facie evidence that the certificate purporting to be there recorded, was made, signed, and filed as there appears.

**Sec. 70. Proceedings when creditor claims that homestead is worth more than \$500. R. S. c. 86, § 67.** 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 thereof as the debtor may select, and if he neglects so to do, the officer may select for him, to such value, by metes and bounds; and they shall then appraise and set off to the creditor, so much of the remainder as may be necessary to satisfy the execution; the appraisers shall be sworn accordingly and the officer shall make return of his doings thereon.

**Sec. 71. Widow and children may occupy during widowhood and minority; not exempt from mechanics' lien. R. S. c. 86, § 68.** After his death, the exempted premises shall not be sold for 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 claim by any creditor of his estate. But this and the three preceding sections do not exempt such property from the lien of mechanics or material men.

**Dissolution of Attachments.**

**Sec. 72. Attachment continues for thirty days after judgment; attachment of real estate expires in five years subject to certain exceptions. R. S. c. 86, § 69.** An attachment of real or personal estate continues for thirty days, and no longer, after final judgment in the original suit, and not in review or error; except attachments of real estate taken on execution; or equities of redemption sold on execution; or an obligee's conditional right to a conveyance of real estate sold on execution; or property attached and replevied; or property attached belonging to a person dying thereafter, or specially provided for in any other case; but an attachment of real estate shall expire at the end of five years from the date of filing the same in the office of the register of deeds in the county or district where the said real estate or some part of it is situated, unless the said register shall, within said period, at the request of the plaintiff or his attorney bring forward the same upon the book of attachments, and at the expiration of five years from the time of such first, or any subsequent bringing forward, such attachment shall expire unless within said period it is again brought forward in like manner. The register shall be entitled to the same fee for bringing forward such attachment upon the said book of attachments, as for the original entry thereof.

See c. 89, § 48; c. 95; §§ 5, 158; c. 99, § 73; c. 109, § 16.  
12 Me. 242; 14 Me. 431; 22 Me. 382; 57 Me. 88; \*92 Me. 380; 97 Me. 497.

**Sec. 73. Attachments, how dissolved. R. S. c. 86, § 70.** All attachments of real or personal estate are dissolved 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 thirty-one of chapter eighty-three; 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.

See c. 89, § 40; 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; 58 Me. 331; 59 Me. 101; 65 Me. 129; 73 Me. 421; \*93 Me. 430.

**Sec. 74. Certificate of dissolution of attachment; plaintiff or his attorney may release attachment. R. S. c. 86, § 71. 1917, c. 271.** When an attachment is dissolved by judgment for the defendant, the clerk of the court 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 or his attorney in such suit may discharge the same in writing on the margin of the record thereof or 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; such attachment may be discharged on the record thereof in the registry of deeds by an attorney at law authorized in writing by the plaintiff in such suit; provided, however, that said writing is first recorded or filed in said office, with a reference thereto made by the register on the margin of the record of the attachment. Within one hour after the delivery of such certificate to him, the

register shall also make a minute of the same on the margin of the record of the attachment.

Note. The commissioner recommends that § 74 of this revision be amended in accordance with the following amendment proposed by Judge Gould.

"Amend section 71 of chapter 86 of the revised statutes of 1916 as amended by chapter 271 of the public laws of 1917, so said section as so amended shall read as follows:

Section 71. When an attachment is dissolved by judgment for the defendant, or if the writ upon which the attachment is made is not entered in the court to which it was returnable within the first five days of said return term, the clerk of the court 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. The said clerk of courts may charge a fee of fifty cents for such certificate. Before or after the entry of said writ in said court, or before or after judgment thereon, or if said writ is not entered in court, the plaintiff, or his attorney in such suit, may discharge the attachment in writing on the margin of the record thereof, or said plaintiff or said attorney may give a certificate, signed, sealed and acknowledged by him, that said attachment is in whole or in part discharged, which the register of deeds shall record with a reference thereto on the margin of the records of attachments. The register of deeds shall note the record of said discharge on the margin of the records of attachments within an hour of the delivery to him of either of the aforesaid certificates. Said attachments may be discharged on the record thereof in the registry of deeds by an attorney at law authorized in writing by the plaintiff in said suit, provided, however, that said writing is first recorded or filed in said registry of deeds with a reference thereto made by said register of deeds on the margin of the record of the attachment."

\*73 Me. 79; 76 Me. 417.

**Sec. 75. Real estate attachment to be discharged of record when dissolved.** 1917, c. 169, § 1. When an attachment of real estate is made in any action and the writ is not entered in court, or when any attachment of real estate is dissolved by lapse of time or failure to levy upon the judgment debt within the time prescribed by law to preserve said attachment, and the said attachment then remains undischarged upon the records of the registry of deeds, the plaintiff upon the demand of the defendant shall either cause the said attachment to be discharged upon the records of the registry of deeds, or give a certificate, signed, sealed and acknowledged by him that said attachment is discharged when said certificate is prepared and presented to the plaintiff by the defendant, which said certificate the register of deeds shall record with reference thereto on the margin of the record of said attachment.

**Sec. 76. Proceeding when plaintiff fails or refuses to discharge attachment.** 1917, c. 169, § 2. If the plaintiff shall upon demand unreasonably delay or refuse to discharge the said attachment as prescribed in section seventy-five, then a bill in equity against the said plaintiff may be filed by the defendant in the supreme judicial court, in the county in which the attachment of said real estate has been made; upon said bill, such notice shall be given as may be ordered by any justice of the said court, in term time or in vacation, and upon proof thereof, such proceedings may be had according to the usual course of suits in equity, and said attachment shall be discharged by a decree of court duly filed in the registry of deeds which the register of deeds shall record with reference thereto on the margin of the record of said attachment.

**Sec. 77. Debtor may petition for a valuation and release.** R. S. c. 86, § 72. Any defendant, whose interest in real estate in 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 eighty-two, and on the plaintiff's attorney, ten days at least before the time fixed therein for a hearing.

**Sec. 78. Valuation and release on bond of debtor.** R. S. c. 86, § 73. 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

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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 that 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.

**Sec. 79. Proceedings and bond to be filed in clerk's office. R. S. c. 86, § 74.** 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.

**Sec. 80. Certificate of proceedings from clerk recorded in registry of deeds. R. S. c. 86, § 75.** 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, vacates the attachment.

**Sec. 81. Same proceedings vacate attachment of personal property. R. S. c. 86, § 76.** When personal property is attached, 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, vacates 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 must be recorded in the town clerk's office, such copy and certificate shall be filed with the officer of such corporation who shall be entitled to twenty cents for filing the same and necessary certificate thereof, or with the town clerk with whom the attachment is filed; and thereby the attachment is vacated.

**Sec. 82. Foreign attachments are vacated by same proceedings. R. S. c. 86, § 77.** 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, vacates the attachment of any goods, effects, or credits in their hands belonging to the petitioner.

**Sec. 83. Costs. R. S. c. 86, § 78.** The party finally prevailing in 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.

**Sec. 84. Attachment may be vacated on bond, conditioned to pay the judgment. R. S. c. 86, § 79.** When real estate or personal property is attached on mesne process, and in all cases of attachment on trustee process, the attachment shall be vacated, upon the defendant, or some one in his behalf, delivering to the officer who made such attachment, or to the plaintiff or his attorney, a bond to the plaintiff in such sum not less than the ad damnum of the writ and with such sureties as may be approved by the plaintiff or his attorney, or by any justice or clerk of the supreme judicial or superior courts; conditioned that within thirty days after the rendition of the judgment, or after the adjournment

of the court in which it is rendered, or after the certificate of decision of the law court shall be received in the county where the cause is pending, he will pay to the plaintiff or his attorney of record, the amount of said judgment including costs; the bond shall be returned by the officer with the process, for the benefit of the plaintiff, and thereupon all liability of the officer to the plaintiff by reason of such attachment shall cease. Upon request the plaintiff or his attorney, shall give to the defendant a certificate acknowledging the discharge of such attachment, which may be recorded in the registry of deeds or town clerk's office, as the case may be, in which the return of the attachment is filed. If stock in any corporation is attached, such certificate shall be filed with the officer of the corporation, with whom the return of such attachment is filed, and he shall record the same. In trustee process the alleged trustee shall not be liable to the principal defendant for the goods, effects and credits in his hands or possession until such certificate shall be delivered to him, and upon receiving such certificate, he shall be discharged from further liability in said trustee action, and need not disclose, and shall not recover costs.

107 Me. 335; 122 Me. 406; 125 Me. 57; 125 Me. 212.

#### **Cross Actions against Non-residents.**

**Sec. 85. In cross actions and set-offs against parties out of state, service may be made on their attorneys. R. S. c. 86, § 80.** When an action is brought by a person not an inhabitant of 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 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 codefendants, 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, is as valid as if made on the party himself within the state.

46 Me. 420; 62 Me. 496; \*97 Me. 26, 28.

**Sec. 86. Actions may be continued for absent party to defend, or to set off judgment or execution. R. S. c. 86, § 81.** 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.

46 Me. 421; 62 Me. 496.

#### **Days on Which No Arrest Can be Made or Process Served.**

**Sec. 87. Exemption from arrest on certain holidays. R. S. c. 86, § 82. 1923, c. 50, § 4.** No person shall be arrested in a civil action, on mesne process, or execution, or on a warrant for taxes, on the day of annual thanksgiving, the nineteenth day of April, the thirtieth day of May, the fourth day of July, the first Monday of September, Armistice Day, November eleventh, or Christmas; and on the day of any military training, inspection, review or election, no officer or soldier required by law to attend the same, shall be arrested on any such processes.

See c. 18, § 62; 16 Me. 136.

**Sec. 88. Exemption from arrest on election days. R. S. c. 86, § 83.** 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.

**Sec. 89. Civil process served on Lord's Day, void; officer liable. R. S. c. 86,**

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§ 84. No person shall serve or execute any civil process on the Lord's Day; but such service is void, and the person executing it is liable in damages to the party aggrieved, as if he had no process.

See c. 95, § 137; c. 135, §§ 37-44; 75 Me. 395; \*96 Me. 173.

## Limitations of Personal Actions.

**Sec. 90. Enumeration of actions to be commenced within six years. R. S. c. 86, § 85.** The following actions shall be commenced within six years after the cause of action accrues and not afterwards.

I. Actions of debt founded upon a contract or liability not under seal, except such as are brought upon a 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.

9 Me. 77; 15 Me. 168; 17 Me. 299; 23 Me. 562; 36 Me. 363; 37 Me. 392; 38 Me. 151; 53 Me. 206; 58 Me. 281, 321, 430; 60 Me. 423; 63 Me. 11; \*66 Me. 444; 69 Me. 519; \*70 Me. 20; 71 Me. 314, 504; 73 Me. 347; 82 Me. 155; 85 Me. 123.

II. 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.

III. Actions for arrears of rent.

IV. Actions of account, of assumpsit or upon the case, founded on any contract or liability, express or implied.

111 U. S. 110; 63 Me. 79; 70 Me. 18; 74 Me. 358, 400; 96 Me. 149.

V. Actions for waste, of trespass on land, and of trespass, except those for assault and battery and false imprisonment.

9 Me. 77.

VI. Actions of replevin, and other actions for taking, detaining, or injuring goods or chattels.

VII. All other actions on the case, except for slanderous words and for libel.

121 Me. 297; \*122 Me. 213.

**Sec. 91. Against sheriff for escape; for misconduct. R. S. c. 86, § 86.** Actions for escape of prisoners committed on execution, shall be actions on the case, and be commenced within one year after the cause of action accrues; but actions against a sheriff, for negligence or misconduct of himself or his deputies, shall be commenced within four years after the cause of action accrues.

74 Me. 262; \*78 Me. 336.

**Sec. 92. Assault, libel, etc., in two years. R. S. c. 86, § 87.** Actions for assault and battery, and for false imprisonment, slander, and libel, shall be commenced within two years after the cause of action accrues.

61 Me. 235; 78 Me. 336; 94 Me. 363.

**Sec. 93. Scire facias against bail, sureties in criminal recognizances and trustees, in one year. R. S. c. 86, § 88. 1927, c. 42.** No scire facias shall be served on bail unless within one year after judgment was rendered against the principal; nor on sureties in recognizances in criminal cases unless within one year after 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. And no action of debt in behalf of the state against sureties and recognizances in criminal cases shall be brought unless within one year after default of principal.

\*125 Me. 218.

**Sec. 94. Not applicable to witnessed notes, bank-bills, or cases otherwise limited. R. S. c. 86, § 89.** 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 a bank; nor to any case or suit limited by statute to be commenced within a different time.

7 Me. 25; 16 Me. 473; 19 Me. 73; 21 Me. 178; 23 Me. 497; 26 Me. 332; 30 Me. 120, 164; 31 Me. 161; \*38 Me. 182, 352; 49 Me. 334; 51 Me. 303; \*60 Me. 408; 63 Me. 79; 64 Me. 225; \*66 Me. 444; 79 Me. 596; 102 Me. 147; \*114 Me. 58.

**Sec. 95. Mutual and open accounts current. R. S. c. 86, § 90.** In actions of debt or assumpsit to recover the balance due, 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.

\*4 Me. 339; 38 Me. 151; 51 Me. 106; 59 Me. 224; 63 Me. 507; 65 Me. 171; 72 Me. 35; 77 Me. 395; 97 Me. 406, 407; \*103 Me. 408; 115 Me. 11; 120 Me. 348.

**Sec. 96. Minors, etc., may sue after disability is removed. R. S. c. 86, § 91.** 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, the action may be brought within the times limited herein, after the disability is removed.

13 Me. 401; 29 Me. 218; 37 Me. 307; 54 Me. 92; 66 Me. 444; \*84 Me. 83; 94 Me. 363.

**Sec. 97. Actions to recover stolen bonds. R. S. c. 86, § 92.** Actions to recover upon bonds, obligations, or coupons thereof, issued by any city or town in the state, and stolen or obtained by robbery from the owner thereof, prior to the twelfth day of February, eighteen hundred and seventy-five, shall be commenced within eighteen months from the time when they become due or payable, and not afterwards; but this limitation does not apply to any action commenced by the person from whom such bonds, obligations, or coupons were stolen or obtained by robbery.

**Sec. 98. General limitation of twenty years. R. S. c. 86, § 93.** Personal actions on any contract, not otherwise limited, shall be brought within twenty years after the cause of action accrues.

Limitation of action by married woman for alienation of affections of husband, c. 74, § 7. Limitation of actions on bonds of administrators and executors, c. 84, § 9; against sureties on replevin bonds, c. 109, § 19; on poor debtor's bond, c. 123, § 74; \*28 Me. 83; 30 Me. 164; \*66 Me. 444; \*70 Me. 20.

Limitation of action against damage by jitney bus, c. 65, § 11.

**Sec. 99. When writ fails of service, or is defeated, or judgment is reversed, new suit in six months. R. S. c. 86, § 94.** When a writ fails of 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.

See c. 123, § 74; 8 Me. 450; 10 Me. 402; 38 Me. 218; \*67 Me. 204; 109 Me. 440.

**Sec. 100. Provisions in case of death of either party before suit is commenced. R. S. c. 86, § 95. 1917, c. 133, § 6.** If a 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 the executor or administrator at any time within eighteen months after his appointment, and not afterwards, if barred by the other provisions hereof; actions on such claims may be commenced against the executor or administrator, after one year, or within one year subject to continuance without costs, and within eighteen months after he has qualified as such executor or administrator, and not afterwards if barred by the other

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provisions hereof, except as provided in section seventeen of chapter one hundred.

118 Me. 437.

**Sec. 101. Saving of rights of alien enemies in time of war. R. S. c. 86, § 96.** If a person is disabled from prosecuting an action in this state by reason of being an alien subject or citizen of a country at war with the United States, the time during which such war continues shall not be a part of the period herein limited for the commencement of any of said actions.

**Sec. 102. Limitation of suits for penalties. R. S. c. 86, § 97.** Actions and suits for any penalty or forfeiture on a 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 commission of the offense; and if no person so prosecutes, it may be recovered by suit, indictment or information, in the name and for the use of the state, at any time within two years after the commission of the offense, and not afterwards.

5 Me. 495; 31 Me. 532; \*39 Me. 214, 353; \*57 Me. 147, 338; \*59 Me. 209; 63 Me. 11; 69 Me. 121; 70 Me. 496; \*84 Me. 432; 112 Me. 235.

**Sec. 103. Making writ begins suit. R. S. c. 86, § 98.** A suit is commenced when the writ is actually made, with intention of service.

38 Me. 585; 69 Me. 338; 77 Me. 140; 79 Me. 245; 85 Me. 123; 95 Me. 387; \*109 Me. 443.

**Sec. 104. Limitation extended in cases of fraud. R. S. c. 86, § 99.** 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.

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; 67 Me. 473; 73 Me. 375; 76 Me. 74; \*80 Me. 56; \*121 Me. 300.

**Sec. 105. Renewal of promise must be in writing. R. S. c. 86, § 100.** In actions of debt or on the case founded on any contract, no acknowledgment or promise takes the case out of the operation hereof, unless the acknowledgment or promise is express, in writing, and signed by the party chargeable thereby. No such acknowledgment or promise made by one joint contractor affects the liability of the others.

\*15 Me. 362, 445; 17 Me. 146, 186; 21 Me. 434; 22 Me. 103; 23 Me. 457; 24 Me. 535; 29 Me. 49; 35 Me. 367; \*38 Me. 351; 60 Me. 440; \*71 Me. 314; 73 Me. 120; \*74 Me. 519; 77 Me. 396; 81 Me. 325; \*84 Me. 381; \*89 Me. 494; 92 Me. 97; \*97 Me. 405; \*98 Me. 136; 108 Me. 20, 382; \*109 Me. 496; \*119 Me. 83.

**Sec. 106. Judgment if action is barred against some and not others. R. S. c. 86, § 101.** 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 is entitled to recover against any other by virtue of a new acknowledgment, promise or otherwise, judgment shall be rendered for the plaintiff against such other, and for the other defendants against the plaintiff.

7 Me. 27; 15 Me. 392.

**Sec. 107. When non-joinder of defendants does not abate writ. R. S. c. 86, § 102.** In an action on contract, if the defendant pleads in abatement that another 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. 108. Effect of partial payment and of indorsement thereof. R. S. c. 86, § 103.** Nothing herein contained alters, takes away or lessens the effect of payment of any principal or interest made by any person; but no indorse-

ment 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, is 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, affects the liability of another.

20 Me. 347; 21 Me. 178, 435; \*22 Me. 499; 23 Me. 163; 28 Me. 423; 30 Me. \*255, 427; 32 Me. 169, 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; 78 Me. 494; 80 Me. 314; \*82 Me. 280; 83 Me. 129; 84 Me. 381; \*97 Me. 287, 405, 406; 108 Me. 20.

**Sec. 109. Presumption of payment after twenty years. R. S. c. 86, § 104.** 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 end of twenty years after any duty or obligations accrued by virtue of such judgment or decree.

\*28 Me. 83; \*55 Me. 134; \*66 Me. 444; 115 Me. 295.

**Sec. 110. Application of the statutes of limitation to set-offs. R. S. c. 86, § 105.** All the provisions hereof respecting limitations, apply to any debt or contract filed in set-off by 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 nonsuit 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.

**Sec. 111. If defendant is out of the state, when action may be commenced; insolvency. R. S. c. 86, § 106.** If a 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 a person is absent from and resides out of the state, after a cause of action has accrued against him, the time of his absence from the state, shall not be taken as a part of the time limited for the commencement of the action; or, if a person is adjudged an insolvent debtor after a cause of action has accrued against him, and such cause of action is one provable in insolvency, the time of the pendency of his insolvency proceedings shall not be taken as a part of the time limited for the commencement of the action. But no action shall be brought by any person whose cause of action has been barred by the laws of any state, territory or country while all the parties have resided therein.

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; 65 Me. 513; \*75 Me. 407; \*80 Me. 508; \*83 Me. 90; \*84 Me. 254; 113 Me. 326.

**Sec. 112. Foreign corporations entitled to benefit of law relating to limitation of actions. R. S. c. 86, § 107.** Any foreign corporation doing business continuously in this state, and having constantly an officer or agent resident herein, on whom service of any process may be made, shall be entitled to the benefit of all provisions of law relating to limitation of actions the same as domestic corporations.

**Sec. 113. When actions to recover damages for land taken for public purposes, to be commenced. R. S. c. 86, § 108.** No action or proceeding shall be brought or maintained to recover damages caused by the taking of any land, rights or other property, to be used for a public purpose, when such taking has been authorized by the legislature, unless the same is commenced within three years after the cause first accrued for which the same, or like proceedings might have been commenced. Nor shall any compensation be awarded for

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damages sustained for more than three years before the commencement of proceedings to recover for the same.

See c. 69, §§ 13, 19; \*109 Me. 67.

**Sec. 114. Actions barred when no administration for six years after death of decedent.** 1917, c. 133, § 13. Where no administration is had upon the estate of a deceased person within six years from the date of death of said decedent, and no petition for administration is pending, all actions upon any claim against said decedent shall be barred.

\*118 Me. 431.

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## CHAPTER 95.

### Proceedings in Civil Actions in Court.

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|----------|---------|---|
| Sections | 1- 63   | General Provisions as to Procedure.                 |
| Sections | 64- 69  | Defense of Suits by Subsequent Attaching Creditors. |
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| Section  | 92      | Referees.   |
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| Sections | 167-172 | Stenographers.                                      |
| Section  | 173     | Crier.  |

### General Provisions as to Procedure.

**Sec. 1. Entry of actions; further service; orders of notice.** R. S. c. 87, § 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. Any justice of the supreme judicial or of either superior court may order notice concerning any civil proceeding, in or out of term time, directing how it shall be given; and such order, when made in vacation, shall be indorsed on the process. Any order of notice that the court may grant may be ordered by a justice in vacation.

See c. 94, § 23; c. 102, § 2; \*56 Me. 425; 79 Me. 42; 93 Me. 251; 100 Me. 547; \*104 Me. 81; \*107 Me. 276; 111 Me. 69.

**Sec. 2. Appointment of auditor, surveyor, and referee, in vacation.** R. S. c. 87, § 2. In all civil cases pending in the supreme judicial court, or in *either* [any] superior court, any justice of either court in vacation may appoint and commission an auditor or surveyor, and upon the written agreement and request of the parties or their attorneys of record such justice may, in vacation, appoint a referee and make any other order or decree, interlocutory or final, in any such case, and the clerk of said court in each county shall enter upon the docket either in term time or vacation, all such appointments and orders in any pending case.

**Sec. 3. When default may be recorded; when taken off.** R. S. c. 87, § 3. When 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 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.

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. 4. Continuance if defendant is out of state. R. S. c. 87, § 4.** 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 had 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.

63 Me. 360; 72 Me. 337; \*81 Me. 475.

**Sec. 5. Execution to be stayed one year, unless bond is given; continuance of attachment on original writ. R. S. c. 87, § 5.** 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, if 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 continues for one year and thirty days after said judgment is so rendered, when no bond is given; and when a bond is given, it continues for thirty days after said bond is filed with the clerk of said court.

See c. 89, § 53; 5 Me. 386; 57 Me. 599; 59 Me. 567; 63 Me. 360; 66 Me. 166; 72 Me. 337.

**Sec. 6. Bond to be left with clerk; petition for review. R. S. c. 87, § 6.** 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.

72 Me. 338.

**Sec. 7. Executions issued upon judgment on default, without deposit of bond, are valid after one year. R. S. c. 87, § 7.** Whenever, through accident, inadvertence, or mistake, an execution has been 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 five and six, all proceedings upon or by virtue of such execution or judgment, shall, after 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 shall be valid as aforesaid, after final judgment for the defendant in review.

72 Me. 338.

**Sec. 8. Court may allow entry of appeals at another term. R. S. c. 87, § 8.** When an appeal is taken from a judgment of a trial justice or municipal or police court, and the action by mistake or accident is not entered, and the judgment has not been affirmed, the court may, on petition of either party, allow the

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action or complaint to be entered at another term of the court, upon reasonable terms, with the same effect as if it had been entered at the proper term.

45 Me. 306; 46 Me. 499; 111 Me. 342.

**Sec. 9. Petition to be within one year; attachment or bail not revived. R. S. c. 87, § 9.** 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. 10. On appeals, original papers sent up, except writ and pleadings. R. S. c. 87, § 10.** In cases carried from a trial justice, municipal, or police court, to a higher court, all 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.

39 Me. 136.

**Sec. 11. Proceedings not abated, etc., for want of form. R. S. c. 87, § 11.** 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.

3 Me. 30; 6 Me. 325; 10 Me. 285; 13 Me. 309; 15 Me. 402, 466; 16 Me. 265, 268, 283; 18 Me. 250; 22 Me. 311; 23 Me. 507; 25 Me. 333; 26 Me. 212, 288; 29 Me. 167; 30 Me. 31, 170; 39 Me. 231; 45 Me. 284; 46 Me. 331; 47 Me. 158, 185; 48 Me. 35, 253; 51 Me. 607; 53 Me. 174; 54 Me. 202, 496; \*57 Me. 156; 58 Me. 41; 63 Me. 153; 74 Me. 113, \*491; 75 Me. 47, 600; 77 Me. 343; 78 Me. 113; 87 Me. 483; \*92 Me. 100; 93 Me. 187; 111 Me. 92; \*112 Me. 499; \*116 Me. 416.

Amendment of declaration; 2 Me. 49; 3 Me. 249; 4 Me. 480; 11 Me. 500; 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. 358; 20 Me. 148; 23 Me. 77; 24 Me. 17, 247; 25 Me. 252, 311; 26 Me. 28, \*212; 54 Me. 496; 65 Me. 320; 66 Me. 94, 388; 67 Me. 490, \*553; 69 Me. 30, 126; 71 Me. 28; 74 Me. 142; \*95 Me. 131, 203, 258; 99 Me. 409; 103 Me. 265; 108 Me. 356; 109 Me. 331; 110 Me. 535; 111 Me. 189.

Ad damnum; 6 Me. 325; 15 Me. 432; \*57 Me. 155; 58 Me. 331; \*90 Me. 310.

Seal of writ; 3 Me. 30; 12 Me. 196; 19 Me. 208; 30 Me. 170.

Date of writ; 14 Me. 396; 71 Me. 266.

Of changing a writ of original summons, to a writ of attachment; 15 Me. 401, 466; 51 Me. 607; 71 Me. 28.

Teste of writ; 15 Me. 433.

Return day of writ; \*16 Me. 267; 17 Me. 417; 35 Me. 123; 54 Me. 202; 63 Me. 409.

**Sec. 12. Writs may be amended. R. S. c. 87, § 12.** 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.

67 Me. 500; 69 Me. 85; 77 Me. 578; 103 Me. \*137; 112 Me. \*496; 114 Me. 125; 116 Me. 416.

**Sec. 13. Writ or process lost after service, new one may be filed. R. S. c. 87, § 13.** 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, with the same effect as the one lost or destroyed.

15 Me. 427.

**Sec. 14. Names of defendants may be struck out on terms or new ones inserted, and service made. R. S. c. 87, § 14.** When there are two or more defendants, the writ may be amended by striking out one or more of them, on payment of costs to him to that time. A writ founded on contract, express or implied, may be amended by inserting additional defendants; and the court may order service to be made on them, and their property to be attached as in case

of original writs; and on return of due service, they become parties to the suit, but are not liable to costs before service.

2 Me. 120; 11 Me. 127; 13 Me. 389; 20 Me. 420; 25 Me. 333; 34 Me. 34; 35 Me. 535; 45 Me. \*444; 58 Me. 41; 59 Me. 344; \*60 Me. 208, 352; 75 Me. 86; 82 Me. 227; \*87 Me. 435; 112 Me. 498.

**Sec. 15. In actions of law, court may require parties to plead in equity. R. S. c. 87, § 15.** When, in an action at law in the supreme judicial court, it appears that the rights of the parties can be better determined and enforced by a judgment and decree in equity, the court may, upon reasonable terms, strike out the pleadings at law, and require the parties to plead in equity in the same cause and may hear and determine the cause in equity.

86 Me. 60; 113 Me. 262; 116 Me. 389; 124 Me. 185.

**Sec. 16. In equity proceedings, court may require parties to plead at law. R. S. c. 87, § 16.** When in any equity proceeding in the supreme judicial court, it appears that the remedy at law is plain, adequate, and complete and that the rights of the parties can be fully determined and enforced by a judgment and execution at law, the court may upon reasonable terms strike out the pleadings in equity, and require the parties to plead at law in the same cause and may hear and determine the cause at law.

87 Me. 452; 95 Me. \*256.

**Sec. 17. In actions at law pending in law court, court may require parties to plead in equity. R. S. c. 87, § 17.** When in an action at law commenced in either of the superior courts and pending in the supreme judicial court, sitting as a law court, it appears that the rights of the parties can be better determined and enforced by a judgment and decree in equity, the supreme judicial court may, upon reasonable terms, strike out the pleadings at law, and require the parties to plead in equity in the same cause; and thereupon the action shall be transferred to the docket of the supreme judicial court for the same county, and be heard and determined in equity in that court.

102 Me. 32; 106 Me. \*190; 116 Me. 389; 117 Me. 211.

**Sec. 18. Defendant in action at law may plead equitable defense; plaintiff may reply with equitable relief. R. S. c. 87, § 18.** Any defendant may plead in defense to any action at law in the supreme judicial court, any matter which would be ground for relief in equity, and shall receive such relief as he would be entitled to receive in equity, against the claims of the plaintiff; such matter of defense shall be pleaded in the form of a brief statement under the general issue. And, by counter brief statement, any plaintiff may plead any matter which would be ground for relief in equity against any defense set up by any defendant in an action at law in said court, and shall receive such relief as he would be entitled to receive in equity against such claim of the defendant.

158 Mass. 313; 178 Mass. 128; 184 Mass. 571; \*88 Me. 611, 615; 94 Me. 306; 100 Me. 564; 101 Me. \*277, 589; \*102 Me. 31; 104 Me. 207; 113 Me. 74, 262; 116 Me. 140; \*117 Me. 211; 120 Me. 494; 126 Me. 193.

**Sec. 19. In superior courts, equitable defenses and replies may be pleaded. R. S. c. 87, § 19.** In actions at law in the superior courts, equitable defenses and equitable replies to matters of defense, may be pleaded by filing a brief statement thereof supported by affidavit that the matters so pleaded are true in fact. Thereupon the action shall be transferred to the docket of the supreme judicial court for the same county, and be heard and determined in that court.

100 Me. 564; \*101 Me. 277; \*106 Me. 190; 126 Me. 192.

**Sec. 20. Court may make necessary decrees to preserve equitable rights. R. S. c. 87, § 20.** Whenever in such action any matter which would be ground for relief in equity is so pleaded by any party, the supreme judicial court may make such decrees and restraining orders, as may be necessary to protect and preserve

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such equitable rights, and may issue injunctions, according to the usual practice of courts of equity.

100 Me. 564; \*101 Me. 277; 113 Me. 262.

**Sec. 21. Attachments not affected; order for attachment of property.** R. S. c. 87, § 21. No attachments shall be affected by proceedings under the six preceding sections. Either party to a cause may, upon petition, obtain from the court an order for the attachment of property of a party to the suit to secure any judgment which may be obtained, to be made on such precept as the court may order and to be recorded as in case of other attachments.

100 Me. 564; \*101 Me. 277.

**Sec. 22. Rules and principles of equity to prevail in all proceedings.** R. S. c. 87, § 22. In all proceedings in the supreme judicial court, under the seven preceding sections, when there appears to be any conflict or variance between the principles of law and those of equity, as to the same subject matter, the rules and principles of equity shall prevail. At the hearing of all equity causes, oral testimony shall be received as in trials at common law.

87 Me. 275; 94 Me. 307; 98 Me. 442; 100 Me. 564; \*101 Me. 277; 104 Me. 53; 113 Me. 262.

**Sec. 23. Either party may file any document material to issue, and give notice to other party; no denial, genuineness admitted.** R. S. c. 87, § 23. A party to any action in the supreme judicial court or superior courts, may file in the clerk's office of the court in the county where such action is pending, any document which he may deem material to the issue, and give to the adverse party notice of such filing and that he desires the execution of said document to be admitted. If within seven days after such notice, unless the time is enlarged by the court or a justice thereof, the adverse party shall not file in said clerk's office a denial of the genuineness of the execution of said document, he shall be held to have admitted the same.

104 Me. 81.

**Sec. 24. Court may order production of books, papers, or written instruments.** R. S. c. 87, § 24. Where books, papers, or written instruments material to the issue in any action at law pending in the supreme judicial court or in the superior courts, are in the possession of the opposite party, and access thereto refused, the court upon motion, notice, and hearing, may require their production for inspection. In case of unreasonable delay or refusal in complying with such requirement the court may order a nonsuit or default as the case may require.

102 Me. 151.

**Sec. 25. Change of venue.** R. S. c. 87, § 25. Any judge of the supreme judicial court, while holding a nisi prius term, on motion of either party, shall, for cause shown, order the transfer of any civil action, or criminal case, pending in said court, to the docket thereof in any other county for trial, preserving all attachments.

75 Me. 368; 80 Me. 22; 107 Me. 276.

**Sec. 26. Minors may be excluded from court-room.** R. S. c. 87, § 26. Any court or trial justice may exclude minors as spectators, from the court-room, during the trial of any cause, civil or criminal, when their presence is not necessary as witnesses or parties.

**Sec. 27. Trespass and case.** R. S. c. 87, § 27. The distinction between actions of trespass and trespass on the case is abolished. A declaration in either form is good.

\*70 Me. 220; \*77 Me. 342; 80 Me. 33.

**Sec. 28. Treasurers may sue in their own name.** R. S. c. 87, § 28. 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.

74 Me. 219.

**Sec. 29. Actions by unincorporated societies.** R. S. c. 87, § 29. Any organized unincorporated society or association may sue in the name of its trustees for the time being, and may maintain an action at law, though the defendant or defendants or some of them are members of the same society or association.

92 Me. 212; 99 Me. 433; 123 Me. 227.

**Sec. 30. Penalties.** R. S. c. 87, § 30. Penalties may be recovered by action of debt, when no other mode of recovery is provided.

56 Me. 78; 84 Me. 433; 87 Me. 476.

**Sec. 31. When assignee of a grantee may sue on real covenants of first grantor.** R. S. c. 87, § 31. 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 encumbrance contained in absolute deeds of the premises between the parties, and recover such damages as the first grantee might have recovered on 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 cannot, in such case, release the covenants of the first grantor to the prejudice of his grantee.

50 Me. 453; \*51 Me. 567; 68 Me. 193; 72 Me. 376; 102 Me. 338.

**Sec. 32. Grantee may defend suit.** R. S. c. 87, § 32. Grantees may appear and defend in suits against their grantors in which the real estate conveyed is attached.

See §§ 72 to 77; \*76 Me. 418; 106 Me. 114.

**Sec. 33. Assignment of breaches; pleadings.** R. S. c. 87, § 33. 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 defense, performance generally, both in affirmative and negative covenants, may be alleged.

58 Me. 130; 77 Me. 111; 80 Me. 362.

**Sec. 34. In actions of covenant, if encumbrance is a right of dower, it may be assigned and be the measure of damages.** R. S. c. 87, § 34. In an action for breach of covenant against encumbrances contained in a deed of real estate, when the encumbrance 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 been demanded and not assigned, the court, on application of the plaintiff, 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, the court shall appoint three commissioners to assign the same, who shall proceed in the manner provided for commissioners appointed under chapter one hundred one to make partition; and when their report is made and accepted by the court, it is a legal assignment of dower, and the value thereof is the measure of damages in said action.

See c. 101, §§ 14, 15, 21.

**Sec. 35. General issue to be pleaded with brief statement.** R. S. c. 87, § 35. The general issue may be pleaded in all cases, and a brief statement of special matter of defense, 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.

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; \*65 Me. 496; 71 Me. 401; 78 Me. 295; 87 Me. 26; 108 Me. 140; 112 Me. 175; 125 Me. 113.

**Sec. 36. Demurrers, when filed, to be joined, and not be withdrawn; amendments may be made; further proceedings.** R. S. c. 87, § 36. 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 court, and of the opposite party; but the justice shall rule on it, and his ruling shall be final unless the party aggrieved excepts; and before exceptions are fined and allowed, he has 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* [law court] 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; but by leave of court the time therefor may be enlarged, or further time may be granted by the court within which to pay said costs and to file such amendment or new pleadings.

29 Me. 110; 51 Me. \*390, 416; 52 Me. 22; 54 Me. \*574; 58 Me. 129; 60 Me. \*500; 63 Me. 152; 65 Me. 94; 66 Me. 286, \*459; 67 Me. 27, 38, \*490, 553; 112 Me. 176; 113 Me. 526; \*117 Me. 423; 119 Me. 530; 126 Me. 16.

**Sec. 37. Hearings and judgments in vacation. R. S. c. 87, § 37.** Any justice of the supreme judicial court or superior courts on application of either party and on notice, may in vacation hear and determine a demurrer or any interlocutory motion in any cause pending in these courts respectively, and may make any order therein which the court could make if in session; and by agreement of parties, he may, at any time or place, try and determine issues of fact and of law submitted to him and render any judgment therein which the court could render if in session. Any such justice may in vacation render judgment in any case heard by him in term time. Parties shall have the right of exception to such orders and judgments, and to other rulings on questions of law, as if judgment had been rendered in term time. *Bills of exceptions in such cases shall be filed within such time as the justice orders.* [Bills of exceptions in such cases shall be filed within thirty days from the rendition of judgment, unless the time is further extended by any justice of such court.] When a judgment for the plaintiff is rendered in vacation, all pending attachments of property shall continue in force for thirty days after the order of final judgment is entered upon the docket.

\*114 Me. 511; \*116 Me. 125; 116 Me. 316; \*120 Me. 281; 121 Me. 512; 124 Me. 288; 125 Me. 138; \*125 Me. 430.

**Sec. 38. Actions on insurance policies. R. S. c. 87, § 38.** In all actions at law on insurance policies a declaration in indebitatus assumpsit on an account annexed, with an allegation that the plaintiff has complied with all conditions of the policy of insurance, mentioned in the account annexed, shall be deemed sufficient. The account annexed shall state the number of the policy and the amount claimed as due, both as principal sum, and interest, if any. The fact that the amount claimed in the account annexed varies, from the amount found to be due the plaintiff shall not defeat the action unless there be a fraudulent claim of an excessive amount. If the defendant relies upon the breach of any condition of the policy by the plaintiff, as a defense, it shall set the same up by brief statement or special plea, at its election; and all conditions the breach of which is known to the defendant and not so specially pleaded shall be deemed to have been complied with by the plaintiff. The plaintiff by counter brief state-

ment or replication may set up any matter waiving or legally excusing his non-compliance with conditions as alleged by the defendant. Nothing herein shall be construed as changing in any way the common law burden of proof as to such matters as are so put in issue under the pleadings.

118 Me. 191; 121 Me. 248; \*122 Me. 361; \*124 Me. 232.

**Sec. 39. Tender may be made, or money brought into court, in case of trespass on land. R. S. c. 87, § 39.** 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 time; and if on trial he establishes the truth of his allegations, he recovers costs.

30 Me. 467; 71 Me. 287; 76 Me. 357.

**Sec. 40. Offer to be defaulted, and its effect. R. S. c. 87, § 40.** In any personal action the defendant may in writing entered of record with its date, offer to be defaulted for a specified sum. If accepted, interest may be added from that date to date of judgment. If not accepted 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 as to the costs; but no costs shall be allowed the defendant, if the offer is accepted within the time fixed by the court, or if accepted when no time has been so fixed. If the offer is not so accepted and 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.

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; 71 Me. 287; 72 Me. 442.

**Sec. 41. Offer of judgment against plaintiff; proceedings and effect. R. S. c. 87, § 41.** 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.

**Sec. 42. Tender before entry; town may tender, or offer to be defaulted. R. S. c. 87, § 42.** 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 for injury to the person or damage to property from defect in ways, a town may make a tender before commencement or entry of the action, or offer to be defaulted for a specified sum, with the same effect as in actions on contract.

9 Me. 112; 39 Me. 435.

**Sec. 43. Partial failure of consideration of note. R. S. c. 87, § 43.** In any proceeding at law or in equity in which the amount due on a promissory note given for the price of land conveyed, is in question, and a total failure of consideration would be a defense, a partial failure of consideration may be shown in reduction of damages.

24 Me. 120; 34 Me. 146; 43 Me. 490; 75 Me. 293; 88 Me. 460; 98 Me. 321; \*99 Me. 353.

**Sec. 44. Property of deceased debtor on joint contract liable. R. S. c. 87, § 44.** The goods and estate of a deceased debtor in a joint contract, express or

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implied, or in a judgment on contract, are liable in the same manner, and the creditor has the same remedy, as in case of a joint and several contract.

\*60 Me. 353.

**Sec. 45. Truth justifies in libel; save in case of malice. R. S. c. 87, § 45.** In an action for writing and publishing a libel, evidence shall be received to establish the truth of the matter charged as libelous. If its truth is established, it is a justification, unless the publication is found to have originated in corrupt or malicious motives.

<sup>30</sup> Me. 467; \*95 Me. 348; 96 Me. 24; 118 Me. 360.

**Sec. 46. Mitigation of damages in action for libel. R. S. c. 87, § 46.** The defendant in an action for libel, may prove under the general issue, in mitigation of damages, that the charge was made by mistake or through error or by inadvertence, and that he has in writing, within a reasonable time after the publication of the charge, retracted the charge and denied its truth, as publicly and as fully as he made the charge; and he may also prove in mitigation of damages that the plaintiff has already recovered or has brought action for damages for, or has received or has agreed to receive compensation for, substantially the same libel as that for which said action was brought.

**Sec. 47. Unproved allegations; effect. R. S. c. 87, § 47.** In actions for libel or slander, an unproved allegation in the pleadings that the matter charged is true, shall not be deemed proof of malice unless the jury on the whole case find that such allegation or the defense thereunder, is made with malicious intent.

**Sec. 48. Burden of proof on defendant in certain cases of negligence; contributory negligence to be pleaded. R. S. c. 87, § 48.** In actions to recover damages for negligently causing the death of a person, or for injury to a person who is deceased at the time of trial of such action, the person for whose death or injury the action is brought shall be presumed to have been in the exercise of due care at the time of all acts in any way related to his death or injury, and if contributory negligence be relied upon as a defense, it shall be pleaded and proved by the defendant.

\*112 Me. 96; \*115 Me. 361; 116 Me. 191, 447; 117 Me. 262; 120 Me. 371; 123 Me. 305; 124 Me. 158; 125 Me. 161.

**Sec. 49. No reversal for wrong joinder. R. S. c. 87, § 49.** 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 until 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.

55 Me. 417.

**Sec. 50. No motions in arrest. R. S. c. 87, § 50.** No motion in arrest of judgment in a civil action can be entertained.

\*44 Me. 42; 53 Me. 109; \*54 Me. 357; 69 Me. 456; 70 Me. 253.

**Sec. 51. On certain bonds and recognizances, jury to assess damages. R. S. c. 87, § 51.** 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 the 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.

17 Me. 452; 21 Me. \*209; 22 Me. 486, 487; 24 Me. 168; 39 Me. 414; 49 Me. 325; 52 Me. \*275; 77 Me. 111; 80 Me. 362; \*83 Me. 32; \*123 Me. 119.

**Sec. 52. Sureties on official bond may defend. R. S. c. 87, § 52.** Sureties upon official bonds may appear and defend in suits against their principal, whenever such sureties may ultimately be liable upon such bonds.

**Sec. 53. Interest. R. S. c. 87, § 53.** Interest shall be allowed on the amount found due for damages and costs in actions on judgments of a court of record.

19 Me. 460; 22 Me. 120; 60 Me. \*256, 257; 63 Me. \*62.

**Sec. 54. Judge may sit by consent, although his town or county is a party.** **R. S. c. 87, § 54.** A justice or judge may sit in the trial or 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.

See c. 90, § 1; 105 Me. \*418; 110 Me. \*199.

**Sec. 55. Death of party suggested, executor or administrator may appear, or be summoned; heirs also, in equity.** **R. S. c. 87, § 55.** When a party to a 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 chapter one hundred. 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.

See c. 90, § 50; c. 94, § 58; c. 100, § 7; 6 Me. 429; 44 Me. 76; \*59 Me. 343; 66 Me. 446; 76 Me. 99; 77 Me. 141.

**Sec. 56. Guardian ad litem may be appointed for insane party.** **R. S. c. 87, § 56.** When a party becomes insane, the suit 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 is entitled to a reasonable compensation, and is not liable for costs.

\*68 Me. 432.

**Sec. 57. Motions to set aside verdicts on report to full court.** **R. S. c. 87, § 57. 1925, c. 170.** When a motion is made in the supreme judicial [or superior] court to have a verdict set aside as against law or evidence, a report of the whole evidence shall be signed by the presiding justice or authenticated by the certificate of the official court stenographer. When the motion is founded on any alleged cause not shown by the evidence presented at the trial, the testimony in support of the allegations of the motion and in rebuttal or impeachment may be taken out and a report of the same, together with that presented at the trial, shall be signed by the justice or authenticated by the certificate of the official court stenographer, and the case shall be marked "Law." When the law court is of the opinion that any such motion is frivolous or intended for delay it may award double or treble costs.

See § 169; c. 90, § 57; 15 Me. 73; 16 Me. 204; 19 Me. 30, 405; 20 Me. 199, 352; 40 Me. 245; 43 Me. 468, 538; 45 Me. 284; 48 Me. \*242, 439; 53 Me. 172; 54 Me. 260; 56 Me. 233, 250; 58 Me. 351; 70 Me. 334; 100 Me. \*273; 104 Me. \*80; 107 Me. \*276; 112 Me. 290; 113 Me. \*281; \*116 Me. 12; 118 Me. 123; 119 Me. 414; \*124 Me. 244.

**Sec. 58. Verdict may be set aside by presiding justice.** **R. S. c. 87, § 58. 1923, c. 70.** Any justice of the supreme judicial court or of a superior court may set aside a verdict and grant a new trial in a civil case tried before him, when in his opinion the evidence demands it. But such verdict shall not be set aside by a single justice when two verdicts have been rendered against the applicant.

A motion to so set aside a verdict must be filed at the same term at which such verdict is rendered and shall be heard by the presiding justice either in term time or in vacation at his discretion; if such motion is heard in term time the presiding justice may render his decision in vacation.

59 Me. \*580; 64 Me. 131; 73 Me. \*225; 79 Me. 217; 83 Me. 452; \*115 Me. 205.

**Sec. 59. In trespass, jury to find it was wilful.** **R. S. c. 87, § 59.** In actions of trespass on property, the court and jury, or magistrate, shall determine whether

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the trespass was committed wilfully; if so found, a record thereof shall be made, and a memorandum thereof minuted on the margin of the execution.

See c. 123, § 80.

**Sec. 60. Damages on protests of bills.** R. S. c. 87, § 60. Damages on protest of bills of exchange of a hundred dollars or more, payable by the acceptor, drawer, or indorser of 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,

**Sec. 61. Legal day's work.** R. S. c. 87, § 61. In all contracts for labor, ten hours of actual labor are 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.

62 Me. 527; 96 Me. 221.

**Sec. 62. Action by a public officer is not abated by his ceasing to act.** R. S. c. 87, § 62. No action, commenced in his official capacity by a public officer, is abated by his ceasing to hold the office; but it may be prosecuted by his successors to the same uses; and the necessary amendments may be made and notices given.

**Sec. 63. No action on demands discharged by a partial payment.** R. S. c. 87, § 63. No action shall be maintained on a demand settled by a creditor, or his attorney entrusted to collect it, in full discharge thereof, by the receipt of money or other valuable consideration, however small.

178 U. S. 366; 46 Me. 434; 47 Me. \*546; 48 Me. 434; 56 Me. 582; 57 Me. \*492; 59 Me. 358; 61 Me. 563; 62 Me. 12; 63 Me. 443; 77 Me. 530; 86 Me. 184; 88 Me. 222; 92 Me. 432; 95 Me. 397; 97 Me. 588; 102 Me. \*505; 103 Me. 106; 106 Me. \*405; 107 Me. 165; \*119 Me. 383; 124 Me. 150.

#### Defense of Suits by Subsequent Attaching Creditors.

**Sec. 64. Subsequent attaching creditor may petition to defend prior suits.** R. S. c. 87, § 64. 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.

See § 32; 64 Me. 319; 74 Me. \*580; 79 Me. 535.

**Sec. 65. If leave is granted, he gives bond and may defend.** R. S. c. 87, § 65. If leave is granted, he shall give bond, or enter into recognizance with sufficient surety, in such sum as the court orders, to pay the plaintiff in the prior suit all damages and costs occasioned by such defense; and an entry of record shall be made that he is admitted to defend such suit.

**Sec. 66. Judgment, how to be entered when defense fails.** R. S. c. 87, § 66. When the petitioner enters into recognizance, and fails in his defense, execution on his recognizance shall be issued against him for the damages found by the court, and costs; and judgment shall be rendered between the original parties as if no such defense had been made.

**Sec. 67. How to be entered when defense prevails.** R. S. c. 87, § 67. 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.

12 Me. 506.

**Sec. 68. When judgment in such prior suit is rendered at the first term, creditor may have review; proceedings.** R. S. c. 87, § 68. When judgment in such prior suit is rendered, at the first term of the court, the plaintiff in such

subsequent suit, within one year thereafter, first giving bond to each party as provided in section sixty-five, may petition as provided in section sixty-four for leave to sue out a writ of review of such action; and such leave may or may not be granted. If it is 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; which operates as a payment of his debt to the amount of damages recovered.

82 Me. 97.

**Sec. 69. Prior attachment to delay or defraud creditors, is void. R. S. c. 87, § 69.** 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 is void.

64 Me. \*320.

### Suits By and Against Bankrupts and Insolvents.

**Sec. 70. Actions by bankrupts or insolvents. R. S. c. 87, § 70.** A person who has been declared a bankrupt or an insolvent, 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 trustee or assignee is filed in the office of the clerk of the court in which the action is pending.

**Sec. 71. Attachments made four months before bankruptcy or insolvency. R. S. c. 87, § 71.** Actions in which an actual attachment of property was made four months prior to the filing of a petition in bankruptcy or insolvency by any defendant therein, shall be disposed of under the ordinary rules of proceedings in court.

56 Me. 561; 67 Me. 19.

**Sec. 72. Other actions against bankrupts, or insolvents, procedure. R. S. c. 87, § 72.** All other actions for recovery of a debt provable in bankruptcy or insolvency, when it appears that any defendant therein has filed his petition in bankruptcy or insolvency, or has been adjudged a bankrupt or an insolvent, on petition of his creditors before or after the commencement of the suit, shall be continued until the bankrupt or insolvent 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 diligence in the prosecution of his bankrupt or insolvent proceedings, after one term's notice to him, in writing, from the plaintiff, the court may refuse further delay.

67 Me. 19; 85 Me. 198; 109 Me. 563.

**Sec. 73. Discharge in bankruptcy, how pleaded. R. S. c. 87, § 73.** A discharge in bankruptcy may be pleaded by a simple averment that on the day of its date such discharge was granted to the bankrupt, and a certificate of such discharge under seal of the court granting the same, shall be conclusive evidence in favor of such bankrupt of the fact and regularity of such discharge.

### Set-off.

**Sec. 74. Defendant must file set-off during the first term, and clerk must enter the same on the docket. R. S. c. 87, § 74.** Demands between plaintiffs and defendants may be set off against each other as follows:

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

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by leave of 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.

6 Me. 240; 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; 78 Me. 465.

What claims may be set off; 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. 176; 57 Me. 166; 69 Me. 381.

How presented and allowed; 35 Me. 180; 36 Me. 224; 41 Me. 264.

Set-off of judgment and executions; 29 Me. 15; 34 Me. 123; \*124 Me. 18.

**Sec. 75. What demands may be set off. R. S. c. 87, § 75.** 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.

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; 78 Me. 469; 94 Me. \*211; \*123 Me. 276; 124 Me. 18.

**Sec. 76. Demand must be due from all plaintiffs to all defendants. R. S. c. 87, § 76.** 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 were no dormant partner.

15 Me. 269; 85 Me. 445; 90 Me. 121; 97 Me. \*26.

**Sec. 77. Demands assigned, may be set off by agreement. R. S. c. 87, § 77.** When a plaintiff had received notice that a demand against him had been assigned to the defendant, and had, before his suit was commenced, agreed to pay it to him, or to receive it as payment towards his demand, it may be set off.

19 Me. 72; 26 Me. 118; 56 Me. 168; 85 Me. 167.

**Sec. 78. Demands acquired after notice. R. S. c. 87, § 78.** 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.

3 Me. 465; 17 Me. 271.

**Sec. 79. Suits by one for another. R. S. c. 87, § 79.** When an action is brought by one person for the use of another, a demand against the latter may be set off.

57 Me. 166.

**Sec. 80. Equitable dues, set off. R. S. c. 87, § 80.** When the demand to be set off is a bond or contract with a penalty, only the sum equitably due can be set off.

57 Me. 166.

**Sec. 81. Demands due from a deceased person, how to be set off. R. S. c. 87, § 81.** Demands against a person belonging to a defendant at the time of the death of such person, may be set off against claims prosecuted by his executor or administrator; and if a balance is found due to the 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, like other judgments.

6 Me. 242; 34 Me. 147; 38 Me. 118; 49 Me. 572.

**Sec. 82. Set-off in actions against persons in a representative capacity. R. S. c. 87, § 82.** 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.

Sec. c. 79, § 16; 1 Me. 183; 3 Me. 371; 24 Me. 38; 33 Me. \*230; 94 Me. 211; 98 Me. 321; 101 Me. 327.

**Sec. 83. Set-off in actions brought by executors or administrators of insolvent estates, and proceedings therein. R. S. c. 87, § 83.** 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 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 finds or the court orders, and it shall be treated and disposed of as other judgments against insolvent estates.

See c. 79, § 19.

**Sec. 84. Pleadings and issue in cases in set-off.** R. S. c. 87, § 84. 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 is entitled to every defense against such set-off, that he might have, by any form of pleading, to an action against him on the same demand.

37 Me. 75; 54 Me. 498; 56 Me. 141; 67 Me. 571.

**Sec. 85. No discontinuance, but by consent; limitations.** R. S. c. 87, § 85. When a demand is filed in set-off, the action cannot be discontinued without consent of the defendant. The statute of limitations applies to demands filed in set-off, as if actions had been commenced on them at the date of the plaintiff's action.

See c. 94, § 110; 68 Me. 472.

**Sec. 86. Costs in set-off.** R. S. c. 87, § 86. When no balance is found due to either party, no costs are recoverable. If a balance is found due to the plaintiff, he shall have judgment therefor with costs, and if a balance is found due from the plaintiff, judgment shall be rendered therefor in favor of the defendant, with costs; but no such judgment shall be rendered against the plaintiff, when the demand sued, had been assigned before the commencement of the action; nor for any balance due from other person than the plaintiff.

30 Me. 28; 68 Me. 132; 73 Me. 169.

**Sec. 87. Similar proceedings before inferior tribunals.** R. S. c. 87, § 87. 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 an amount in excess of the civil jurisdiction of such court, exclusive of costs.

### Auditors.

**Sec. 88. Auditors may be appointed in certain cases; proceedings before auditor; payment of fees.** R. S. c. 87, § 88. 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 is 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. The fees and necessary expenses of auditors so appointed shall be paid by the county on presentation of the proper certificate of the clerk of courts for that county, and the amount thereof shall be fixed by the court upon the coming in of the report.

Appointment in vacation, § 2; 40 Me. 340; \*57 Me. 61; 64 Me. 154; \*65 Me. 328; 66 Me. 26; 69 Me. 568; 72 Me. 60; 75 Me. 279; 77 Me. 396; 80 Me. 364; 87 Me. 195; 88 Me. 486; 116 Me. 316.

**Sec. 89. All hearing, a majority may report; proceedings on report.** R. S. c. 87, § 89. When there is more than one auditor, all must hear, but a majority

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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, to be fixed by the court and paid as provided in the preceding section.

\*57 Me. 61; \*65 Me. 328; 75 Me. 279.

**Sec. 90. Report as evidence. R. S. c. 87, § 90.** Their report may be used as evidence by either party, and may be disproved by other evidence.

57 Me. 61; 65 Me. \*328; 78 Me. 458; 116 Me. 316.

**Sec. 91. If defendant in action of account neglects to account, proceedings. R. S. c. 87, § 91.** When in an action of account, judgment has been entered that the defendant account, and he unreasonably neglects to appear, or appearing, neglects 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.

45 Me. 111; 65 Me. \*328.

## Referees.

**Sec. 92. Court may appoint referees. R. S. c. 87, § 92.** In all cases in the supreme judicial or either superior court in which the parties agree that the same may be tried by one or more person as referees, the court may appoint the same, not exceeding three, 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 thereof shall be fixed by the court upon the coming in of the report.

Appointment in vacation, § 2; 64 Me. 154; \*92 Me. 99.

## Juries.

**Sec. 93. Impaneling of jury; challenges. R. S. c. 87, § 93.** When venires for jurors are returned to court the clerk shall, at the commencement of each term, prepare an alphabetical list of the names of the several persons returned as traverse jurors; and before they are impaneled, the court shall cause it to be ascertained whether all so returned are present, and any juror desiring to be excused shall make application therefor when his name is called, and thereupon be heard on said application. The clerk shall then place separately upon tickets in a box, the names of all jurors legally summoned and in attendance, and not excused, and the names shall be drawn from the box by the clerk, after having been thoroughly mixed, one at a time, and the first twelve persons whose names are drawn from the box shall compose the first jury, and shall be impaneled by the first two being sworn, and then the other ten in succession as they were drawn, and in such divisions as the court directs, or all at the same time; and the next twelve so drawn shall be impaneled 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 for an offense punishable by imprisonment for life, the clerk may, under direction of 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 may peremptorily challenge four 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; provided, that the right to challenge

peremptorily any person called or returned to serve as a juror may be exercised after it has been determined that the person so called or returned stands indifferent. 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.

See c. 146, § 13; 5 Me. 334; 49 Me. 575, 592; 60 Me. 304; 75 Me. 106; 74 Me. 153, \*511; 80 Me. 416.

**Sec. 94. Supernumeraries, transfers and excuses.** R. S. c. 87, § 94. Supernumerary jurors may be excused, from time to time, until wanted, and they may be placed on either jury as occasion requires; jurors may be transferred from one jury to the other when convenience requires it; and for good reason, any juror may be excused.

75 Me. 105.

**Sec. 95. Form of jurors' oath.** R. S. c. 87, § 95. The following shall be the form of 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."

62 Me. 304.

**Sec. 96. Foreman, how chosen.** R. S. c. 87, § 96. Each jury, after being thus impaneled and sworn, shall retire 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 ninety-three.

**Sec. 97. Talesman, when and how to be returned.** R. S. c. 87, § 97. When, by reason of challenge or other cause, a sufficient number of jurors duly drawn and summoned cannot be obtained for the trial of a cause, the court shall cause jurors to be returned from the bystanders, 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.

3 Me. 216; 48 Me. 438; 51 Me. 396.

**Sec. 98. New jurors, or new juries, may be summoned during term.** R. S. c. 87, § 98. The court may, in term time, issue venire 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 venire for new jurors to supply their places; who shall be drawn and notified to attend at such time as the court directs.

48 Me. 439.

**Sec. 99. Challenge of jurors, how determined.** R. S. c. 87, § 99. 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 an 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 that he does not stand indifferent in the cause, another juror shall be called and placed in his stead.

6 Me. 329; 30 Me. 485; 32 Me. 311; 38 Me. 45; 43 Me. 109; 75 Me. 207; 84 Me. 305; \*120 Me. 426.

**Sec. 100. Challenge from the panel; court may regulate right by general**

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**rules. R. S. c. 87, § 100.** 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 ninety-three has been exercised; and the court may, by rules, prescribe the manner in which such right shall be exercised.

\*70 Me. 338; 74 Me. 153; 119 Me. 472.

**Sec. 101. Judge may order a review. R. S. c. 87, § 101.** In any jury trial the presiding justice may order a view by the jury.

**Sec. 102. Judge to charge jury on matters of law, but not to express opinion on issues of fact. R. S. c. 87, § 102.** During a jury trial the presiding justice shall rule and charge the jury, orally or in writing, upon all matters of law arising in the case, but shall not, during the trial, including the charge, express an opinion upon issues of fact arising in the case, and such expression of opinion is sufficient cause for a new trial, if either party aggrieved thereby and interested desires it; and the same shall be ordered accordingly by the law court upon exceptions.

64 Me. 290; 65 Me. 269, \*324; 66 Me. 550; 67 Me. 76; 69 Me. 416; 70 Me. 286, 472; 73 Me. 317; 78 Me. 306, 501; 79 Me. 124; 80 Me. 208, 394; 85 Me. 252; 87 Me. 315; 93 Me. 356; 95 Me. 367; 104 Me. 396; \*114 Me. 511; \*115 Me. 84; \*120 Me. 468; 121 Me. 116; \*125 Me. 44.

**Sec. 103. Separate verdicts as to defendants. R. S. c. 87, § 103.** 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 accordingly. In case of separate judgment against defendants in the same action, the court shall apportion the costs to be taxed against each defendant.

65 Me. 499; 72 Me. 55; 93 Me. 549; 108 Me. 242; \*115 Me. 287; 127 Me. 188.

**Sec. 104. Juries may find special verdicts for cases of law. R. S. c. 87, § 104.** The traverse jury may, in all cases, find a special or general verdict, subject to the opinion of the court on a case agreed on by the parties and reserved, or on the facts as reported by the justice presiding at the trial.

**Sec. 105. When jurors do not agree, proceedings. R. S. c. 87, § 105.** When a jury, not having agreed, return into court stating the fact, the justice may, in his discretion, explain any questions of law, if proposed to him, or restate 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 difficulties not stated when they first came into court.

22 Me. 458; 24 Me. 509; 31 Me. 157; 33 Me. 492; 36 Me. 476; 73 Me. 465; 77 Me. 383; 81 Me. 563; 91 Me. 31.

**Sec. 106. When juror not disqualified by residence. R. S. c. 87, § 106.** In prosecutions for recovery of money, or other forfeiture, it is not 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.

48 Me. 439; 52 Me. 413; 98 Me. 130; 110 Me. 199.

**Sec. 107. Objections not stated before trial, are waived. R. S. c. 87, § 107.** 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 make it; unless by leave of court for special reasons.

6 Me. 329; 47 Me. 594; 52 Me. 413, 501; 53 Me. 536; 71 Me. 90; \*81 Me. 161; 84 Me. 305.

**Sec. 108. Verdict is not affected by irregularities. R. S. c. 87, § 108.** No irregularity in the venires, or drawing, summoning, returning, or impaneling jurors, is sufficient to set aside a verdict, unless the party objecting was injured by the irregularity; or unless the objection was made before the return of the verdict.

3 Me. 216; 8 Me. 50; 46 Me. 413; 48 Me. 439; 65 Me. 469.

**Sec. 109. Verdict may be set aside for improper practices with jurors.** R. S. c. 87, § 109. If either party, in a cause in which a verdict is returned, during the same term of the court, before or after the trial, gives to any of the jurors who try the cause, any treat or gratuity, or purposely introduces among the papers 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.

Setting aside verdict for misconduct, or errors of any juror; 2 Me. 38; 3 Me. 204; 6 Me. 140, 380; 11 Me. 490; 17 Me. 306; 20 Me. 97; 22 Me. 200; 25 Me. 487; 38 Me. 139; 41 Me. 551; 53 Me. 470; 55 Me. 565; 57 Me. 493; 64 Me. 213; 70 Me. 96; 101 Me. 596.

For excessive damages; 3 Me. 282, 312; 12 Me. 311; 16 Me. 191; 42 Me. 248; 50 Me. 223; 86 Me. 552; 92 Me. 454; 93 Me. 201; 95 Me. 103, 149; 114 Me. 105; 115 Me. 353; \*117 Me. 147; 125 Me. 263.

### Witnesses and Evidence.

**Sec. 110. Subpoenas for witnesses.** R. S. c. 87, § 110. The clerks of the several courts, trial justices, and justices of the peace may issue subpoenas for witnesses to attend before any court or before persons authorized to examine witnesses, to give evidence concerning any pending matter.

**Sec. 111. Religious belief affects credibility only; atheists may testify.** R. S. c. 87, § 111. No person is an incompetent witness on account of his religious belief, but he is subject to the test of credibility; and a person who does not believe in the existence of a Supreme Being may testify under solemn affirmation, and is subject to the pains and penalties of perjury.

18 Me. 159.

**Sec. 112. Parties, husbands, wives, and others interested, as witnesses.** R. S. c. 87, § 112. No person is excused or excluded from testifying 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 hereinafter provided, but such interest may be shown to affect his credibility; and the husband or wife of either party may be a witness.

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; 77 Me. 75, 93; 90 Me. 548; 97 Me. 86; \*124 Me. 401; 126 Me. 16.

**Sec. 113. Exemption, when the action implies an offense.** R. S. c. 87, § 113. No defendant shall be compelled to testify in any suit when the cause of action implies an offense 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.

46 Me. 326; 48 Me. 425; 55 Me. 490.

**Sec. 114. Attestation of wills, and instruments, not affected.** R. S. c. 87, § 114. Nothing in section one hundred and twelve affects the law relating to the attestation of the execution of last wills and testaments, or of any other instrument, which the law requires to be attested.

48 Me. 194; \*114 Me. 105.

**Sec. 115. Testimony of a party out of the state, how to be taken.** R. S. c. 87, § 115. When a party to a suit resides without the state, or is absent therefrom 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 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 nonsuited or defaulted by order of court,

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unless his attorney admits 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.

**Sec. 116. When testimony of a party may be contradicted by coplaintiffs or codefendants.** R. S. c. 87, § 116. When one of the plaintiffs or defendants is used as a witness by the opposite party, testimony may be introduced by his coplaintiffs or codefendants to contradict or discredit him, as if he were not a party to the suit.

126 Me. 16.

**Sec. 117. Not applicable to executors, administrators, or heirs, save in special cases.** R. S. c. 87, § 117. The five preceding sections do not apply to 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 is made a party as heir of a deceased party; except in the following cases:

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; 73 Me. 342; 74 Me. 192; 77 Me. 75; 78 Me. 523; 79 Me. 323, 484; 80 Me. 113; 83 Me. 177; 90 Me. 548; 95 Me. 262, 526; 101 Me. 323; 110 Me. 345; 113 Me. 325, 510; 117 Me. 428, 445; 118 Me. 468; \*120 Me. 336; \*124 Me. 401.

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

69 Me. 290.

II. 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 admissible upon the rules of evidence, happening before the death of such person; and when such person so testifies, the adverse party is neither 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 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.

59 Me. 260; 64 Me. 25; 65 Me. 424; 67 Me. 197; 68 Me. 417; 69 Me. 290; 74 Me. 195; 77 Me. 125; 79 Me. 484; \*119 Me. 111; 125 Me. 192.

III. If the representative party is nominal only, both parties may be 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 is not 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 is excused or excluded from testifying.

59 Me. 508; 78 Me. 435.

IV. 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.

\*59 Me. 364; 64 Me. 25; 69 Me. 290.

V. In actions where an executor, administrator, or other legal representative is a party, and the opposite party is an heir of the deceased, said heir may testify when any other heir of the deceased testifies at the instance of such executor, administrator or other legal representative.

73 Me. 342; 108 Me. 556.

VI. In all actions brought by the executor, administrator, or other legal representative of a deceased person, such representative party shall not be excused

from testifying to any facts admissible upon general rules of evidence, happening before the death of such person, if so requested by the opposite party. But nothing herein shall be so construed as to enable the adverse party to testify against the objection of the plaintiff when the plaintiff does not voluntarily testify.

\*119 Me. 111.

**Sec. 118. Insane party.** R. S. c. 87, § 118. The rules of evidence which apply to actions by or against executors or administrators, apply in actions where a person shown to the court to be insane, is solely interested as a party.

65 Me. 534.

**Sec. 119. Same rules in all civil tribunals.** R. S. c. 87, § 119. The rules of evidence in special proceedings of a civil nature, such as before referees, auditors, county commissioners and courts of probate, are the same as herein provided for civil actions.

73 Me. 363.

**Sec. 120. Witnesses summoned, neglecting to attend, in contempt; liable for damages.** R. S. c. 87, § 120. When a person, summoned and obliged to attend before any judicial tribunal, fails to do so without reasonable excuse, he is liable to the party aggrieved for all damages sustained thereby. The judge or justice of such tribunal may issue a *capias* to apprehend and bring such delinquent before him; and he may be fined not exceeding one hundred dollars and costs of attachment, and committed until the same and costs are paid.

96 Me. 25.

**Sec. 121. Penalty for refusal to answer.** R. S. c. 87, § 121. When a witness in court refuses to answer such questions as the court allows to be put, he may be fined not exceeding one hundred dollars, or imprisoned not exceeding three months in the county jail.

68 Me. 219.

**Sec. 122. Oaths, how to be administered to witnesses.** R. S. c. 87, § 122. 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 believing any other than the Christian religion may be sworn according to the ceremonies of his religion.

**Sec. 123. Affirmation.** R. S. c. 87, § 123. Persons conscientiously scrupulous of taking an oath, may affirm as follows: "I affirm under the pains and penalties of perjury," which affirmation is of the same force and effect as an oath.

78 Me. 488; 79 Me. 104.

**Sec. 124. Conviction affects credibility only.** R. S. c. 87, § 124. No person is incompetent to testify in any court or legal proceeding, in consequence of having been convicted of an offense; but such conviction may be shown to affect his credibility.

See c. 146, § 20; 47 Me. 108; 48 Me. 328; 51 Me. 112, 125; 55 Me. 215; 63 Me. 136; 65 Me. 79; 102 Me. 315.

**Sec. 125. Not obliged to attend court, unless fees are paid or tendered.** R. S. c. 87, § 125. No person is obliged to attend 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, if he requests it.

**Sec. 126. Signature, how proved.** R. S. c. 87, § 126. The signature to an attested instrument or writing, except a will, may be proved in the same manner as if it were not attested.

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**Sec. 127. Affidavit of plaintiff prima facie evidence. R. S. c. 87, § 127. 1925, c. 96.** In all actions brought on an itemized account annexed to the writ, the affidavit of the plaintiff, made before a notary public using a seal, that the account on which the action is brought is a true statement of the indebtedness existing between the parties to the suit with all proper credits given, and that the prices or items charged therein are just and reasonable, shall be prima facie evidence of the truth of the statement made in such affidavit, and shall entitle the plaintiff to the judgment, unless rebutted by competent and sufficient evidence. When the plaintiff is a corporation, the affidavit may be made by its president, secretary or treasurer. If the said affidavit be made before a notary public using a seal without the state, his authority as a notary public to act and to administer an oath shall be certified thereto and the genuineness of his signature certified by a clerk of a court of record or by a deputy clerk of the same and have the seal of said court attached thereto.

\*117 Me. 427; \*120 Me. 333; 120 Me. 468; \*124 Me. 112, \*279.

**Sec. 128. Records of other courts are evidence. R. S. c. 87, § 128.** 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, are evidence.

120 Me. 292.

**Sec. 129. Printed copy of laws of U. S., or of any state, is evidence. R. S. c. 87, § 129.** 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 authority of government, may be admitted as evidence; those of this state as sufficient, those of other states as prima facie evidence.

61 Me. 139.

**Sec. 130. Foreign laws and unwritten laws of the states, how proved. R. S. c. 87, § 130.** 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.

120 Me. 293.

**Sec. 131. When office copies are admissible. R. S. c. 87, § 131.** In all actions touching the realty, 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.

\*54 Me. 138; 55 Me. 171; 61 Me. \*412; 70 Me. 280; 74 Me. 129; 89 Me. 380; 91 Me. 357; 96 Me. 49; 104 Me. \*37, 432; 107 Me. 30.

**Sec. 132. Certain copied records of deeds admissible in evidence. R. S. c. 87, § 132.** Copies made from any portion of either of the volumes of the early records in the York county registry of deeds published by the authority of the legislature and placed in each registry, when attested by any register of deeds having lawful custody of such printed volume; also copies made from records which have been duplicated from originals in the York county registry of deeds and filed in the Cumberland county registry by the commissioners of Cumberland county, under authority of chapter two hundred and seventeen of the public laws of eighteen hundred and eighty-three; also the records contained in the copy of volume one of the Cumberland county records of deeds, and copies thereof, made under authority of chapter three hundred and five of the special laws of nineteen hundred and one, when attested by the register of deeds for Cumberland county; also copies of the record of the copies and certificates

which have been made from the records in the Lincoln county registry of deeds and filed in the Kennebec county registry of deeds, under authority of chapter three hundred and forty-two, of the special laws of eighteen hundred and ninety-seven, when attested by the register of deeds for Kennebec county; also copies of the records contained in the copy of volume one of the records of deeds in the registry of deeds for the western district of Oxford county made under authority of chapter one hundred of the special laws of nineteen hundred and thirteen, when attested by the register of deeds for the western district of Oxford county; also copies of the record of the copies and certificates which have been made from the records in the registries of deeds in the counties of Hancock, Penobscot, Kennebec and Somerset, relating to the titles of lands embraced in the present limits of Piscataquis county, and filed in the Piscataquis county registry of deeds, under authority of chapter nine of the special laws of nineteen hundred and thirteen, when attested by the register of deeds of Piscataquis county; also copies of the record of the copies and certificates which have been made from the records in the registries of deeds in the counties of Hancock, Lincoln, Kennebec and Somerset, relating to the titles of lands embraced in the present limits of Waldo county, and filed in the Waldo county registry of deeds, under authority of chapter one hundred and ninety-eight of the special laws of nineteen hundred and seven, when attested by the register of deeds of Waldo county; also copies of the record of the copies and certificates which have been made of the five volumes of Washington county records of deeds in the Aroostook registry district of Aroostook county, under authority of chapter eighty-six of the public laws of eighteen hundred and ninety-one, when attested by the register of deeds for said district, [Also copies of the record of the copies and certificates which have been made from the records in the registries of deeds in the counties of Lincoln, Waldo, and Hancock relating to the titles of lands embraced in the present limits of Knox county and filed in the Knox county registry of deeds, under authority of chapter seventy-eight of the special laws of nineteen hundred and twenty-one, when attested by the register of deeds of Knox county.] may be used in evidence like attested copies of the original records.

Note. As to admissibility of certain traced or copied records in the registry of deeds of Somerset county, see special laws of 1893, c. 514.

As to admissibility of copies of plans of towns deposited in the registry of deeds of Kennebec county, see special laws of 1905, c. 86.

Transcripts from certified copies of proprietors' records may be used in evidence, c. 15, § 19.

Note. Clause in brackets suggested by E. K. Gould, Esq.

**Sec. 133. Copies of consular and custom-house documents and records are evidence.** R. S. c. 87, § 133. Copies of 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 official entries in the books or records of such office, when certified under the hand and official seal of the proper consul, vice-consul, or commercial agent, are evidence. Copies of registers or enrolments 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.

**Sec. 134. Adjutant general's certificate is evidence.** R. S. c. 87, § 134. The certificate of the adjutant general relating to the enlistment of any person from this state, in the United States' service, and of all facts pertaining to the situation of such person, to the time of and including his discharge, as found upon the

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records of his office, are prima facie evidence of the facts so certified, in any suit or proceeding.

60 Me. 252; 70 Me. 395; 77 Me. 333.

**Sec. 135. Testimony of a deceased subscribing witness, or magistrate may be given in subsequent suit. R. S. c. 87, § 135.** When the testimony of a subscribing witness to a 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 is admissible in the trial of any other civil cause involving the same question, if the parties are the same, or if 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 may be impeached like the testimony of a living witness.

**Sec. 136. Writings dated on Sunday. R. S. c. 87, § 136.** No deed, contract, receipt or other instrument in writing, is void because dated on the Lord's Day, without other proof than the date, of its having been made and delivered on that day.

84 Me. 112.

**Sec. 137. Defendant must restore consideration; actions for injury received on Lord's day. R. S. c. 87, § 137.** No person who receives a valuable consideration for a contract, express or implied, made on the Lord's Day, shall defend any action upon such contract on the ground that it was so made, until he restores such consideration; nor shall the provisions of chapter one hundred thirty-five, relating to the observance of the Lord's Day, affect in any way the rights or remedy of either party in any action for a tort or injury suffered on that day.

See c. 94, § 89; 77 Me. 484; 79 Me. \*156; \*84 Me. 113, 115; 88 Me. 144; 93 Me. 562; 101 Me. 458.

## Costs.

**Sec. 138. Costs for party prevailing; in law court. R. S. c. 87, § 138.** In all actions, the party prevailing recovers costs, unless otherwise specially provided. If, after a verdict, the party in whose favor the jury found, carries the case into the law court and the decision there is against him, he recovers no costs after the verdict, but the party prevailing in the law court recovers costs accruing after verdict.

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; 75 Me. 414; 76 Me. 548; 78 Me. 323; 86 Me. 509; \*98 Me. 187; 100 Me. 548.

When parties do not recover costs; 13 Me. 51; 19 Me. 210; 35 Me. 19; 38 Me. 256; 43 Me. 286; 78 Me. 324.

Parties liable for costs; 5 Me. 177; 6 Me. 49; 13 Me. 260; 18 Me. 336; 29 Me. 306, \*560; 41 Me. 460.

In law court, 81 Me. 379; \*115 Me. 165.

**Sec. 139. Costs upon appeal in condemnation proceedings. R. S. c. 87, § 139.** In all proceedings for the estimation of damages for the taking of lands or other property, under any general or special law, if the owner of the land, after an award made by the county commissioners enters an appeal therefrom and fails to obtain a final judgment for an amount greater than the amount of the said award with interest thereon to the date of said judgment, he shall be subject to costs accruing after the date of said first award, and the amount thereof may be applied in reduction of the sum required to be paid by said judgment.

**Sec. 140. If plaintiff appeals from judgment in his favor. R. S. c. 87, §**

**140.** 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 recovers only a quarter of the sum last recovered, for costs.

1 Me. 16, 17; 4 Me. 67; 7 Me. 361; 10 Me. 69; 54 Me. 437.

**Sec. 141. Costs in actions of replevin. R. S. c. 87, § 141.** In actions of replevin commenced in the supreme judicial or a superior court, 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 recovers for costs only one quarter part of such value.

2 Me. 162; 6 Me. 262; 12 Me. 54; 40 Me. 286; 49 Me. 325.

**Sec. 142. If improperly sued in supreme judicial court or superior court, quarter costs; on report of referees. R. S. c. 87, § 142.** In actions commenced in the supreme judicial or a superior court, 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, including actions of replevin where the value of the property does not exceed twenty dollars, the plaintiff recovers for costs only one quarter part of his debt or damages. On reports of referees, full costs may be allowed, unless the report otherwise provides.

See c. 14, §§ 28, 82; c. 67, § 25; c. 123, § 79; 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; 44 Me. 429; 47 Me. 459; 49 Me. 335; 51 Me. 460; 53 Me. 516; \*60 Me. 547; 63 Me. 268; 72 Me. 442; 82 Me. 97; \*115 Me. 165.

Report of referees; 1 Me. 66; 14 Me. 398; 78 Me. 427; 82 Me. 184.

**Sec. 143. When damages are reduced by set-off, full costs. R. S. c. 87, § 143.** When an account is filed in set-off and the plaintiff recovers not exceeding twenty dollars, he is entitled to full costs, if the jury certify in their verdict that the damages were reduced so low as that sum by reason of the amount allowed in set-off.

5 Me. 76; 31 Me. 130; 44 Me. 429; 56 Me. 71; 72 Me. 442; 82 Me. 185.

**Sec. 144. Costs of evidence not to be doubled. R. S. c. 87, § 144.** When a party recovers double or treble costs, the fees of witnesses, depositions, copies, and other evidence are not doubled or trebled.

**Sec. 145. On petitions for review, etc. R. S. c. 87, § 145.** 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.

21 Me. 400; 85 Me. 407.

**Sec. 146. Plaintiff nonsuited pays costs; second suit stayed until costs of first are paid. R. S. c. 87, § 146.** When a plaintiff becomes nonsuit, or discontinues his suit, the defendant recovers costs against him, and in all actions, as well those of qui tam as others, the party prevailing is 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 suit are paid, further proceedings shall be stayed until such costs are paid, and the suit may be dismissed unless they are paid at such time as the court appoints.

32 Me. 36; \*48 Me. 162; 60 Me. 546; 65 Me. 58, 331; 79 Me. 538; 88 Me. 555; 98 Me. 187; 118 Me. 447.

**Sec. 147. A suitor in name of state is liable for costs. R. S. c. 87, § 147.** 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

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the defendant prevails, judgment for his costs shall be rendered against such person, and execution issued, as if he were plaintiff.

55 Me. 455.

**Sec. 148. State is liable for costs in a civil suit.** R. S. c. 87, § 148. 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.

26 Me. 75.

**Sec. 149. No fees for travel taxable for state.** R. S. c. 87, § 149. When the state recovers costs in a civil suit no fees shall be taxed for the travel of an attorney.

See c. 59, § 93.

**Sec. 150. In suit in name of assignor, writ to be indorsed; costs.** R. S. c. 87, § 150. The name and place of residence of an assignee, if known, shall, at any time during the pendency of the suit, be indorsed by request of the defendant on 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.

See c. 122, § 9; 59 Me. 199; 62 Me. 12; 69 Me. 82; 72 Me. 56; \*77 Me. 567; 101 Me. 403.

**Sec. 151. If assignee is not known, defendant may recover costs against him and offset judgment.** R. S. c. 87, § 151. 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.

\*77 Me. 567.

**Sec. 152. Assignee of choses not negotiable, may sue in his own name.** R. S. c. 87, § 152. Assignees of choses in action, not negotiable, assigned in writing, may bring and maintain actions in their own names, 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 are preserved to the defendant.

See c. 59, § 68; c. 76, § 50; c. 94, § 9; c. 122, § 9; 66 Me. 544; 69 Me. 99, 443; 71 Me. 116; 72 Me. 56, 373; 74 Me. 482; 81 Me. 17; 85 Me. 167; \*87 Me. 338; 91 Me. 338; 93 Me. 231; 94 Me. 237; 95 Me. 278; 99 Me. 307, \*432; 101 Me. 319; 103 Me. 481; 109 Me. 67; 111 Me. 508; 112 Me. 237, 398; 114 Me. 474; \*119 Me. 380; 123 Me. 175; \*124 Me. 342.

**Sec. 153. In divers actions against same party at same term, or in case of division of an account, only one bill of cost allowed plaintiff.** R. S. c. 87, § 153. 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 which 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 recovers 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.

34 Me. 284; 55 Me. 454; 70 Me. 272; 72 Me. 265.

**Sec. 154. If execution could issue, no costs in action on judgment.** R. S. c. 87, § 154. 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.

See c. 99, § 85; 33 Me. 211; 56 Me. 80.

**Sec. 155. Travel in actions by a corporation. R. S. c. 87, § 155.** In actions of a corporation, its travel is computed from the place where it is 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. 156. Power of court over costs. R. S. c. 87, § 156.** The power of the court to require payment of costs, or to refuse them as the condition of amendment or continuance, is not affected by this chapter.

**Sec. 157. When bankrupt recovers no costs. R. S. c. 87, § 157.** When a defendant pleads a discharge in bankruptcy, or insolvency, obtained after the commencement of the suit, he recovers no costs before the time when the certificate was produced in court.

**Sec. 158. Hearing on costs; appeal. R. S. c. 87, § 158.** When a nonsuit or default is entered, or verdict rendered, or a report of referees is 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; and any party aggrieved by the decision, may file exceptions thereto; but if no such application is made, the clerk, after adjournment, shall determine the costs, and either party dissatisfied with his taxation may appeal to the court, or to a judge in vacation from whose decision no appeal shall be taken, and all attachments shall continue in force for thirty days after such appeal is decided; provided, however, that the costs shall be taxed and the appeal taken within thirty days from the rendition of final judgment or within thirty days from the term following the receipt of a rescript from the law court.

\*60 Me. 547; 107 Me. 156; 118 Me. 321.

#### Action for Damages Against Perjured Parties and Witnesses.

**Sec. 159. Rights of action for damages, when a judgment has been obtained by perjury. R. S. c. 87, § 159.** When a judgment has been obtained against a party by the perjury of a witness 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 is no bar thereto.

73 Me. 379; 76 Me. 37; \*78 Me. 214; \*122 Me. 262; \*126 Me. 14.

#### Executions.

**Sec. 160. Issue and return. R. S. c. 87, § 160.** Executions may be issued on a judgment of the supreme judicial court after twenty-four hours from its rendition, returnable within three months.

Executions in actions in which bail is taken, c. 98, § 5; 2 Me. 112; 8 Me. 209; 11 Me. 178; 15 Me. 66; 24 Me. 306; 27 Me. 560; 49 Me. 414; \*87 Me. 439.

**Sec. 161. Not after one year; exception. R. S. c. 87, § 161.** No first execution shall be issued after one year from the time of judgment, except in cases provided for by section five; in which the first execution may be issued within not less than one, nor more than two years from the time of judgment.

72 Me. 339.

**Sec. 162. May be renewed in ten years. R. S. c. 87, § 162.** An alias or

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pluries execution may be issued within ten years after the day of the return of the preceding execution, and not afterwards.

89 Me. 95; 90 Me. 574.

**Sec. 163. When execution is not so issued, scire facias on judgment. R. S. c. 87, § 163.** 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 is shown, execution may be issued thereon.

69 Me. 88.

**Sec. 164. Interest on judgments. R. S. c. 87, § 164.** On executions, issued on judgments, interest shall be collected from the time of judgment.

\*60 Me. 258; 101 Me. 228.

**Sec. 165. New, may be issued, on proof of loss. R. S. c. 87, § 165.** 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. 166. Execution upon award to creditor by commissioners on a solvent estate. R. S. c. 87, § 166.** 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 the office of the clerk of courts, and apply in writing to a justice of the supreme judicial court for an execution; and such justice 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 justice 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 costs 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.

61 Me. 239, \*243; 67 Me. 117.

### Stenographers.

**Sec. 167. Stenographers, their appointment and duties. R. S. c. 87, § 167. 1917, c. 260, § 11. 1921, c. 160. 1927, c. 71, § 3.** Any justice of the supreme judicial court and *either* [any] justice of the superior courts 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. He shall take full notes of all oral testimony, and other proceedings in the trial of causes, including the charge of the justice and all comments and rulings of said justice in the presence of the jury during the progress of the trial, as well as all statements and arguments of counsel addressed to the court, and furnish for the use of the court or any party interested a fair, legible, longhand copy of so much of his notes as may be required. 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 of ten cents for every hundred words.

100 Me. 273.

**Sec. 168. Appointment for hearings in vacation. R. S. c. 87, § 168.** At any hearing in vacation of a cause in law or equity pending in the supreme judicial court, the presiding justice may, when necessary, appoint a stenographer other than his regularly appointed court stenographer to report the proceedings

thereof, who shall receive for his services from the treasury of the county in which the cause is pending a sum not exceeding six dollars a day for attendance in addition to actual traveling expenses; but when at such hearings the presiding justice employs his regularly appointed stenographer, such stenographer shall receive from said treasury only the amount of his actual expenses incurred in attending the same.

**Sec. 169. Authentication of evidence, by official stenographer. R. S. c. 87, § 169.** In all cases coming before the law court from the supreme judicial court or either superior court, in which a copy of the evidence is required by statute, rule of court, or order of the presiding justice, a certificate signed by the official court stenographer, stating that the report furnished by him is a correct transcript of his stenographic notes of the testimony and proceedings at the trial of the cause, shall be a sufficient authentication thereof without the signature of the presiding justice.

\*116 Me. 12; 119 Me. 485; 124 Me. 247.

**Sec. 170. Upon death or disability of official stenographer, proceedings. R. S. c. 87, § 170.** When a verdict has been rendered or a decree made in any cause, in law or equity, in the supreme judicial court or in either superior court, and a certified copy of the evidence taken by the official stenographer cannot be obtained by reason of the death or disability of such stenographer, the justice who presided at the trial of such cause may, if a motion for a new trial has been filed during the term at which the verdict was rendered, on petition therefor, after notice and hearing thereon, set aside such verdict and grant a new trial at any time within one year after it was returned, when in his opinion the evidence demands it; and exceptions allowed by such justice, when the evidence or any portion thereof is made a part of the exceptions, or an appeal taken from any decree in equity made by him, may be heard and determined by the law court either upon a statement of facts agreed upon by counsel and certified by such justice, or upon a report signed and certified by him as a true report of all the material facts in the case.

**Sec. 171. Testimony may be proved by certified copy of notes of former. R. S. c. 87, § 171.** Whenever it becomes necessary, in any court in the state, to prove the testimony of a witness at the trial of any former case in any court in the state, the certified copy of the notes of such testimony, taken by the stenographic reporter at the court where said witness testified, is evidence to prove the same.

69 Me. 402; 110 Me. 338; 127 Me. 236.

**Sec. 172. Stenographic reports may be taxed in bill of costs. R. S. c. 87, § 172.** 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 them, may be taxed in the bill of costs and allowed against the losing party, as is now allowed for copies, if furnished by the clerk.

#### Crier.

**Sec. 173. Sheriff, deputy or clerk may act as crier. R. S. c. 87, § 173.** The duties of crier in the courts shall be performed by the sheriff, or any deputy, or by the clerk.

## CHAPTER 96.

### Municipal and Police Courts, Trial Justices; Their Jurisdiction and Proceedings in Civil Actions.

- Sections 1-17 Appointment, Qualification and Jurisdiction.  
Sections 18-22 Appeals.  
Sections 23-24 Executions.  
Sections 25-26 Scire Facias.  
Sections 27-32 Records.  
Sections 33-34 Trial Justices, and Judges of Inferior Courts, not to be of Counsel.  
Sections 35-36 Justices of the Peace.

#### Appointment, Qualification and Jurisdiction.

**Sec. 1. Trial Justices, appointment and tenure.** R. S. c. 88, § 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 seven years from the date of their commissions.

63 Me. 268; 64 Me. 197; 96 Me. 498.

**Sec. 2. Jurisdiction in civil actions.** R. S. c. 88, § 2. 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 is restricted to those cases in which jurisdiction was given to justices of the peace, in the act establishing such court, and to cases wherein jurisdiction is given to trial justices in like manner.

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; 65 Me. 169; 78 Me. 540; 82 Me. 98; 86 Me. 80; 91 Me. 576; 102 Me. 523.

Note. Jurisdiction of trial justices, and judges of municipal and police courts is also conferred in the following cases:

To provide for care and custody of abused or neglected children, c. 72, § 53.

To enforce liens under c. 104, § 76.

In actions of forcible entry and detainer, c. 107, § 3.

In actions for penalties for trespasses on islands, c. 108, § 14.

In replevin of beasts, c. 109, § 1, and of goods, § 9.

In cases of libels for forfeited goods, c. 111, § 8.

To act in poor debtor disclosures, c. 123, §§ 22, 68.

Criminal jurisdiction, c. 144.

**Sec. 3. When title to real estate is in question, proceedings.** R. S. c. 88, § 3. When it appears by the pleadings or brief statement, that the title to real estate is in question, the cause shall, on request of either party, be removed to the supreme judicial court or the superior court in the county; and such party shall recognize to the other in a reasonable sum, with sufficient sureties, to enter the case at the next term thereof; and if he does not so recognize, the justice shall hear and decide the case, as if such request had not been made.

3 Me. 256; 9 Me. 113; 27 Me. 95.

**Sec. 4. Copy and papers to be produced at appellate court; proceedings if**

**not entered. R. S. c. 88, § 4.** 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 action as before provided, he shall, on 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. 5. Writs, form and service. R. S. c. 88, § 5.** The writ in civil actions commenced before a trial justice, shall be a summons, a *capias*, and an attachment, or *scire facias*, of the form prescribed by law, signed by the justice, and served not less than seven, nor more than sixty days before the return day thereof.

**Sec. 6. Municipal or police court writs, when returnable. R. S. c. 88, § 6.** Writs in civil actions before any municipal or police court, may be made returnable at any term thereof, to be held not less than seven, nor more than sixty-five days from their date.

84 Me. 240; 86 Me. 345; \*114 Me. 441.

**Sec. 7. Signature of recorder or clerk, evidence of authority. R. S. c. 88, § 7.** The signature of the recorder or clerk of any municipal or police court to a complaint, warrant, mittimus, writ, or other document, purporting to come from the court of which he is recorder or clerk, shall be sufficient evidence of his authority to issue the same, without, in any way, accounting for the absence or presence of the judge of said court.

See c. 94, § 3.

**Sec. 8. Actions, where to be brought, when parties live in same county. R. S. c. 88, § 8.** 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.

68 Me. 248.

**Sec. 9. When parties live in different counties. R. S. c. 88, § 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, named in the writ, resides.

91 Me. 576.

**Sec. 10. Jurisdiction of municipal courts. R. S. c. 88, § 10.** A municipal or police court shall not have jurisdiction in any civil matter unless a defendant resides within the county in which such court is established, or is a non-resident of the state and has personal service within the county, or a party summoned as trustee resides within the county, or property of the defendant is attached within the county, in which such court is established. But in case of such personal service, trustee, or attachment, such court shall have jurisdiction to the amount of the established jurisdiction thereof.

See c. 94, § 16; 96 Me. 348.

**Sec. 11. Writs issued by one justice, returnable before another; municipal and police court writs. R. S. c. 88, § 11.** 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 municipal or police court, may be made returnable before any other such court in the same or an adjoining county.

**Sec. 12. Writ, when returnable; justice to be present with writ. R. S. c. 88,**

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§ 12. 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 is valid if he is not present with the plaintiff's writ at the place, within one hour after the time therein named, unless the case is continued by some other justice, as provided in section fourteen.

52 Me. 246.

**Sec. 13. Nonsuit or default, after one hour; may be stricken off. R. S. c. 88, § 13.** The justice may enter judgment on nonsuit or default against the party failing to appear, at the end 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.

53 Me. 401.

**Sec. 14. When justice cannot attend, another may continue proceedings. R. S. c. 88, § 14.** When a trial justice fails to attend at the time and place appointed by him for the trial of any suit already entered, or at which a writ is returnable before him, any other trial justice who might legally try the same, or any justice of the peace, 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 on his own docket; and if said trial justice, who so appointed such time and place, or before whom such writ is returnable, fails to attend at the time and place fixed in such continuance, such action may then and there 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.

17 Me. 415; 18 Me. 28; 31 Me. 337; 61 Me. 579; 70 Me. 447.

**Sec. 15. Where court may be held; pleadings; limitation of costs. R. S. c. 88, § 15.** A 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.

70 Me. 448; 78 Me. 76.

**Sec. 16. Judgment on default, or trial. R. S. c. 88, § 16.** If a person 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 on trial, the action is 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.

49 Me. 413.

**Sec. 17. If plaintiff does not prevail, costs for defendant. R. S. c. 88, § 17.** If the plaintiff fails to enter and prosecute his action, or if, on trial, he does not maintain his action, the defendant recovers judgment for his costs to be taxed by the justice; and execution shall issue therefor.

### Appeals.

**Sec. 18. Appeal, when and how claimed; its effect. R. S. c. 88, § 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 after the judgment, Sunday not included; [The appellant shall within twenty-four hours after judgment, Sunday not included, pay to the clerk the required fees for such appeal, including the entry fee in and cost of forwarding such appeal to the appellate court], and in that case no execution shall issue, *and the case shall be entered and determined in the appellate court*, [and the clerk shall enter the appeal in the appellate court where it shall be determined as a new entry.]

24 Me. 438; 57 Me. 292; 64 Me. 533; 105 Me. 262.

**Sec. 19. Appeal without trial. R. S. c. 88, § 20.** 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, as if there had been an actual trial.

78 Me. 76.

**Sec. 20. Appellant's recognizance. R. S. c. 88, § 19.** *Before such appeal is allowed, the appellant shall recognize with sufficient surety or sureties to the adverse party, if required by him.* [If so requested by the adverse party, the appellant shall within one week after notice of such request, Sunday not included, or within such further time as may be allowed by the court, recognize to such adverse party] in a reasonable sum, with condition to prosecute his appeal with effect, and pay all costs arising after the appeal.

42 Me. 328; 72 Me. 486; 76 Me. 546; 105 Me. 262.

**Sec. 21. When appeal considered withdrawn.** [If the appellant fails to pay such fees within twenty-four hours after judgment, Sunday not included, or if he fails to recognize as provided in the preceding section, the appeal shall be vacated and execution may be issued as if no appeal had been taken.]

**Sec. 22. On appeal copies and papers to be produced. R. S. c. 88, § 21.** *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.*

[When such appeal is completed the clerk shall file in the appellate court, the originals of all depositions and other written evidence or documents, and a copy of the record and all papers filed in the cause.]

44 Me. 41.

Note: Sections eighteen to twenty-two, inclusive, in the new revision, have been re-drafted to carry out certain recommendations of B. G. Ward, Esq., Judge Hinckley, Recorder Cowan, and other attorneys, for a more satisfactory disposition of appeals where at present delay results in case of failure of appellant to prosecute.

Justice Chapman suggests an alternative amendment by retaining the present sections but substituting for the last clause in section twenty-one the following:

"And if he fails to produce such papers and enter and prosecute his action, his appeal shall be void, and the court which has rendered the judgment may affirm the same with costs."

Mr. Ward also suggests making the time of such action by the lower court after adjournment of the next succeeding term of the appellate court.

### Executions.

**Sec. 23. Issue and return of executions. R. S. c. 88, § 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 when they are issued.

11 Me. 178; 38 Me. 532; 87 Me. 439.

**Sec. 24. Executions may be directed into other counties. R. S. c. 88, § 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 court may issue execution against him, directed to the proper officers in the county

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where he is supposed to be; and it has the same force as if issued by a justice or court of the latter county.

### Scire Facias.

**Sec. 25. When writs of scire facias may issue.** R. S. c. 88, § 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. 26. Such writs and executions, when to be directed into other counties.** R. S. c. 88, § 25. In cases of scire facias against bail, indorsers of writs, executors or administrators, and 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 said 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 to be Kept and Transcribed.

**Sec. 27. Records, how kept, and transcribed after death of justice.** R. S. c. 88, § 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 trial justice of the county may, on complaint of the creditor, issue a summons to the person in whose 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, for contempt, to be detained until he submits to such examination and produces the record; and when the record is so delivered, 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, is legal evidence in all cases where an authenticated copy of the original might be received.

61 Me. 565; 75 Me. 111.

**Sec. 28. Execution may be issued on the transcribed record.** R. S. c. 88, § 27. On such transcribed record, the justice may issue executions 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 when the judgment was rendered, unless on scire facias.

61 Me. 566.

**Sec. 29. On removal or death, records to be deposited with clerk; penalty for neglect; duty of the clerk.** R. S. c. 88, § 28. Every trial justice, who removes from the state, shall first deposit with the clerk of the judicial court 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 official records and papers of the deceased justice that come into his hands; and if either neglects to do so, he forfeits one hundred dollars. The clerk shall receive and safely keep such records and papers, and may grant certified copies thereof, which are as good evidence as if certified by the justice.

**Sec. 30. Proceedings, if records are not completed; when an exception may be used instead of a copy of the record.** R. S. c. 88, § 29. If any trial justice dies or removes from the state, without recording and signing a 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 are 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 by the justice on such judgment, 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.

33 Me. 442; 60 Me. 258.

**Sec. 31. Justice may certify copies and issue new executions after commission expires. R. S. c. 88, § 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.

11 Me. 380; 35 Me. 137.

**Sec. 32. Unsatisfied executions of a trial justice, how renewed. R. S. c. 88, § 31.** Executions remaining unsatisfied, in whole or in part, issued by a trial justice whose commission has expired, or who has removed from the county for which he was commissioned, or who has deceased, may be renewed by any trial justice in the same county, upon such vouchers as would be required by the trial justice who rendered the judgment.

See § 27.

#### **Trial Justices and Judges Shall Not Be of Counsel.**

**Sec. 33. Justice not to be of counsel; abatement of action. R. S. c. 88, § 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.

91 Me. 201.

**Sec. 34. Judge not to act in cases within jurisdiction of his court. R. S. c. 88, § 33. 1921, c. 66.** No judge of any municipal or police court shall act as counsel or attorney in any case, cause, matter or thing, which depends upon or relates to any cause exclusively cognizable by the court over which he presides, or which is actually brought in said court, although concurrently cognizable by some other court.

#### **Justices of the Peace.**

**Sec. 35. Ex officio, justices of the peace. R. S. c. 88, § 34.** Trial justices and judges of municipal and police courts are, ex officio, justices of the peace and all their official acts, attested by them in either capacity, except those pertaining to the exclusive jurisdiction of trial justices and judges of municipal and police courts, are of equal effect.

66 Me. 271.

**Sec. 36. Commissioned for the state. R. S. c. 88, § 35.** Justices of the peace shall exercise their powers and duties, and shall be commissioned to act, within and for every county.

77 Me. 589.

## CHAPTER 97.

### Levy of Executions on Personal Property.

**Sec. 1. Goods which may be sold on execution.** R. S. c. 89, § 1. All chattels, real and personal, liable at common law to attachment, and not exempted therefrom by statute, may be taken and sold on execution as prescribed in this chapter.

24 Me. 399; 51 Me. 557.

**Sec. 2. Coin and bank-notes, how levied on.** R. S. c. 89, § 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.

57 Me. 414.

**Sec. 3. Goods, when to be sold on execution.** R. S. c. 89, § 3. Goods and chattels, legally taken on execution, shall be safely kept by the officer at the expense of the debtor, for four days at least after the day on which they were taken, exclusive of Sunday; and they shall be sold within fourteen days after the day of seizure, except as hereinafter provided, unless before the time of sale the debtor redeems them by otherwise satisfying the execution.

24 Me. 398; 61 Me. 531; 75 Me. 394.

**Sec. 4. Notice of sale.** R. S. c. 89, § 4. The officer shall post public notice of the time and place of sale, at least forty-eight hours before the time thereof, in two or more public places in the town or place of sale.

60 Me. 206.

**Sec. 5. Adjournment of sale; time.** R. S. c. 89, § 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 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.

11 Me. 374; 34 Me. 442; 60 Me. 206.

**Sec. 6. Adjournment of sale to another place.** R. S. c. 89, § 6. For good reason, and for the purpose of obtaining a better price for the goods, he may, if he deems it for the benefit of the debtor, adjourn the auction to another place in the same town.

11 Me. 374; 74 Me. 553.

**Sec. 7. Indemnity, officer may require.** R. S. c. 89, § 7. When there is reasonable doubt as to the ownership of goods, or their liability to be taken on execution, the officer may require sufficient indemnity.

**Sec. 8. Buyer refusing to take; proceedings.** R. S. c. 89, § 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 that he recovers of the first bidder for a loss on the resale, as for so much received on the execution.

110 Me. 222.

**Sec. 9. Return of sale, how to be made; penalty for fraud, in sale or in return.** R. S. c. 89, § 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 commits any fraud in the sale or return, he forfeits to the debtor, five times the sum of which he defrauds him to be recovered in an action on the case.

110 Me. 221.

**Sec. 10. Proceeds of sale, how disposed of.** R. S. c. 89, § 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 applied as provided in section twenty-two.

**Sec. 11. Buildings on leased land, may be sold for land rent; redemption.** R. S. c. 89, § 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 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 appraisement 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 a year.

See c. 104, § 46.

**Sec. 12. Shares in incorporated companies, how to be sold.** R. S. c. 89, § 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 not otherwise, anything in the charter of such company to the contrary notwithstanding.

**Sec. 13. Notice of seizure.** R. S. c. 89, § 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.

**Sec. 14. Officers of corporations, to certify number of debtor's shares, under penalty.** R. S. c. 89, § 14. The officer of the company having the care of the records or account of shares, or interest of the stockholders, shall, on 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 section twenty-eight of chapter ninety-four.

**Sec. 15. Shares sold, to be transferred; new certificate to purchaser; dividends.** R. S. c. 89, § 15. Within fourteen days after the 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 is thereupon 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.

63 Me. 514.

**Sec. 16. Notice of sale, how to be given.** R. S. c. 89, § 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, otherwise by forwarding it to him by mail, if his residence is known to such officer, postage paid, whether within or without the state; and public notice thereof by posting it 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

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of sale; and shall publish an advertisement of the same import, naming the judgment debtor, for three weeks successively before the day of sale in some public newspaper printed in the county, if any, if not, in the state paper.

74 Me. 20.

**Sec. 17. Franchise of corporation, notice of sale.** R. S. c. 89, § 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 thereof, if there are any officers, and if not, where any stockholder resides, for thirty days at least before the day of sale, and by causing an advertisement, naming the creditor therein, to be inserted for 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, the last publication being at least four days before the day of sale; and if there is no newspaper printed in any such county, then in the state paper.

**Sec. 18. Mode of sale; possession, how given.** R. S. c. 89, § 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 the corporation is entitled to receive, for the shortest period of time, is the highest bidder, and the purchaser for such period; and immediately after such sale, the officer shall deliver to him possession of the tollhouses and gates, in whatever county situated, and state his doings therein in his return.

**Sec. 19. Rights and duties of the purchaser.** R. S. c. 89, § 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, 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.

**Sec. 20. Right of redemption by the corporation.** R. S. c. 89, § 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, in addition to the toll received.

**Sec. 21. Application of §§ 17-20 to franchises of railroads lying wholly within the state; notice given in each county interested; conveyance.** R. S. c. 89, § 21. The provisions of the four preceding sections apply to the franchises of railroad corporations whose railroads lie wholly within the state, except that notice shall be given of the time and place of such sale, by posting a notification thereof at the court-house in each county through which such railroad runs, either wholly or in part, for thirty days at least before the day of sale, and by causing an advertisement to be inserted for 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 instead; and when the company has an established office in the state, notice of the sale shall also be given by leaving an attested copy thereof at the office of said company for not less than thirty days previous to such sale; and notice given in the manner herein provided is sufficient. The officer shall deliver to the purchaser a conveyance by deed of the franchise so sold.

See c. 89, § 44.

**Sec. 22. Proceeds of property sold, how applied.** R. S. c. 89, § 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.

\*67 Me. 31; 76 Me. 298; \*93 Me. 31; \*107 Me. 188.

**Sec. 23. Notice of second attachment to be given to the first attaching officer.**

**R. S. c. 89, § 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 the sale to the debtor, he is not liable therefor to the person claiming under such subsequent attachment or seizure.

**Sec. 24. Warrant against turnpike and other corporations taking toll, may be issued proceedings thereon. R. S. c. 89, § 24.** When damages are assessed in favor of a person by the county commissioners, by a committee or by verdict of a jury, for an injury sustained by him through the acts of any corporation authorized to demand and receive toll, and they are not paid within 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.

**Sec. 25. Preservation of lien, in case of prior attachment. R. S. c. 89, § 25.** When real or personal estate is seized on execution, and further service is suspended by a prior attachment thereof, such estate shall be bound by the seizure until it is set off or sold in whole or in part under the prior attachment, or until the attachment 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 the 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.

76 Me. 297, 329.

**Sec. 26. Proceedings, when prior attachment is removed. R. S. c. 89, § 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 continues 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.

**Sec. 27. Set off of executions. R. S. c. 89, § 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 as it will extend; and 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.

22 Me. 462; 24 Me. 352; \*58 Me. 155; \*101 Me. 327.

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**Sec. 28. Cases in which executions not to be set off.** R. S. c. 89, § 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 to so much of the first execution as is due to the attorney in the suit for his fees and disbursements therein.

<sup>3</sup> Me. 37; 7 Me. 84; \*58 Me. 155.

**Sec. 29. Proceeds of sale of property mortgaged, how to be applied; sale without tender.** R. S. c. 89, § 29. After deducting his fees and charges of sale, the officer shall apply the proceeds of the sale of property mortgaged or pledged, 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.

<sup>24</sup> Me. 110.

**Sec. 30. Executions and warrants of distress against towns; issue; levy.** R. S. c. 89, § 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 upon the plan thereof, as is necessary to satisfy said precepts and expenses of sale.

See c. 55, § 104; 47 Me. 141; \*49 Me. 328; 68 Me. 507; 69 Me. 467; 74 Me. 43;

\*77 Me. 215; \*98 Me. 440; \*111 Me. 93; 112 Me. 451.

**Sec. 31. Notice and incidents of the sale.** R. S. c. 89, § 31. He shall advertise in the state paper, and in one of the newspapers printed in the county where the lands lie, if any, for 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.

See c. 55, § 104; 69 Me. 469; 83 Me. 294.

**Sec. 32. Remedy of owner of the property so sold.** R. S. c. 89, § 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.

See c. 14, § 70; c. 55, § 104; 69 Me. 468; 74 Me. 43.

## CHAPTER 98.

## Bail in Civil Actions.

**Sec. 1. Bail-bond; its form; to be returned with writ.** R. S. c. 90, § 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.

<sup>1</sup> Me. 336; 4 Me. 13; 8 Me. 423; 40 Me. 125; 76 Me. 265; 96 Me. 436.

**Sec. 2. Number of sureties.** R. S. c. 90, § 2. No officer is obliged to accept a bail-bond unless signed by at least two sureties, 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 is liable to the plaintiff for any deficiency thereof.

<sup>2</sup> Me. 48.

**Sec. 3. When obligors are held.** R. S. c. 90, § 3. A bail-bond binds the obligors although 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.

**Sec. 4. Surrender of principal before entry; proceedings and effect.** R. S. c. 90, § 4. Any bail may, before the action is entered, exonerate himself from all liability, by surrendering his principal to the jail in the county where the arrest was made, or in the county where the writ is returnable, and within fifteen days thereafter, leaving with the jailer an attested copy of the writ or process whereby the arrest was made, 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.

<sup>2</sup> Me. 383; 76 Me. 266.

**Sec. 5. Names of bail to be entered, on execution.** R. S. c. 90, § 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 places 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.

<sup>4</sup> Me. 13; 76 Me. 266.

**Sec. 6. Officer to notify bail; his fees must be paid.** R. S. c. 90, § 6. The officer holding the execution shall, fifteen days at least before its expiration, whether the debtor has given bail to the arresting officer or the jailer, notify each of the bail personally, or by leaving a notice in writing, by him signed, at the bail's 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 service of a writ, and for travel, 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.

Sec. c. 126, § 5; 7 Me. 81.

**Sec. 7. Surrender of principal in court.** R. S. c. 90, § 7. If the bail do not

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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.

19 Me. 412; 20 Me. 481; 76 Me. 266.

**Sec. 8. In case of avoidance, officer's duty; liability of bail.** R. S. c. 90, § 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 defense.

76 Me. 266.

**Sec. 9. When scire facias against bail may issue.** R. S. c. 90, § 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.

62 Me. 237.

**Sec. 10. Pleadings and defense by bail.** R. S. c. 90, § 10. The bail may plead, jointly or severally, that they never became bail as alleged in the writ, and under that plea may avail themselves of every defense which would avail them in an action of debt on the bond, 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.

**Sec. 11. Surrender of principal, on scire facias.** R. S. c. 90, § 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 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.

**Sec. 12. Proceedings, when bail is taken in a justice action.** R. S. c. 90, § 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 twenty dollars.

**Sec. 13. Surrender of principal before trial justice, proceedings; effect.** R. S. c. 90, § 13. If the bail, at any time before final judgment in the original suit or on scire facias, bring the principal before the justice, and procure 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.

**Sec. 14. Officer's fees; duty and liability for neglect.** R. S. c. 90, § 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.

**Sec. 15. Surrender in such case, before and after judgment.** R. S. c. 90, § 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; but if he is surrendered 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 the copy to the jailer with the prisoner; which shall be a sufficient warrant to the officer for receiving and conveying him to jail, and to the jailer for holding him in custody.

71 Me. 406; 77 Me. 24.

**Sec. 16. Remedy of bail against principal.** R. S. c. 90, § 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.

## CHAPTER 99.

### Trustee Process.

- Sections 1-66 General Provisions as to Procedure.  
 Sections 67-72 Scire Facias.  
 Sections 73-79 Miscellaneous Provisions.  
 Sections 80-84 Trustee Process in Inferior Courts.  
 Section 85 Trustee Action on Judgment may be Abated.  
 Sections 86-87 Proceedings when Demand Against Trustee has been Assigned.

### General Provisions as to Procedure.

**Sec. 1. Actions in which trustee process may be used.** R. S. c. 91, § 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 or superior courts; or when the amount demanded in damages is not less than five, nor more than twenty dollars, before a municipal or police court, or a trial justice unless otherwise limited in the act establishing such court.

\*57 Me. 408; 70 Me. 242; \*120 Me. 382.

**Sec. 2. Form of writ.** R. S. c. 91, § 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.

See 1821, c. 71, § 6; 81 Me. 475; 98 Me. 334.

**Sec. 3. Service of writs.** R. S. c. 91, § 3. The officer serving it shall attach the goods and estate of the principal and give to him in hand or leave at his last and usual place of abode a summons of the form hereinafter prescribed; which is sufficient service on the principal whether any trustee is held or not. The summons shall be in substance as follows:

“STATE OF MAINE.

\_\_\_\_\_ ss.

To \_\_\_\_\_

Greeting:

We command you that you appear at our \_\_\_\_\_ court, next to be holden at \_\_\_\_\_ within and for the county of \_\_\_\_\_ aforesaid, on the \_\_\_\_\_ day of \_\_\_\_\_ next, then and there to answer to \_\_\_\_\_ in a plea of

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\_\_\_\_\_ which plea the said plaintiff has commenced, to be heard and tried at said court and your goods or estate are attached to the value of \_\_\_\_\_ for security to satisfy the judgment which the said plaintiff may recover upon said trial. Fail not of appearance at your peril.

And to \_\_\_\_\_, trustee of said \_\_\_\_\_. We command you to appear before our said court to be holden as aforesaid, to show cause if any you have, why execution to be issued upon such judgment as the said plaintiff may recover against the said principal defendant in said action, if any, should not issue against his goods, effects or credits in your hands or possession as trustee of said principal defendant.

Witness \_\_\_\_\_ Justice of our said court at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand nine hundred and \_\_\_\_\_.

Clerk."

**Sec. 4. Effect of service on trustee; service on partnership.** R. S. c. 91, § 4. A like service on the trustee binds all goods, effects or credits of the principal defendant entrusted to and deposited in his possession, to respond to the final judgment in the action, as when attached by ordinary process. When a partnership is made a trustee in a trustee suit, service upon one member of the firm shall be a sufficient attachment of the property of the principal defendant in the possession of the firm, provided, that such service be made at any place of business of the firm, or that legal service be afterward made upon the other members of the firm.

32 Me. 33; 46 Me. 295; 47 Me. 304; \*81 Me. 475; \*98 Me. 345; 118 Me. 285.

**Sec. 5. County in which action must be brought.** R. S. c. 91, § 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; except in a suit in which a railroad corporation is named and alleged as trustee, the action may be brought in any county in which said railroad corporation runs and operates its road.

4 Cush. 588; 6 Me. 406; 33 Me. 576; 54 Me. 315, 380; 57 Me. 409; 79 Me. 245; 101 Me. 413.

**Sec. 6. Insertion of names of additional trustees; suit discontinued, trustee not entitled to costs; proviso.** R. S. c. 91, § 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 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. When a trustee suit is discontinued or settled by the principal parties thereto, the trustee shall be entitled to no costs, provided the plaintiff or his attorney shall notify the trustee in writing seven days before the return day of the writ, that the suit has been discontinued.

19 Me. 44; 52 Me. 236; 67 Me. 397; 71 Me. 436.

**Sec. 7. Notice to principal, if absent from the state; any trustee may appear for him.** R. S. c. 91, § 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 ninety-four; or proceedings may be had as provided in section four of chapter ninety-five, unless in the meantime 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.

1 Me. 325; 35 Me. 392; 36 Me. 303; 54 Me. 380; 60 Me. 173; 81 Me. 475.

**Sec. 8. Domestic corporations and foreign companies doing business in the state may be summoned as trustees; may answer by attorney or agent and disclose. R. S. c. 91, § 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 trustee writs may be served on them as other writs are served on such companies or corporations, except that the service shall be by the summons described in section three of this chapter, 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 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.

34 Me. 590; 37 Me. 321; 47 Me. 304; 51 Me. 371; 52 Me. 593; 55 Me. 350; 62 Me. 256; 67 Me. 496; 81 Me. 473; 111 Me. 83.

**Sec. 9. Taxes due corporation from defendant, exempt. R. S. c. 91, § 9.** Any corporation summoned as trustee of a defendant, may set off and deduct from any amount found due the defendant from the trustee and attached by trustee process, the amount due from the defendant to the trustee for taxes.

**Sec. 10. Trustee about to leave the state, may disclose before a justice; proceedings. R. S. c. 91, § 10.** When a 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 of the county where he resides, for a notice to the plaintiff 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; and being certified and returned to the court, the same proceedings may be had thereon as if it had been in court.

See c. 120, § 30.

**Sec. 11. Court may appoint commissioner to take disclosure; proceedings. R. S. c. 91, § 11.** The court before whom a trustee is summoned may appoint a commissioner to take his examination and disclosure when any other reasonable cause appears, and may prescribe the notice to be given to the plaintiff, of the time and place thereof; and upon return of such service, 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.

**Sec. 12. Trustee may so disclose by consent. R. S. c. 91, § 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.

**Sec. 13. Non-resident, adjudged trustee. R. S. c. 91, § 13.** A person summoned as trustee may be adjudged trustee by the court, although he was not then, and never had been an inhabitant of the state; and the writ may be made returnable in the county in which either the plaintiff or principal defendant resides.

33 Me. 416; 81 Me. 474.

**Sec. 14. Trustee, when entitled to costs; payment. R. S. c. 91, § 14.** If any supposed trustee comes into court at the first term and submits himself to an examination, on oath, after having in writing declared that at the time of the service of the trustee process upon him, he had no goods, effects, or credits of the principal in his possession, he is entitled to his costs, as in civil actions where

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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.

3 Me. 49; 18 Me. 336, 363; 29 Me. 464; 101 Me. 414.

**Sec. 15. Disclosure to be sworn to.** R. S. c. 91, § 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.

See c. 120, § 30.

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; 71 Me. 127.

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, 383; 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; 68 Me. 445; 69 Me. 271; 73 Me. 291; 75 Me. 41, 397; 76 Me. 33; 77 Me. 195; 79 Me. 572; 80 Me. 329; 81 Me. 467; 83 Me. 396; 92 Me. 102.

When discharged; 6 Me. 263; 17 Me. 30, 94; 18 Me. 336; 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; 72 Me. 450; 75 Me. 100, 385; 76 Me. 468; 78 Me. 158, 244; 87 Me. 203; 89 Me. 65; 101 Me. 414.

**Sec. 16. Lien for costs on articles in his hands; payment by officer.** R. S. c. 91, § 16. Where any person is adjudged trustee for specific articles in his hands, he has 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 be evidence of the lien.

**Sec. 17. Discharge of trustees; effect upon principal.** R. S. c. 91, § 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 defense of the suit.

58 Me. 301.

**Sec. 18. Compensation, if trustee lives in another county.** R. S. c. 91, § 18. When the trustee, at the time when 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.

**Sec. 19. Liability of trustee for not appearing at first term.** R. S. c. 91, § 19. If a 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 is 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.

See § 62; 29 Me. 464; 54 Me. 380; 100 Me. 429.

**Sec. 20. Trustees, when jointly liable for costs.** R. S. c. 91, § 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.

**Sec. 21. Exception in favor of trustees out of their county, and those residing out of state.** R. S. c. 91, § 21. Persons summoned as trustees, residing out of the county where the suit is pending, are not 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 after his return, he shall be allowed for his costs and charges as if he had appeared at the return term.

**Sec. 22. If the action fails, costs for defendant and trustee.** R. S. c. 91, § 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.

**Sec. 23. No costs for trustee, unless he appears.** R. S. c. 91, § 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, although the suit is discontinued.

29 Me. 464; 65 Me. 302.

**Sec. 24. Trustee, living out of county, may appear by attorney.** R. S. c. 91, § 24. A person summoned as trustee, and not then living in the county where the writ is returnable, need not 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.

35 Me. 158; 65 Me. 302.

**Sec. 25. Proceedings.** R. S. c. 91, § 25. If the plaintiff proceeds no further, the declaration shall be considered true.

**Sec. 26. Examination of trustee.** R. S. c. 91, § 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 justice of the supreme judicial or superior court, or a justice of the peace.

**Sec. 27. Disclosure, how sworn to.** R. S. c. 91, § 27. When a trustee has submitted himself to examination on oath in court, his disclosure may be sworn to before a justice 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.

70 Me. 163.

**Sec. 28. Trustee not appearing, defaulted.** R. S. c. 91, § 26. When a person summoned as trustee, neglects to appear and answer to the suit, [or having appeared fails to file his answer at the return term] he shall be defaulted, and adjudged trustee as alleged.

**Sec. 29. Trustee may submit a statement of facts.** R. S. c. 91, § 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.

21 Me. 24; 33 Me. 32; 35 Me. 232; 75 Me. 387.

**Sec. 30. Disclosure true, prima facie.** R. S. c. 91, § 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.

17 Me. 95; 18 Me. 188; 25 Me. 75, 264; 42 Me. 139; 57 Me. 588; 58 Me. 319; 65 Me. 364; 66 Me. 394; 68 Me. 199; 71 Me. 69; 79 Me. 562; 86 Me. 137; 89 Me. 67; 92 Me. 132; 93 Me. 459; 99 Me. 464; 100 Me. 426; 123 Me. 512.

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**Sec. 31. Questions of fact submitted to court or jury.** R. S. c. 91, § 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.  
58 Me. 319; 68 Me. 199; 70 Me. 507; 100 Me. 426.

**Sec. 32. Proceedings, if trustee discloses an assignment of the principal's claim.** R. S. c. 91, § 32. When it appears by the answers of a trustee, that any goods, effects, or credits in his hands are claimed by a third person by virtue of an assignment from the principal debtor, or in some other way, the court may permit such claimant to appear, if he see cause. If he does not appear voluntarily, notice may be issued and served on him, as the court directs; 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 he 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 attorney, the assignment shall have no effect to defeat plaintiff's attachment.

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; 69 Me. 321; 73 Me. 261, 498; 74 Me. 348; 77 Me. 425; 78 Me. 324; 79 Me. 262; 80 Me. 128; 85 Me. 440; 87 Me. 307; 88 Me. 421; 91 Me. 578; 92 Me. 102; 94 Me. 367; 96 Me. 413.

**Sec. 33. Principal defendant may testify.** R. S. c. 91, § 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.

**Sec. 34. Form of judgment against principal and trustee.** R. S. c. 91, § 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.

**Sec. 35. Trustee may appear by consent at another term, as of the first.** R. S. c. 91, § 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.

29 Me. 464.

**Sec. 36. Executor or administrator is liable as trustee; also stockholders of corporations.** R. S. c. 91, § 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.

19 Me. 203; 39 Me. 404; \*65 Me. 301; \*74 Me. 485; 78 Me. 158; \*80 Me. 329.

**Sec. 37. Death of trustee after service, goods to be held in hands of administrator.** R. S. c. 91, § 37. If a 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, remain bound thereby; and his executors or administrators are liable therefor as if the writ had been originally served on them.

11 Me. 38.

**Sec. 38. Death of trustee before judgment, administrator may be cited.** R. S. c. 91, § 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 an ordinary action; and 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.

21 Me. 24; 39 Me. 404; 47 Me. 563.

**Sec. 39. If administrator does not appear, judgment may be rendered.** R. S. c. 91, § 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, 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.

**Sec. 40. If he does not pay, scire facias to issue.** R. S. c. 91, § 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.

**Sec. 41. If trustee dies within thirty days after judgment, proceedings to preserve the attachment.** R. S. c. 91, § 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, with the same effect as if made within thirty days after the judgment.

**Sec. 42. Manner of issuing execution, if administrator is adjudged trustee.** R. S. c. 91, § 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 is 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.

74 Me. 485.

**Sec. 43. Remedy on his bond, if he neglects to pay.** R. S. c. 91, § 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 has 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.

**Sec. 44. Articles in trustee's hands, to be delivered to the officer, to be sold.** R. S. c. 91, § 44. When a 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.

**Sec. 45. Remedy, if trustee refuses.** R. S. c. 91, § 45. If the trustee neglects or refuses to deliver them, or sufficient to satisfy the execution, the judgment creditor has his remedy on a scire facias, as provided in sections sixty-seven to seventy-two, inclusive; and the debtor has his remedy for an overplus belonging to him, as at common law.

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**Sec. 46. Mode of settling the value, as between the principal and trustee. R. S. c. 91, § 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 application of the trustee, notify the principal debtor previous to the delivery, that the value may be thus ascertained, so 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 sees cause; and if he neglects or refuses, by the officer; they shall all be duly sworn to appraise the same, and the officer, justice, and appraisers, shall certify their doings on the execution.

65 Me. 302.

**Sec. 47. If part only is taken, proceedings. R. S. c. 91, § 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. Surplus. R. S. c. 91, § 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. Trustee process, after commitment of the debtor; effect. R. S. c. 91, § 49.** When a judgment creditor has caused the debtor to be committed on execution and afterwards discovers goods, effects, or credits of the debtor, not attachable by ordinary process of law, he may have the benefit of the trustee process like any other creditor, if, within seven days after 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.

1 Me. 162; 13 Me. 421.

**Sec. 50. Proceedings, if trustee discloses property mortgaged to him. R. S. c. 91, § 50.** When a trustee states in his disclosure that he had, at the time when 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 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 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.

See c. 63, § 101; c. 122, § 8; 13 Me. 429; 32 Me. 174; 35 Me. 59, 148; 36 Me. 137; 37 Me. 316; 42 Me. 136, 366; 46 Me. 295; 49 Me. 83; 56 Me. 334; 58 Me. 285; 67 Me. 161; 75 Me. 399.

**Sec. 51. On return of scire facias, excess to be determined by court or jury. R. S. c. 91, § 51.** On 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 that the trustee has refused or neglected to comply therewith, the court or justice shall enter up judgment against him 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 the amount of this excess shall, on the trial of the scire facias, be determined by the court or jury.

**Sec. 52. On disclosure, trustee to deliver property to officer.** R. S. c. 91, § 52. If, by the disclosure, it appears that the property in the hands of the supposed trustee was mortgaged, pledged or subject to a lien to indemnify him against any liability, or 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 the property to the officer, to be by him held and disposed of as if it had been attached.

60 Me. 175.

**Sec. 53. Officer having sold property on execution, proceedings.** R. S. c. 91, § 53. The officer, having sold on execution any personal property delivered to him by virtue of this chapter, after deducting the fees and charges of sale, shall pay to 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.

**Sec. 54. Trustee not prevented from selling property mortgaged.** R. S. c. 91, § 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 have been authorized by the terms of the contract between him and the principal defendant.

**Sec. 55. When not to be adjudged trustee.** R. S. c. 91, § 55. 1919, c. 109. 1923, c. 125. No person shall be adjudged trustee:—

I. 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;

71 Me. 442; 90 Me. 306.

II. 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;

III. By reason of any money in his hands as a public officer, for which he is accountable to the principal defendant;

IV. 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;

3 Me. 49; 30 Me. 388; 35 Me. 232; 47 Me. 563; 49 Me. 284; 50 Me. 208; 63 Me. 67; 65 Me. 535; 70 Me. 141; 71 Me. 441; 73 Me. 572; 75 Me. 103, 386; \*80 Me. 104; 89 Me. 383; \*95 Me. 235.

V. 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; \*122 Me. 241.

VI. 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 and payable to him as wages for his personal labor; and ten dollars shall be exempt in all cases; moreover, wages of minor children and of women, are not, in any case, subject to trustee process on account of any debt of parent or husband; if after wages for personal labor or

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services have been attached and before entry of the writ, the defendant tenders to the plaintiff or to his attorney the whole amount due and recoverable in the action and the fees of the officer for serving the writ, the plaintiff shall recover no costs, except the fees of the officer; and if the defendant is defaulted without an appearance or if he files an offer of judgment on the return day of the writ, and the plaintiff accepts such offer or fails to secure more than the amount thereof and of the interest thereon from its date, the plaintiff shall recover no costs, except the entry fee and the officers' fees. The trustee shall pay to the defendant the amount exempt from attachment at the same time and in the same manner as if no process had been served.

22 Me. 494; 36 Me. 465; 37 Me. 202; 60 Me. 344; 61 Me. 524; 71 Me. 435; 72 Me. 449; 73 Me. 24; 80 Me. 129; 82 Me. 416; 92 Me. 132; 93 Me. 460; 96 Me. 414; \*97 Me. 374; \*110 Me. 161; \*115 Me. 124; \*116 Me. 115.

VII. Where service was made on him by leaving a copy or a summons, 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;

72 Me. 520.

VIII. By reason of any amount due for board furnished a member of the legislature, while in attendance thereon.

126 Me. 51.

Note. Additional exemptions; life and accident policies and money due thereon, c. 59, §§ 143, 169; policies in fraternal beneficiary associations, c. 60, § 17; claims under "Workmen's Compensation Act," c. 54, § 24.

**Sec. 56. Effect, if defendant is summoned as trustee of plaintiff. R. S. c. 91, § 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.

17 Me. 255; 36 Me. 308; 58 Me. 319; 72 Me. 452.

**Sec. 57. Costs in such case. R. S. c. 91, § 57.** If the amount disclosed is as large as the sum recovered in the action, the trustee is liable to no costs after service of the trustee process upon him; otherwise, he is liable to legal costs.

17 Me. 255; 36 Me. 308; 58 Me. 319; 72 Me. 452.

**Sec. 58. Proceedings if defendant in action pending, is summoned as trustee of plaintiff. R. S. c. 91, § 58.** If, during the pendency of an action, the defendant is summoned as 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.

17 Me. 255; 36 Me. 308; 58 Me. 319; 72 Me. 452.

**Sec. 59. Defendant not adjudged trustee, after judgment in first suit. R. S. c. 91, § 59.** If the first suit is not continued, and judgment is rendered therein, the defendant shall not afterwards be adjudged a trustee on account of the demand thus recovered against him, while he is liable to an execution thereon.

72 Me. 453.

**Sec. 60. Effect, if before final judgment, defendant is adjudged trustee on the other suit. R. S. c. 91, § 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.

72 Me. 453.

**Sec. 61. Money, etc., may be trustee before it is payable; effect.** R. S. c. 91, § 61. Any money or other thing due absolutely, to the principal defendant, may be attached before it has become payable; but the trustee is not required to pay or deliver it before the time appointed therefor by the contract.

4 Me. 532; 22 Me. 182; 65 Me. 535; 74 Me. 485; 89 Me. 383.

**Sec. 62. Proceedings, if trustee does not pay costs, when liable.** R. S. c. 91, § 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, the officer shall state the fact in his return thereon; and if it appear thereby that the costs have not been paid by any one, the court shall award execution against such trustee for the amount thereof.

**Sec. 63. Goods fraudulently conveyed, may be trustee.** R. S. c. 91, § 63. If an alleged trustee has in his possession 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.

25 Me. 264; 29 Me. 487; 35 Me. 332; 46 Me. 296; 48 Me. 325; 57 Me. 419; 66 Me. 247; 67 Me. 162; 75 Me. 54; 104 Me. 90; 123 Me. 514.

**Sec. 64. Trustee may retain pay due him, but not for unliquidated damages.** R. S. c. 91, § 64. Every trustee may 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 is liable for the balance only, after their mutual demands are adjusted.

7 Me. 361; 54 Me. 539; 62 Me. 125; 65 Me. 302; 74 Me. 485; 76 Me. 37; 85 Me. 166; \*123 Me. 509, 513.

**Sec. 65. Form of judgment against trustee.** R. S. c. 91, § 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.

25 Me. 262; 28 Me. 455; 34 Me. 124, 589; 42 Me. 134; 70 Me. 113, 164.

**Sec. 66. Discharge no bar to claim of principal.** R. S. c. 91, § 66. If an alleged trustee is discharged, the judgment shall be no bar to an action brought by the principal defendant against him for the same demand.

58 Me. 319.

### Scire Facias.

**Sec. 67. Scire facias against trustee.** R. S. c. 91, § 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.

23 Me. 63; 40 Me. 260; 48 Me. 171; 58 Me. 113; 65 Me. 302; 66 Me. 164; 93 Me. 96; 100 Me. 64; 113 Me. 445.

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**Sec. 68. Judgment on scire facias. R. S. c. 91, § 68.** After such writ has been served on him, if he neglects to appear and answer thereto, he shall be defaulted; and if he was not examined in the original suit, judgment shall be rendered against him for the whole sum remaining due on the judgment against the principal defendant.

88 Me. 501.

**Sec. 69. Judgment when all defendants are defaulted. R. S. c. 91, § 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.

**Sec. 70. If trustee, defaulted on scire facias, was examined in first suit, proceedings. R. S. c. 91, § 70.** If a 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 is not liable for costs on the scire facias.

40 Me. 259; 46 Me. 92, 350.

**Sec. 71. Liability for costs, if discharged on scire facias, not having been before examined. R. S. c. 91, § 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 costs.

7 Me. 130; 36 Me. 303; 40 Me. 260; 48 Me. 82; 60 Me. 173.

**Sec. 72. If examined in original suit, trustee may be examined again. R. S. c. 91, § 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 defense; and the court may enter such judgment as law and justice require, upon the whole matter appearing on such examination and trial.

15 Me. 345; 25 Me. 266; 41 Me. 131; 60 Me. 173.

#### Miscellaneous Provisions.

**Sec. 73. Goods and effects are liable to another attachment, if not demanded within thirty days; exceptions. R. S. c. 91, § 73.** When a person is adjudged trustee, if the goods, effects, and credits in his hands, are not demanded of him by virtue of the execution within thirty days after final judgment, their attachment 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 continues until the expiration of thirty days after such debt is payable in money, or the property aforesaid is demanded of the trustee.

34 Me. 73; 36 Me. 308; 58 Me. 286; 64 Me. 349; 65 Me. 302; 113 Me. 445.

**Sec. 74. If no second attachment, principal may recover. R. S. c. 91, § 74.** If there is no second attachment, the principal defendant may recover the goods, effects, and credits, if not so demanded, as if they had not been attached.

64 Me. 349.

**Sec. 75. Demand, how to be made if trustee is out of state, or has no dwelling**

**in the state. R. S. c. 91, § 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 dwelling-house or place of abode in 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 is a sufficient demand for the purposes mentioned in the two preceding sections.

113 Me. 446.

**Sec. 76. Effect of judgment against trustee. R. S. c. 91, § 76.** The judgment against any person as trustee discharges 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 afterwards sued for the same by the defendant or his executors or administrators, such judgments and 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. Such payment, delivery, or accounting for may be made either to the officer holding the execution or to the plaintiff or his attorney of record, and may be proved by the officer's return upon the execution, by indorsement made thereon by the plaintiff or his attorney of record, or by any other competent evidence.

18 Me. 335; 34 Me. 73; 48 Me. 143; 65 Me. 302; 93 Me. 460; \*122 Me. 239, 245.

**Sec. 77. Penalty for false disclosure. R. S. c. 91, § 77.** Whoever summoned as trustee, upon his examination wilfully and knowingly answers falsely, 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.

16 Me. 435; 57 Me. 338, 419; 122 Me. 245.

**Sec. 78. Trustee is exempt from costs on scire facias, in certain cases. R. S. c. 91, § 78.** If a person summoned as 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 is not liable for 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.

60 Me. 346.

**Sec. 79. On exceptions, whole case may be reexamined by law court. R. S. c. 91, § 79.** Whenever exceptions are taken to the ruling and decision of a single justice as to the liability of a trustee, the whole case may be reexamined and determined by the law court, and remanded for further disclosure or other proceedings, as justice requires.

29 Me. 489; 34 Me. 124; 35 Me. 146; 42 Me. 134; 59 Me. 198; 60 Me. 346; 75 Me. 54; 89 Me. 67; 92 Me. 107; 94 Me. 370; 96 Me. 413; 104 Me. 95, 421; 123 Me. 513.

### Trustee Process in Inferior Courts.

**Sec. 80. Form and service of trustee process for inferior courts. R. S. c. 91, § 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

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county where either of the supposed trustees resides; and if not so brought, it shall be dismissed and the trustees shall recover their costs.

See 1821, c. 63, § 6; 12 Me. 18.

**Sec. 81. Default, if trustee does not appear; costs.** R. S. c. 91, § 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 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, the trustee shall be allowed his costs.

**Sec. 82. Subsequent proceedings; discharge of trustee if judgment is less than five dollars, save in set-off.** R. S. c. 91, § 82. All subsequent proceedings in such causes shall be the same as in the supreme judicial court, varying the forms as circumstances require; but when, in a trustee process before such municipal or police court or trial 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.

**Sec. 83. How execution shall issue, if principal or trustee removes.** R. S. c. 91, § 83. If after a judgment is rendered in such trustee process, the principal defendant or trustee removes from the county in which it was 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.

**Sec. 84. Proceedings, if trustee, living in another county, is discharged.** R. S. c. 91, § 84. When an action is brought against a trustee in a 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.

#### Trustee Actions on Judgment may be Abated.

**Sec. 85. Trustee suit on judgment, when abated; costs.** R. S. c. 91, § 85. When an action is commenced by trustee process on a judgment on which 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.

See c. 95, § 154.

#### Proceedings, When Demand Against Trustee Has Been Assigned.

**Sec. 86. Demands assigned as security, may be trustee and redeemed.** R. S. c. 91, § 86. 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 fulfilment 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. 87. Plaintiff's rights, in case of redemption.** R. S. c. 91, § 87. The officer making demand on the trustee upon 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.

60 Me. 173.

Note. Proceedings to dissolve attachment on trustee process by application to court, c. 94, § 82; by bond properly approved, c. 94, § 84.  
Costs taxable for trustee, c. 126, § 10.

## CHAPTER 100.

### Actions by or Against Executors and Administrators.

**Sec. 1. Process against estate in their hands. R. S. c. 92, § 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.

14 Me. 324; 23 Me. 253; 24 Me. 27; 36 Me. 246; 61 Me. 471; \*96 Me. 381.

**Sec. 2. Executions for costs against their own goods and estate. R. S. c. 92, § 2.** Executions for costs 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 defense, 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.

6 Me. 49; 23 Me. 253; 24 Me. 29; 70 Me. 463; \*96 Me. 381, 383.

**Sec. 3. Execution against the estate of deceased, if returned unsatisfied. R. S. c. 92, § 3.** When a proper officer makes his return, on an execution issued under section one, that he cannot find personal property of the deceased, or other means to satisfy it, a writ of scire 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.

2 Me. 112; \*97 Me. 393.

**Sec. 4. Administrator de bonis non may prosecute and defend, and sue judgments. R. S. c. 92, § 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.

14 Me. 324; 32 Me. 131, 175; 69 Me. 150; 78 Me. 141; 109 Me. 67.

**Sec. 5. Scire facias against administrator de bonis non. R. S. c. 92, § 5.** When an executor or administrator ceases to be such after judgment against him, a writ of scire 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.

32 Me. 131, 175; \*69 Me. 150; \*78 Me. 141.

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**Sec. 6. Writ of error. R. S. c. 92, § 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.

69 Me. 150; 78 Me. 141; 109 Me. 67.

**Sec. 7. When the only party to an action dies, proceedings. R. S. c. 92, § 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.

19 Me. 346; 59 Me. 342; 64 Me. 385; 76 Me. 98; \*108 Me. 350.

**Sec. 8. Actions which survive. R. S. c. 92, § 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.

See c. 94, § 58; 3 Me. 176; 17 Me. 410; 30 Me. 201; 45 Me. 210; 46 Me. 159; 50 Me. 87; 55 Me. 144; 59 Me. 342; 60 Me. 491; 62 Me. 279; \*65 Me. 18; 103 Me. 437; \*104 Me. 115; \*112 Me. 60.

**Sec. 9. Actions for injuries causing immediate death, may be maintained. R. S. c. 92, § 9.** Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default, is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or the corporation which, would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as shall amount to a felony.

88 Me. 46; 89 Me. 119; 90 Me. 268; 92 Me. 457; 93 Me. 21; 94 Me. 500; 95 Me. 104, 150; 96 Me. 144, 291; 97 Me. 109, 248, 529; 98 Me. 304; 99 Me. 291, 436; \*103 Me. 267; \*104 Me. 113; 106 Me. 211; 109 Me. 67; 112 Me. 98, 492, 509; 113 Me. 271; 114 Me. 213, 220; 115 Me. 467; 116 Me. 25, 191; 117 Me. 61, 262; 118 Me. 334, 414; \*124 Me. 156; 126 Me. 17, 411.

**Sec. 10. How such action to be brought; and amount recovered, disposed of; limitation. R. S. c. 92, § 10.** Every such action shall be brought by and in the names of the personal representatives of such deceased person, and the amount recovered in every such action shall be for the exclusive benefit of his widow, if no children, and of the children, if no widow, and if both, then of her and them equally, and, if neither, of his heirs. The jury may give such damages as they shall deem a fair and just compensation, not exceeding five thousand dollars, with reference to the pecuniary injuries resulting from such death to the persons for whose benefit such action is brought, provided, that such action shall be commenced within two years after the death of such person.

114 Me. 123; 115 Me. 467; 126 Me. 411.

**Sec. 11. Damages in actions of trespass; goods returned in replevin, are not assets. R. S. c. 92, § 11.** 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 discharges him.

62 Me. 279.

**Sec. 12. Proceedings when one of several parties dies; survivors may testify.** R. S. c. 92, § 12. 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.

37 Me. 552; 50 Me. 88; 59 Me. 343; 60 Me. 353; 61 Me. 17; 64 Me. 385.

**Sec. 13. Heirs, devisees, or legatees may petition to defend suit; bond.** R. S. c. 92, § 13. When suit has been brought against an executor or administrator, any of the heirs, devisees, or legatees of the deceased may personally or by attorney, petition the court for leave to defend the suit, setting forth the facts as he believes them to be and his reasons for so desiring to defend, and the court may grant or refuse such leave. If leave is granted, the petitioner shall give to the administrator or executor bond in such sum as the court orders, to hold the executor or administrator harmless, for any damages or costs occasioned by the suit or by said defense; and an entry of record shall be made that he is admitted to defend such suit.

**Sec. 14. Claims against estates to be filed in writing with affidavit; no action for thirty days; claims not filed, barred.** R. S. c. 92, § 14. 1917, c. 133, § 7. 1919, c. 177, § 1. All claims against estates of deceased persons, except for legacies and distributive shares and for labor and materials for which suit may be commenced under section thirty-four of chapter one hundred four, shall be presented to the executor or administrator in writing, or filed in the registry of probate, supported by an affidavit of the claimant, or of some other person cognizant thereof, either before or within twelve months after his qualification as such executor or administrator; and no action shall be commenced against such executor or administrator on any such claim until thirty days after the presentation or filing of such claim as above provided. Any claim not so presented or filed shall be forever barred against the estate, except as provided in sections sixteen, eighteen and twenty of this chapter.

107 Me. 308; \*112 Me. 552; 113 Me. 390; \*114 Me. 147; 116 Me. 212; 118 Me. 440; \*119 Me. 465; 120 Me. 488; 121 Me. 78; \*122 Me. 144.

**Sec. 15. Continuance of actions, if brought within one year after notice, without costs.** R. S. c. 92, § 15. 1917, c. 133, § 8. Actions against executors or administrators, on such claims, if brought within one year after their qualification, shall be continued without cost to either party, until said year expires and be barred by a tender of the debt within the year, except actions on claims not affected by the insolvency of the estate and actions on appeals from commissioners of insolvency or other commissioners appointed by the judge of probate. No action shall be maintained against an executor or administrator on a claim or demand against the estate, except for legacies and distributive shares, and except as provided in section seventeen, unless commenced and served within twenty months after his qualification as such executor or administrator. When an executor, or administrator, guardian [conservator] or testamentary trustee residing out of the state, has no agent or attorney in the state, service may be made on one of his sureties in the same manner and with the same effect as if made on him.

Limitation begins to run from time of granting letters in usual form, c. 76, § 37; see c. 76, § 42; 3 Me. 19; 8 Me. 168; 11 Me. 151; 21 Me. 265; 37 Me. 552; 63 Me. 333; 68 Me. 30; 69 Me. 554; 71 Me. 101, 163, 490; 72 Me. 117, 222, 246, 344; 73 Me. 375; 74 Me. 519; 76 Me. 19, 45, 197; 79 Me. 385; 84 Me. 83, 145; 85 Me. 442; 92 Me. 83; 105 Me. 357; 107 Me. 308; 109 Me. 67; 110 Me. 213; 112 Me. 552; 116 Me. 212.

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**Sec. 16. Proceedings, when action does not accrue within twelve months. R. S. c. 92, § 17. 1919, c. 177, § 2.** When an action on a covenant or contract does not accrue within said twelve months, the claimant may file his demand in the registry of probate within that time, verified as required in case of claims presented to the commissioners on insolvent estates; and the judge of probate shall direct that sufficient assets, if such there are, 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 the judge to pay whatever is found due on said claim.

39 Me. 500; 63 Me. 332; 74 Me. 20; 76 Me. 20; 110 Me. 213; 111 Me. 210; 116 Me. 212.

**Sec. 17. Proceedings when bond is given, and when not given. R. S. c. 92, § 18.** 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. When a bond is given, assets shall not be reserved, but the estate is 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.

63 Me. 332; 110 Me. 212; 111 Me. 210.

**Sec. 18. Remedy on claim not filed within twelve months. R. S. c. 92, § 19. 1919, c. 177, § 3.** When such claim has not been filed in the probate office within said twelve months, 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.

6 Me. 138; 63 Me. 332; 74 Me. 19; 76 Me. 20, 45; 77 Me. 198; 111 Me. 210.

**Sec. 19. Actions against administrators de bonis non. R. S. c. 92, § 20. 1917, c. 133, § 10.** When an executor or administrator after qualification dies, resigns, or is removed, without having fully administered the estate, and a new administrator is appointed, such new administration shall be deemed to be a continuation of the preceding administration, and all limitations which could be claimed for or against the predecessor may be claimed for or against such successor: Provided, however, that the time when there is no representative of the estate shall not be reckoned as part of the periods for the filing or proof of claims or limitations for bringing suits; and such periods, and generally the periods referred to where no provisions to the contrary is made, shall be reckoned exclusive of such time.

1 Me. 157; 14 Me. 323.

**Sec. 20. When claim is not presented within the time limited, supreme court may give relief in equity. R. S. c. 92, § 22.** If the supreme judicial court, upon a bill in equity filed by a creditor whose claim has not been prosecuted within the time limited by the preceding sections, is of the opinion that justice and equity require it, and that such creditor is not chargeable with culpable neglect in not prosecuting his claim within the time so limited, it may give him judgment for the amount of his claim against the estate of the deceased person; but such judgment shall not affect any payment or distribution made before the filing of such bill.

79 Me. 208; 87 Me. 201; 90 Me. 511; 93 Me. 242; 100 Me. 209; 106 Me. 36; 110 Me. 212; 119 Me. 111.

**Sec. 21. Actions for legacies not affected; liability for unfaithful administration. R. S. c. 92, § 23.** An action for the recovery of a legacy, is not affected by this chapter. When an executor or administrator is guilty of unfaithful administration, he is liable on his administration bond for all damages occasioned thereby.

**Executions May Issue After Creditor's Death.**

**Sec. 22. How an execution may issue after creditor's death. R. S. c. 92, § 24.** 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 application in writing of the 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 or be renewed, after the term within which it might have been done if the party had not died.

<sup>71</sup> Me. 190.

**Sec. 23. Recitals of the execution; to what uses property levied on to be held. R. S. c. 92, § 25.** In an 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 died, 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.

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## CHAPTER 101.

### Partition of Real Estate by the Supreme Judicial Court.

**Sec. 1. Partition, by writ at common law. R. S. c. 93, § 1.** Persons seized or having a right of entry into real estate in fee simple or for life, as tenants in common or joint tenants may be compelled to divide the same by writ of partition at common law.

<sup>12</sup> Me. 144, 327, 401; <sup>16</sup> Me. 391; <sup>17</sup> Me. 427; <sup>21</sup> Me. 49; \*<sup>31</sup> Me. 487; \*<sup>35</sup> Me. 110; <sup>52</sup> Me. 25; <sup>64</sup> Me. 99; \*<sup>92</sup> Me. 397; <sup>110</sup> Me. 63; <sup>111</sup> Me. 194.

**Sec. 2. Partition by petition; form of petition. R. S. c. 93, § 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 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.

<sup>5</sup> Me. 461; <sup>12</sup> Me. 145, 327; <sup>16</sup> Me. 391; <sup>17</sup> Me. 427; <sup>39</sup> Me. 164; <sup>52</sup> Me. 416; <sup>64</sup> Me. 99; <sup>94</sup> Me. 490; <sup>111</sup> Me. 194; <sup>125</sup> Me. 219.

**Sec. 3. Filing, if all cotenants are named; service. R. S. c. 93, § 3.** The petition may be filed in the clerk's office in vacation, if all the cotenants 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, is sufficient service.

<sup>100</sup> Me. 548.

**Sec. 4. Order of notice when not all named. R. S. c. 93, § 4.** When the cotenants 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 cotenants, as the court orders; and in

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case of non-compliance therewith, or other imperfection of notice, the court may order further notice to be given.

5 Me. 464; 94 Me. 490; 96 Me. 558.

**Sec. 5. When those not notified may appear; pleadings. R. S. c. 93, § 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.

34 Me. 36; 35 Me. 463; 36 Me. 18; \*46 Me. 90; 68 Me. 272.

**Sec. 6. Counter brief statement may be filed. R. S. c. 93, § 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 defense.

22 Me. 325.

**Sec. 7. Guardian for infant or insane, and agent for non-resident. R. S. c. 93, § 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 for one year before the petition was presented, and do not return before judgment for the partition is to be made.

82 Me. 330.

**Sec. 8. Division of time for occupation of sawmills. R. S. c. 93, § 8.** Tenants in common of a sawmill 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.

64 Me. 465.

**Sec. 9. Respondent, claiming a specific part, may have separate trial. R. S. c. 93, § 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 be heard no further, and the petitioner shall recover of him the costs of the trial.

22 Me. 326; 82 Me. 328; 90 Me. 102.

**Sec. 10. Costs. R. S. c. 93, § 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 recovers costs. When found entitled to have partition of the share claimed, he recovers costs of the respondent. In such cases, or on default, a judgment that partition be made shall be entered. In all other cases, including default of the respondent or respondents, when judgment for partition is given, the court, after notice to all parties in interest, may, in the discretion of the presiding justice, apportion the costs between the petitioner and respondent or respondents, or allow the petitioner to recover costs of the proceedings against the respondent or respondents to be taxed the same as in a civil action, and execution may be issued therefor.

45 Me. 164; 46 Me. 90; 76 Me. 549; 87 Me. 140.

**Sec. 11. Owners may join or sever; proceedings when petitioner dies or conveys. R. S. c. 93, § 11.** The owners may join or sever in their petitions. When they join, and one dies or conveys his share, or when a several petitioner dies or conveys his share, the petition, by leave of court, may be amended by

erasing his name and inserting the names of his heirs, devisees or grantees, and they may proceed with the process for their respective shares.

60 Me. 208.

**Sec. 12. On death of respondent, heirs or devisees may be cited in.** R. S. c. 93, § 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. Commissioners to be appointed.** R. S. c. 93, § 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.

15 Me. 367; 50 Me. 264.

**Sec. 14. Oath and certificate on warrant.** R. S. c. 93, § 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. Notice; all to be present; but majority may report.** R. S. c. 93, § 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.

20 Me. 293; 32 Me. 137; 38 Me. 540.

**Sec. 16. Share of tenant in exclusive possession of part, how assigned; his improvements to be considered.** R. S. c. 93, § 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. When any person shall have heretofore made or shall hereafter make improvements upon a part of any real estate with the consent of the owners thereof, or any of them, and such person shall have thereafter become a tenant in common of such real estate, his share shall be assigned from or including such part, and the value of the improvements so made shall be considered, and the assignment of shares made in conformity therewith.

38 Me. 540; 50 Me. 265; 68 Me. 140, \*569; 71 Me. 379.

**Sec. 17. Parcel of greater value than share, assigned to one who pays to others.** R. S. c. 93, § 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 shares; but the report shall not be accepted, until the sums so awarded are paid or secured to the satisfaction of the parties entitled thereto.

15 Me. 367; 30 Me. 219; \*62 Me. 113.

**Sec. 18. Expenses may be apportioned.** R. S. c. 93, § 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 justice shall determine, after notice to all concerned, the equitable proportion thereof to be paid by the several owners in the lands of which partition has been made, and execution therefor may be issued against any owner neglecting to pay.

**Sec. 19. When share of greater value is set off to one, part owner out of state may have new division.** R. S. c. 93, § 19. If a share larger than his real

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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.

<sup>82 Me. 331.</sup>

**Sec. 20. Proceedings on new partition. R. S. c. 93, § 20.** In such new partition, so much shall be taken from any share as the same shall be adjudged to be in excess of its just proportion of the whole, estimated as in the condition when first divided, and no more; and if 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 the improvements, by him to whose share they are added; and the court may issue execution therefor, and for costs of the new partition.

<sup>82 Me. 331.</sup>

**Sec. 21. Report; proceedings thereon; judgment. R. S. c. 93, § 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.

Duplicate plans to be filed in registry of deeds, c. 15, § 22; 20 Me. 294; 30 Me. 219; 39 Me. 218.

**Sec. 22. Judgment, effect of. R. S. c. 93, § 22.** Such judgment is 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.

<sup>29 Me. 42, 130, 560.</sup>

**Sec. 23. When an unequal share is left out of state, new partition may be made. R. S. c. 93, § 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 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, the court may order a new partition as provided in section twenty.

<sup>82 Me. 331.</sup>

**Sec. 24. Claimant not party to proceedings, is not affected by judgment. R. S. c. 93, § 24.** When a person not a party to the proceedings claims to hold the premises described, or any part thereof, in severalty, he is not precluded by the judgment, for partition; but may bring his action therefor, as if no such judgment had been rendered.

<sup>29 Me. 42; 33 Me. 102; 82 Me. 328.</sup>

**Sec. 25. Person not party claiming a share assigned or left, rights of. R. S. c. 93, § 25.** When a person, not a party to the proceedings, claims a share assigned to or left for a part owner, he is concluded so far as it respects the assignment of the shares; but he is not 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, the same as if the demandant had claimed the piece demanded, instead of an undivided part of the whole.

**Sec. 26. Part owner, to whom no share was assigned, rights of. R. S. c. 93, § 26.** When a person, not a party to the proceedings, to whom no share

was assigned or left, claims to have been a part owner of the estate, he is 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.

**Sec. 27. Person evicted of his share, to have new partition. R. S. c. 93, § 27.** When a person to whom a share has been assigned or left is evicted by an elder and better title than that of the parties to the judgment, he is entitled to a new partition of the residue, as if no partition had been made.

**Sec. 28. Mortgage, attachment, or lien on a share in common holds the share set out. R. S. c. 93, § 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 remains in force on the part assigned or left to such part owner.

111 Me. 194; \*117 Me. 211.

**Sec. 29. Lots reserved for public uses to be first set off. R. S. c. 93, § 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.

Sec. c. 11, § 26; 17 Me. 427; 61 Me. 411.

Note. Joint tenants and tenants in common liable in treble damages for cutting trees and timber pending partition, c. 108, § 5.

## CHAPTER 102.

### Partitions and Actions of Review.

#### Petitions for Review.

**Sec. 1. Review, within three years after judgment; special cases. R. S. c. 94, § 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 petition therefor is presented within three years after the rendition of judgment, and in the special cases following:

1 Me. 324; 3 Me. 93; 4 Me. 61, 537; 6 Me. 412, 479; 8 Me. 212; 19 Me. 108, 260;  
24 Me. 170; 27 Me. 537; 33 Me. 233, 586; 39 Me. 170; 67 Me. 408; 72 Me. 366;  
102 Me. 421; 121 Me. 264.

I. When a petition for a 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.

33 Me. 586; 42 Me. 571; 73 Me. 30; 84 Me. 303.

II. 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, in the opinion of the court, sufficient proof that the testimony was false; or if the witness has been convicted of perjury therefor.

1 Me. 324; 3 Me. 93; 56 Me. 550; 78 Me. 214.

III. 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

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surety or sureties, approved by the presiding justice, to secure the party of record against any judgment recovered by the defendant in review.

63 Me. 464; 81 Me. 203; 112 Me. 240; \*116 Me. 378

IV. When a judgment has been rendered on the report of referees in an action referred by rule of court, if 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.

60 Me. 53.

V. When a material amendment of the declaration is made after 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.

74 Me. 526.

VI. In cases mentioned in section fifty-three of chapter eighty-nine.

VII. A review may be granted in any case where it appears that through fraud, accident, mistake, or misfortune, justice has not been done, and that a further hearing would be just and equitable, if a petition therefor is presented to the court within six years after judgment.

42 Me. 571; 60 Me. 52, 438; 62 Me. 191; 63 Me. 120; 67 Me. 408; 69 Me. 150;  
93 Me. 146; 102 Me. 421; 105 Me. 509; \*107 Me. 336; 109 Me. 142; 112 Me. 203,  
\*240; \*115 Me. 89.

VIII. Any defendant in the original judgment may petition in the name of all, by furnishing to each of his codefendants requiring it, such security against all liability therefrom as the court deems reasonable; and the court, on motion of any original codefendant shall require such security in any stage of the proceedings.

44 Me. 84.

**Sec. 2. Signature to petition by attorney; attachment; notice. R. S. c. 94, § 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 may be attached thereon, the same as on other writs; notice thereon may be ordered by any justice of the supreme judicial court in term time or vacation, returnable in the county where the judgment was rendered, and it must be given accordingly.

See c. 95, § 1; 59 Me. 156; 64 Me. 204; 104 Me. 81.

**Sec. 3. Evidence, discovered pending petition. R. S. c. 94, § 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.

6 Me. 412; 36 Me. 11.

**Sec. 4. New evidence and names of witnesses must be stated on oath. R. S. c. 94, § 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.

44 Me. 65, 83; 50 Me. 119; 53 Me. 356; 56 Me. 550; 74 Me. 210; 96 Me. 509; 126 Me. 294.

**Sec. 5. Stay of execution or supersedeas on filing bond. R. S. c. 94, § 5.** On presentation of a petition for review, any justice of said 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.

47 Me. 439; 64 Me. 237; 104 Me. 81.

### Second Review.

**Sec. 6. Second review. R. S. c. 94, § 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.

74 Me. 209.

### Actions of Review.

**Sec. 7. Issue and entry of writ; copies to be produced. R. S. c. 94, § 7.** When a review is a matter of right as provided by section five of chapter ninety-five, or when it is 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.

1 Me. 405; 61 Me. 336; 68 Me. 480; 72 Me. 338; 111 Me. 72.

**Sec. 8. Recitals of writ; service. R. S. c. 94, § 8.** In the writ of review, it is 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.

111 Me. 68.

**Sec. 9. When original plaintiff is plaintiff in review, attachment. R. S. c. 94, § 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 held to satisfy the judgment on review.

111 Me. 66.

**Sec. 10. Pleadings. R. S. c. 94, § 10.** The proper pleadings shall be made on review, when no issue has 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 tried and disposed of as if it were an original suit.

**Sec. 11. Judgment. R. S. c. 94, § 11.** Judgment in the suit reviewed shall be given without regard to the former judgment, except as follows. When the original plaintiff recovers on review as debt or damage, a sum exceeding that recovered by the first judgment, he shall have judgment for the debt or damage recovered on review, or for so much thereof as remains unsatisfied, and for costs on review.

38 Me. 113; 47 Me. 438; 64 Me. 238; 73 Me. 247; 111 Me. 71; 122 Me. 464.

**Sec. 12. When sum first recovered is reduced, judgment, how rendered; and when wholly reversed; costs. R. S. c. 94, § 12.** When the sum first recovered is reduced, the original defendant shall have judgment for the difference, with costs on review; and if the former judgment has not been satisfied, one judgment

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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 canceled 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.

1 Me. 255; 2 Me. 397; 38 Me. 113; 47 Me. 440, 529; 48 Me. 288; 64 Me. 238; 73 Me. 247; 107 Me. 486; 111 Me. 71.

**Sec. 13. In replevin and set-off, plaintiff is as defendant. R. S. c. 94, § 13.** When actions of replevin, and actions in which a claim in set-off was filed, are reviewed, the defendant is in the position of a plaintiff, so far as it respects the damages awarded to him.

**Sec. 14. When levy is void. R. S. c. 94, § 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, and a copy of the final judgment in review duly certified by the clerk of courts in the county where such judgment is rendered shall be recorded within thirty days from the rendition thereof, in the registry of deeds where such levy is recorded.

47 Me. 529.

**Sec. 15. Party prevailing, has costs; court may impose terms. R. S. c. 94, § 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 orders; but the court granting a review may impose terms respecting costs.

1 Me. 255; 2 Me. 397; 40 Me. 332; 64 Me. 239; 73 Me. 247; 107 Me. 486.

Note. Reviews in equity cases, c. 90, § 39.

Review of judgments of superior courts, c. 90, § 107.

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## CHAPTER 103.

### Mortgages of Real Estate.

**Sec. 1. Forms of mortgages of real estate. R. S. c. 95, § 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.

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; 52 Me. 98; \*53 Me. 11, 464; 55 Me. 388, 407; 68 Me. 488; 70 Me. 209; 71 Me. 553, \*570; 75 Me. \*268; 77 Me. 554; 82 Me. 556; 93 Me. 87; 109 Me. 487.

**Sec. 2. Mortgagee may enter before or after breach, unless otherwise agreed. R. S. c. 95, § 2.** A 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 possession, shall be accounted for and deducted from the sum due on the mortgage.

Rights of parties; 2 Me. 136, 175, 340; 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, 160; 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, 447, 463; 51 Me. 49; 52 Me. 98, 116, 130, 185, 406; 55 Me. 495, 522; \*58 Me. 367; 66 Me. 275; 67 Me. 547; 72 Me. 281; 80 Me. 460; 82 Me. \*424, 457; 84 Me. 311; 92 Me. 242.

Transfers of mortgages; 2 Me. 331; 5 Me. 276; 8 Me. 283; 23 Me. 346; 24 Me. 189; 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. 377; 116 Me. 459; \*125 Me. 114.

**Sec. 3. Modes of obtaining possession for foreclosure. R. S. c. 95, § 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.:

See c. 90, § 6, ¶ i; 18 Me. 199; 21 Me. 128; 23 Me. 25; 24 Me. 156; 35 Me. 557; 40 Me. 523; 42 Me. 39; 48 Me. 62; 49 Me. 266, 378; 51 Me. 381.

I. He may obtain possession under a writ of possession issued on a conditional judgment, as provided in section ten, 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.

See c. 126, § 10; 27 Me. 241; 33 Me. 198; 35 Me. 551; 45 Me. 452; 51 Me. 395; 52 Me. 469; 55 Me. 522; 78 Me. 343.

II. He may enter into possession, and hold the same by consent in writing of the mortgagor, or the person holding under him; and such consent with the affidavit of the mortgagee or his assignee to the fact and time of entry endorsed thereon, shall be recorded in each registry of deeds in which the mortgage is or by law ought to be recorded, within thirty days after the entry is made.

28 Me. 353; 29 Me. 57; 33 Me. 364; 38 Me. 551; 41 Me. 71; 74 Me. 312.

III. 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 certificate shall be recorded in each registry of deeds in which the mortgage is or by law ought to be recorded, within thirty days after the entry is made.

4 Me. 495; 37 Me. 388; 47 Me. 296; 50 Me. 473; \*52 Me. 135; \*58 Me. 368; 64 Me. 161; 66 Me. 272; \*82 Me. 557.

**Sec. 4. Foreclosure in one year. R. S. c. 95, § 4. 1917, c. 192, § 1. 1921, c. 47, § 1.** Possession obtained in either of these three modes, and continued for one year, forever forecloses the right of redemption.

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.

**Sec. 5. Modes of foreclosing without possession. R. S. c. 95, § 5. 1917, c. 192, § 2. 1927, c. 197, §§ 1, 2.** 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:

I. He may give public notice in a newspaper published and printed in whole or in part 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, the notice before publication shall be sworn to as true before any officer authorized to administer oaths by the holder of the mortgage claiming foreclosure thereof, or by the legal representatives of said holder or his attorney duly author-

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ized by letter of attorney recorded in the registry of deeds where said mortgage is recorded; and he shall cause a copy of such printed notice, together with the certificate or jurat of the officer, and the name and date of the newspaper in which it was last published to be recorded in said registry in which the mortgage deed is or by law ought to be recorded, within thirty days after such last publication.

25 Me. 392; 38 Me. 258; 45 Me. 99, 452; 46 Me. 274, 497; 49 Me. 103, 376; 53 Me. 73; 55 Me. 544; \*58 Me. 367; 61 Me. 54; 63 Me. 544; 66 Me. 170; 71 Me. 444; 74 Me. 75; \*77 Me. 554; 84 Me. 97; \*94 Me. 305; \*97 Me. 223; 103 Me. 169.

II. He may cause an attested copy of such notice to be served on the mortgagor, or mortgagors or in case of any recorded transfer or transfers of the mortgaged property since the giving of the mortgage, on the record holder or holders of the title of the mortgaged property at the time of the service of said notice, if he lives in the state, by the sheriff of the county where the mortgagor or the record holder of the title resides, or his deputy, by delivering it to him in hand or leaving it at his last and usual place of 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 case different mortgagors or record holders reside in different counties, then service shall be made of such notice as above provided by any sheriff or his deputy upon the mortgagors or record holders residing in the same county as such sheriff or deputy, and in all cases the certificate of the register of deeds is prima facie evidence of the fact of such entry, notice, publication of foreclosure, and of the sheriff's return.

77 Me. 433.

*All notices of foreclosure of mortgages of real estate already begun at the time this act takes effect, but neither acknowledged nor sworn to, may be duly recorded in the registry of deeds where the mortgage is recorded; and all notices of foreclosure which have been heretofore served by a sheriff or his deputy in compliance with the terms of said subdivision II as amended by said section two of chapter one hundred ninety-two of the public laws of nineteen hundred and seventeen are hereby validated as to their service.*

**Sec. 6. Fees of attorneys for the foreclosure of a mortgage. R. S. c. 95, § 6.** For the foreclosure of a mortgage by either method prescribed by the preceding section, or by paragraphs two and three of section three, the mortgagee or the person claiming under him may charge an attorney's fee of five dollars which shall be a lien on the mortgaged estate, and shall be included, with the expense of publication, service and recording, in making up the sum to be tendered by the mortgagor or the person claiming under him in order to be entitled to redeem; provided, said sum has actually been paid in full or partial discharge of an attorney's fee.

**Sec. 7. Mortgagor may redeem within one year; exceptions; waiver. R. S. c. 95, § 7. 1917, c. 192, § 3. 1921, c. 47. 1923, c. 73.** The mortgagor, or person claiming under him, may redeem the mortgaged premises within one year after the first publication, or the service of the notice mentioned in section five, and if not so redeemed, his right of redemption is forever foreclosed.

*All proceedings for foreclosure of real estate mortgages which shall have been instituted at the time when this act takes effect, and under which the period of redemption fixed by law shall not then have expired, shall be subject to the provisions of this act, and no affidavit shall be required to perfect foreclosure. All foreclosures of mortgages of real estate heretofore begun in which the affidavit required by chapter one hundred and ninety-two of the public laws of nineteen hundred and seventeen has been seasonably filed are hereby made valid as far as such affidavit may be necessary to perfect such foreclosure.*

The mortgagor and mortgagee may agree upon any period of 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, legal representatives and assigns and shall apply to all the modes of the foreclosure of mortgages on real estate.

The mortgagor or those claiming under him shall have the right to redeem the mortgaged premises from any or all sales thereof under and by virtue of authority and power contained in such mortgage or from any sale of the mortgaged premises under or by virtue of a separate instrument executed at or about the same time with the mortgage, and being a part of the same transaction, by paying or tendering to the mortgagee or to those claiming under him as appears by record at the registry of deeds where the mortgage is properly recorded, the debt, interest, costs of foreclosure, and other obligations provided in the mortgage at any time within one year from the date of such sale. Nothing herein shall apply to railroad mortgages, so-called, or to bond issues of corporations, or to bonds forming a part of a mortgage indebtedness of any corporation or corporations wherein the method of sale is provided in the deed of trust or any similar instrument.

The acceptance before the expiration of the right of redemption and after the commencement of foreclosure proceedings of any mortgage of real property of anything of value to be applied on or to the mortgage indebtedness by the mortgagee or any person holding under him shall constitute a waiver of such foreclosure unless an agreement to the contrary in writing be signed by the person from whom the same is accepted. Except, however, the receipt of income from the mortgaged premises, by the mortgagee or his assigns while in possession thereof shall not constitute a waiver of the foreclosure proceedings of the mortgage on such premises.

20 Me. 271; 36 Me. 51; 76 Me. 281; \*77 Me. 554; \*103 Me. 413.

**Sec. 8. Redemption in case of death of mortgagee; administrator may be appointed; notice.** R. S. c. 95, § 8. Whenever a mortgagee or his assignee dies, and there is no executor or administrator to receive the mortgage money, the mortgagor or person claiming under him having a 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 upon such estate, and if, after due notice to all parties interested therein, they neglect or refuse to take out administration for thirty days, then the judge may commit administration to such person as he deems suitable, who may act as administrator with reference to said mortgage, as 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. 9. Form of declaration in a suit to obtain possession.** R. S. c. 95, § 9. 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 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 seven before the suit

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was commenced, the plaintiff not consenting to such judgment; and unless such judgment is awarded, judgment shall be entered as at common law.

2 Me. 332; 13 Me. 186; 14 Me. 299; 17 Me. 439; 19 Me. 276, 366; 28 Me. 135; 42 Me. 188; 53 Me. 77; 56 Me. 10; 63 Me. 545; 64 Me. 445; 79 Me. 570; 80 Me. 460; 81 Me. 285; 95 Me. 33; 103 Me. 169.

**Sec. 10. Form of conditional judgment. R. S. c. 95, § 10.** The conditional judgment shall be, that if the mortgagor, his heirs, executor, or administrator, pays the sum that the court adjudges to be due and payable, with interest, within two months from the time of judgment, and also pays such other sums as the court adjudges to be thereafter payable, within two months from the time that 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 three years from 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.

35 Me. 551, 562; 53 Me. 78; 64 Me. 446; 70 Me. 345; 79 Me. 570; 80 Me. 461; 81 Me. 285; 88 Me. 460; 93 Me. 439; see § 30; \*115 Me. 463.

**Sec. 11. Judgment, if nothing is due. R. S. c. 95, § 11.** 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.

2 Me. 322, 332; 31 Me. 394; 67 Me. 548; 72 Me. 202; 112 Me. 148.

**Sec. 12. Action by executor or administrator. R. S. c. 95, § 12.** 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.

78 Me. 343.

**Sec. 13. Mortgages are assets in the hands of executors and administrators. R. S. c. 95, § 13.** Lands mortgaged to secure the payment of debts, or the performance of any collateral engagement, and the debts so secured, are on the death of the mortgagee, or person claiming under him, assets in the hands of his executors or administrators; they shall have the control of them as of a personal pledge; and when they recover seizin and possession thereof, it shall be for the use of the widow and heirs, or devisees, or creditors of the deceased, as the case may be; and when redeemed, they may receive the money, and give effectual discharges therefor, and releases of the mortgaged premises.

See c. 78, § 28; c. 84, § 1, ¶ viii; 20 Me. 163; 31 Me. 313; 51 Me. 124; 56 Me. 210; \*78 Me. 343; \*79 Me. 301; 80 Me. 138; \*84 Me. 311; \*92 Me. 490; \*103 Me. 415.

**Sec. 14. Against whom, action on a mortgage to be brought. R. S. c. 95, § 14.** 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 cotenant, whether he then has any interest or not in the premises; but he is not liable for costs, when he has no such interest, and makes his disclaimer thereto upon the records of the court.

14 Me. 299; 17 Me. 439; 95 Me. 260.

**Sec. 15. Proceedings in equity to redeem a mortgage. R. S. c. 95, § 15.** 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 seven, 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 has 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.

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. 352; 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, 494; 48 Me. 61; 49 Me. 564; 50 Me. 174, 240; 51 Me. 348; 52 Me. \*135, 408, 544; 53 Me. \*142, 246, 353, 441; 54 Me. 180, 406; 55 Me. 157; 56 Me. 159; 62 Me. 577; 65 Me. 108, 288; 66 Me. 190, \*272, 470; 68 Me. 192; 69 Me. 192; 70 Me. 388; 74 Me. 314; 87 Me. 88; \*95 Me. 264; \*99 Me. 318; 111 Me. 140, 530; 113 Me. 81; 117 Me. 264; 117 Me. 468; 119 Me. 143.

**Sec. 16. Proceedings when the amount due on a mortgage has been paid or tendered; and when not.** R. S. c. 95, § 16. 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; although 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 the preceding section, and the cause shall be tried in the same manner.

7 Me. 33; 27 Me. 241; 30 Me. 360; 36 Me. 51; 40 Me. 117; 47 Me. 54; 52 Me. 408, 561; 78 Me. 445; 87 Me. 88; 95 Me. 264; 96 Me. 360; 116 Me. 73.

**Sec. 17. When bill is brought before entry, notice to mortgagee if out of state; remedy for fraudulent mortgage.** R. S. c. 95, § 17. When a bill to redeem is brought before an actual entry for breach of the condition, and before payment or tender, if the mortgagee, or person claiming under him, is out of the state and has not had actual notice, the court shall order proper notice to be given 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.

95 Me. 264.

**Sec. 18. Provisions for redemption, when the mortgagee is out of the state.** R. S. c. 95, § 18. When 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 fifteen, and pay at the same time to the clerk of the court 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 it judges proper.

95 Me. 264.

**Sec. 19. Redemption after payment or tender, and before foreclosure, when mortgagee is out of the state; notice must be published; discharge.** R. S. c. 95, § 19. When an amount due on a mortgage has been paid, or tendered to the mortgagee, or person claiming under him, before foreclosure of the mortgage, and the mortgagee or his assignee is out of the state, and the mortgage is undis-

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charged 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 sixteen, 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, for 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 justice thereof, in vacation, orders, said court may decree a discharge of such mortgage; and the record of such decree in the registry of deeds where said mortgage is recorded is evidence of such discharge.

**Sec. 20. Limitation of such a bill in equity. R. S. c. 95, § 20.** 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 commencement of the suit, unless within one year after such tender.

60 Me. 233; 87 Me. 88; 116 Me. 73; 117 Me. 468.

**Sec. 21. Court may order other persons to be joined as defendants and notified. R. S. c. 95, § 21.** 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, the court on motion, may order him to be served with an attested copy of the bill amended in such manner as it directs, and on his appearance, the cause shall proceed as though he had been originally joined.

**Sec. 22. Award of execution on decree of court, jointly or severally. R. S. c. 95, § 22.** The court, when a decree is made for the redemption 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. 23. Deduction of rents and profits from the sum brought into court for redemption; mortgagee upon request to render statement of amount due. R. S. c. 95, § 23.** When 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 money is tendered to redeem such lands, if he receives a larger sum than he is entitled to retain, shall refund the excess. Any mortgagee or person holding under him when requested by an assignee in insolvency or trustee in bankruptcy to render a statement of the amount due on a mortgage given by the insolvent where there is an equity of redemption shall render a true statement to the assignee or trustee of the amount due on such mortgage and for any loss resulting to the insolvent estate from any misrepresentation of the amount due, the assignee or trustee shall have a right of action on the case against such person to recover such loss.

37 Me. 310; 53 Me. 67; 90 Me. 209; 100 Me. 306.

**Sec. 24. Owner of subsequent mortgage may request assignment of prior mortgage under foreclosure; may bring bill in equity to compel assignment; proceedings; appeal. R. S. c. 95, § 24.** When proceedings for the foreclosure of any prior mortgage of real estate have been instituted by any method provided by law, the owner of any subsequent mortgage of the same real estate, or of any part of the same real estate, may, at any time before the right of redemption from such prior mortgage has expired, in writing, request the owner of such prior mortgage to assign the same and the debt thereby secured, to him upon his paying to the owner of such prior mortgage, the full amount, including all interest, costs of foreclosure, and such other sums as the mortgagor or

person redeeming would be required to pay in order to redeem; if the owner of such prior mortgage neglects or refuses to make such assignment within a reasonable time after such written request, the owner of such subsequent mortgage may bring a bill in equity in the supreme judicial court for the purpose of compelling the owner of such prior mortgage to assign the same and the debt thereby secured, to him, the owner of such subsequent mortgage, upon making payment as aforesaid. If the court, upon hearing, shall be of the opinion that the owner of such prior mortgage will not be injured or damaged in his property matters and rights by such assignment, and that such assignment will better protect the rights and interests of the owner of such subsequent mortgage, and that the rights and interests of any other person in and to the same real estate, or any part thereof, will not be prejudiced or endangered thereby, the court, in its discretion, may order and decree that such prior mortgage and the debt thereby secured, shall be assigned by the owner thereof to the owner of such subsequent mortgage upon his making payment as aforesaid. The time within which, and the place where such payment shall be made, shall be fixed by the court, and if the parties are unable to agree upon the amount of such payment, the court shall fix and determine the amount. The court may issue all necessary and needful process or processes to enforce any order or decree made under the provisions of this section. The owner of any prior mortgage assigned under the provisions hereof, shall not be holden on nor liable for the debt secured by such mortgage unless he especially agrees in writing by him signed to be so holden or liable. An appeal from any final decree may be taken as provided by section twenty-three of chapter ninety.

126 Me. 438.

**Sec. 25. Treasurer of state may discharge or foreclose mortgages made to the state. R. S. c. 95, § 25.** 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. 26. Bill in equity for redemption may be filed against the state. R. S. c. 95, § 26.** 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. 27. Notice and proceedings thereon. R. S. c. 95, § 27.** 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 to the state on said mortgage, and award costs as it deems equitable; and the treasurer shall accept the sum adjudged by the court to be due, and discharge the mortgage.

**Sec. 28. On death of person entitled to redeem, his administrator or heir may redeem; tender in behalf of non-resident. R. S. c. 95, § 28.** If a person, entitled to redeem a mortgaged estate, or 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 may be made and a bill for redemption commenced and prosecuted by his executor or administrator, heirs or devisees; and if the plaintiff in 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 the tender shall be as effectual as if made by the mortgagor.

**Sec. 29. Tender to guardian of mortgagee; discharge of mortgage. R. S. c. 95, § 29.** 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, he shall execute a discharge of the mortgage.

**Sec. 30. Claimant of mortgagor's interest, may file bill in equity to have facts determined and damages, if any, assessed. R. S. c. 95, § 30.** In all cases where a debtor has mortgaged real and personal estate to secure the performance of a collateral agreement or undertaking, other than the payment of money, and proceedings have been commenced to foreclose said mortgage for alleged breach of the conditions thereof, but the time of redemption has not expired, any person having any claim against the mortgagor and having attached said mortgagor's interest in said estate on said claim, may file a bill in equity in the supreme judicial court in the county where such agreement has to be performed, where the owner of such mortgage resides, or where the property mortgaged is situated, alleging such facts and praying for relief; and said court may examine into the facts and ascertain whether there has been a breach of the conditions of said mortgage, and if such is found to be the fact, may assess the damages arising therefrom, and may make such orders and decrees in the premises as will secure the rights of said mortgagee or his assignee, so far as the same can be reasonably accomplished, and enable the creditor, by fulfilling such requirements as the court may impose, to hold said property, or such right or interest as may remain therein by virtue of such attachment, for the satisfaction of his claim. Such claim may include possession of the property by the mortgagee, for such time as the court deems just and equitable. Pending such proceedings, the right of redemption shall not expire by any attempted foreclosure of such mortgage.

81 Me. 458.

**Sec. 31. Discharge of mortgages; penalty for neglect to discharge mortgage. R. S. c. 95, § 31.** A mortgage may be discharged by an entry acknowledging the satisfaction thereof, made on the margin of the record of the mortgage in the registry of deeds, and signed by the mortgagee or by his executor, administrator or assignee, and such entry shall have the same effect as a deed of release duly acknowledged and recorded. If a mortgagee or his executor, administrator or assignee after full performance of the condition of his mortgage, whether before or after breach of such condition, refuses or neglects for seven days after being thereto requested to make such discharge or to execute and acknowledge a deed of release of the mortgage, he shall be liable to a fine of not less than ten, nor more than fifty dollars, to be recovered in an action on the case.

What constitutes a discharge; 5 Me. 275; 6 Me. 260; 17 Me. 371; 18 Me. 11; 24 Me. 335; 25 Me. 346, 462; 27 Me. 219; 31 Me. 394; 33 Me. 451; 39 Me. 22; 44 Me. 115; 45 Me. 103; \*54 Me. 466.

What does not; 17 Me. 371; 22 Me. 87; 23 Me. 390; 24 Me. 437; 29 Me. 451; 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.

**Sec. 32. Discharge by attorney at law. R. S. c. 95, § 32.** 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 is first recorded or filed in said office and a minute of the same is made by the register on the margin of the page in connection with said discharge.

**Sec. 33. Redemption of estate from purchaser of equity. R. S. c. 95, § 33.** 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, may redeem such mortgaged estate from such purchaser, or any person claiming under him, within the time and in the manner that he might have redeemed it of the mortgagee if there had been no such sale made, and within such time only.

<sup>2</sup> Me. 343; 6 Me. 237; 7 Me. 103; 21 Me. 105; 46 Me. 437; 49 Me. 266; 52 Me. 407; 55 Me. 253.

**Sec. 34. Writ of entry against mortgagee in possession, after mortgage has been paid. R. S. c. 95, § 34.** 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.

<sup>67</sup> Me. 361; <sup>75</sup> Me. 403; <sup>79</sup> Me. 448.

**Sec. 35. Proceedings to bar action on undischarged mortgage. R. S. c. 95, § 35.** When the record title of real estate is encumbered by an undischarged mortgage, and the mortgagor and those having his estate in the premises have been in uninterrupted possession of such real estate for twenty years after the expiration of the time limited in the mortgage for the full performance of the conditions thereof; he or they, or any person having a freehold estate, vested or contingent in possession, reversion, or remainder, in the land originally subject to the mortgage or in any undivided or any aliquot part thereof, or any interest therein which may eventually become a freehold estate, or any person who has conveyed such land or any such interest therein with covenants of title or warranty, may apply to the supreme judicial court in the county where the whole or any part of the mortgaged premises is situated, by petition setting forth the facts, and asking for a decree as hereinafter provided; and if after notice to all persons interested as provided in section thirty-eight, no evidence is offered of any payment within said twenty years or of any other act within said time, in recognition of its existence as a valid mortgage, the court upon hearing may enter a decree setting forth such facts and its findings in relation thereto, which decree shall within thirty days be recorded in the registry of deeds where the mortgage is recorded; and thereafter no action at law or proceeding in equity shall be brought by any person to enforce a title under said mortgage.

<sup>\*117</sup> Me. 468.

**Sec. 36. Two or more persons owning in severalty may join in petition. R. S. c. 95, § 36.** Any two or more persons owning in severalty different portions or different interests of the character above described, in the whole or in different portions thereof, may join in one petition. Two or more defects arising under different mortgages affecting one parcel of land may be set forth in the same petition; and in case of a contest the court shall make such order for separate issues as may be proper.

**Sec. 37. Proceedings to bar action on undischarged mortgage given to secure against some contingent liability. R. S. c. 95, § 37.** When the mortgagor of such an undischarged mortgage and those having his estate in the premises have been in uninterrupted possession of such real estate for twenty years from the date thereof, and it shall appear that such mortgage was not given to secure the payment of a sum of money or a debt, but to secure the mortgagee against some contingent liability assumed or undertaken by him, and that such conditional liability has ceased to exist and that the interests of no person will be prejudiced by the discharge of such mortgage, the mortgagor or those having

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his estate in the premises, or any of the persons to whom a similar remedy is granted in section thirty-five may apply to the supreme judicial court in the county where the whole or any part of the mortgaged premises is situated, by petition setting forth the facts and asking for a decree as hereinafter provided; and if after notice to all persons interested as provided in the following section, and upon hearing it shall appear that the liability on account of which such mortgage was given has ceased to exist and that such mortgage ought to be discharged, the court may enter a decree setting forth the facts proved and its findings in relation thereto, which decree shall within thirty days be recorded in the registry of deeds where the mortgage is recorded; and thereafter no action or proceeding in equity shall be brought to enforce a title under said mortgage.

**Sec. 38. Description of unknown mortgagees; service of petition.** R. S. c. 95, § 38. When it is alleged under oath in the petition that the mortgagees or persons claiming under them are unknown or that their names are unknown, they may be described generally as claiming by, through, or under some person or persons named in the petition. Personal service by copy of the petition and order of notice shall be made upon all known respondents residing in the state fourteen days before the return day; and upon all other respondents, service may be made by personal service of copy of the petition and order of notice; by publication for such length of time, in such newspapers or by posting in such public places as the court may direct; or in any or all of these ways at the discretion of the court

**Sec. 39. Court has jurisdiction over all respondents.** R. S. c. 95, § 39. Upon the service of such notice in accordance with the order of the court, the court shall have jurisdiction of all persons made respondents in the manner above provided, and shall upon due hearing make such decree upon the petition and as to costs as it shall deem proper.

**Sec. 40. Decree effectual to bar claims.** R. S. c. 95, § 40. The decree of the court, determining the validity, nature or extent of any such encumbrance shall operate directly on the land as a proceeding in rem, and shall be effectual to bar all the respondents from any claim thereunder contrary to such determination, and such decree so barring said respondents shall have the same force and effect as a release of such claims, executed by the respondents in due form of law. The court may, in its discretion, appoint agents or guardians ad litem, to represent minors or other respondents.

## CHAPTER 104.

### Mortgages of Personal Property. Liens and Their Enforcement.

- Sections 1- 6. Mortgages of Personal Property.
- Sections 7-26. Liens on Vessels.
- Section 27. Liens on Lime, Lime-rock, Granite and Slate.
- Section 28. Liens on Brick.
- Sections 29-46. Liens on Buildings and Lots, Wharves and Piers.
- Sections 47-53. Liens on Logs, Lumber, Wood and Bark.
- Sections 54-55. Lien on Hay.
- Sections 56-57. Lien on Vehicles.
- Section 58. Lien on Canned Goods.
- Section 59. Lien on Leather.
- Sections 60-61. Liens on Colts, and on Animals for Pasturage, Food and Shelter.
- Section 62. Lien on Monumental Work.
- Sections 63-65. Liens on Watches, Clocks and Jewelry.
- Sections 66-69. General Provisions for Enforcement and Discharge.
- Sections 70-79. Enforcement of Liens on Goods in Possession and Choses in Action.
- Sections 80-81. Pledges.
- Section 82. Lien of Safe Deposit Companies.

### Mortgages of Personal Property.

#### Sec. 1. Mortgages of personal property, when valid; provisions as to record.

**R. S. c. 96, § 1. 1919, c. 121.** No mortgage of personal property executed and delivered after the third day of July, nineteen hundred and fifteen, shall be valid against a trustee in bankruptcy or an assignee in insolvency of the mortgagor, or against an assignee under a general assignment for the benefit of the creditors of the mortgagor, or against any person other than the mortgagor, unless and until possession of such property is delivered to the mortgagee within twenty days from the date written in said mortgage, or, when undated, then from the date of execution and delivery of the same, and unless such possession is retained by the mortgagee, or unless and until the mortgage is recorded within the said period of twenty days in the office of the clerk of the city, town, or plantation organized for any purpose, in which the mortgagor resides when the mortgage is given, or registry of deeds as hereinafter provided. When all mortgagors reside without the state, the mortgage shall be so recorded in the office of the register of deeds in the registry district 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 so organized in which such mortgagors reside when the mortgage is given. If any mortgagor resides in an unorganized place, the mortgage shall be so recorded in the office of the register of deeds for the registry district in which such unincorporated place is located. A mortgage made by a corporation shall be so recorded in the city, town, or plantation where it has its established place of business, and, if said corporation has no established place of business in the state, or said place of business is in

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an unorganized place in the state, then in the office of the register of deeds for the registry district in which such property is when the mortgage is made. Such chattel mortgages need not be acknowledged for presentation for record. If possession is taken or said mortgage recorded subsequent to said period of twenty days, it shall be valid against mortgages, assignments and bills of sale executed and delivered subsequent to the making of said record, and also against attachments made subsequent thereto, based upon causes of action arising subsequent thereto, and also against trustees in bankruptcy and common law assignees, so far as relates to claims accruing subsequent thereto.

See c. 5, § 20; 19 Me. 169; 21 Me. 92; \*22 Me. 561; 24 Me. 108, 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; 59 Me. 320; \*65 Me. 490; 72 Me. 400; 73 Me. 198; 83 Me. 528; 87 Me. 171; \*92 Me. 69; \*97 Me. 363; 98 Me. 163; 100 Me. 294; \*104 Me. 317; 113 Me. 441; 114 Me. 270; 115 Me. 32; \*117 Me. 95; \*117 Me. 138; 119 Me. 38; 127 Me. 175.

**Sec. 2. Duty of clerk; consent for sale or exchange.** R. S. c. 96, § 2. The clerk 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. No consent given by the mortgagee of personal property to the mortgagor, on and after the first day of January, nineteen hundred and five, for the sale or exchange of the mortgaged personal property shall be valid or be used in evidence in civil process unless in writing and signed by the mortgagee or his assigns.

See c. 5, § 20; c. 15, § 14; c. 126, § 20; 19 Me. 173; 31 Me. 74; 37 Me. 186; 40 Me. 285; 43 Me. 376; 73 Me. 250; \*81 Me. 299; \*97 Me. 227; \*116 Me. 94; 117 Me. 512.

**Sec. 3. Redemption after breach of condition.** R. S. c. 96, § 3. When the condition of a mortgage of personal property is broken, the mortgagor, or person lawfully claiming under him, may redeem it at 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 mortgagee, 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, 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 on the case.

See c. 103, § 30; 49 Me. 39; 54 Me. 561; 64 Me. 107; \*73 Me. 199; 77 Me. 355; \*95 Me. 227; 103 Me. 443; 118 Me. 298; 123 Me. 12.

**Sec. 4. Notice of foreclosure.** R. S. c. 96, § 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 cannot be found by reasonable diligence or is out of the state, although 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 no newspaper is published in such town, such notice may be published in any newspaper printed in the county where the mortgage is recorded.

See c. 90, § 6, Par. 1; 59 Me. 420; \*73 Me. 199; 103 Me. 443; 123 Me. 13.

**Sec. 5. Sworn copy of notice to be recorded; is evidence of the facts; mort-**

**gagee out of state to appoint agent. R. S. c. 96, § 5. 1919, c. 193. 1927, c. 19.** The notice with an affidavit of service or the official return of service of any officer qualified to serve civil process, or a copy of the last publication, with the name and date of the paper containing it, shall be recorded where the mortgage is recorded, and the copy of such record is 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 county where the mortgage is recorded, 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 is not forfeited.

118 Me. 312.

**Sec. 6. Right of redemption forfeited after sixty days; exceptions. R. S. c. 96, § 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 defeats 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.

See c. 103, § 30.

24 Me. 136; 29 Me. 432; 31 Me. 106; 32 Me. 174; 36 Me. 49; 39 Me. 450; \*55 Me. 81; 59 Me. 420.

### Liens on Vessels.

**Sec. 7. Lien on domestic vessels, created. R. S. c. 96, § 7.** All domestic vessels shall be subject to a lien to any part owner or other person to secure the payment of debts contracted and advances made for labor and materials necessary for their repair, provisions, stores, and other supplies necessary for their employment, and for the use of a wharf, dry dock, or marine railway, provided, that such lien shall in no event continue for a longer period than two years from the time when the debt was contracted or advances made.

See Act of Congress, June 23, 1910, c. 373, § 5; 3 U. S. Comp. St. 1913, § 7787.

80 Me. 530; 21 Wall, 558.

**Sec. 8. Lien for labor or materials furnished for building vessels; on vessels, by owners of dry docks and marine railways. R. S. c. 96, § 8.** Whoever furnishes labor or materials for building a vessel, has 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 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 also has a lien on the materials furnished, before they become part of the vessel, which may be enforced by attachment; and the owners of any dry dock or marine railway, used for any vessel, have a lien on said vessel for the use of said dock or railway, to be enforced by attachment within four days after the last day in which the same is used or occupied by said vessel.

33 Me. 479; 34 Me. 206; 36 Me. 387; 40 Me. 292, 411; 41 Me. 399; 42 Me. 81, 147; \*58 Me. 98; \*61 Me. 567; 69 Me. 235; 70 Me. 351; 71 Me. 464, 494; 72 Me. 129; \*80 Me. 522.

**Sec. 9. Form of writ for enforcing lien. R. S. c. 96, § 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.

[L. S.] We command you to attach the 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 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 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, our \_\_\_\_\_, at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, nineteen hundred and \_\_\_\_\_.

E. F., Clerk.”

Said writ shall be signed, sealed and tested like other writs in civil actions, and returned in the county where said vessel is.

\*61 Me. 567; \*69 Me. 237.

**Sec. 10. Specification to be annexed to the writ; verification by oath. R. S. c. 96, § 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 names of the persons personally liable to him, and names of the owners of the vessel if known to him, and it 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 law of the state, he has a lien on such vessel for the whole or a part thereof.

61 Me. 588; \*69 Me. 237.

**Sec. 11. Attachment of vessel on the stocks; proceedings for sale of attached vessel liable to depreciation. R. S. c. 96, § 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; he may take possession at any time before it is launched; but if he does, he shall not hinder the work thereon, or prevent or delay the launching. If at the time of attachment, the vessel is launched, it shall be attached like other personal property. And whenever a vessel has been attached as aforesaid, and the expense of retaining possession of said vessel is great, or the vessel 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 thereon; 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 then appears to said justice to be for the benefit of all parties in interest that said vessel should be sold, he shall issue to the officer in possession of the same, or to the sheriff of the county in which said vessel has been attached, an order to sell it at public auction, and shall designate in said order the notice to be given of the time and place of said sale; and said vessel shall be sold pursuant to said order, and the proceeds of such 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-two to forty-one, inclusive, of chapter ninety-four, so far as the same are applicable, shall apply to proceedings under this section.

\*58 Me. 99; \*75 Me. 444.

**Sec. 12. Service of writ on debtor and on owners. R. S. c. 96, § 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 at the term to be held at , in and for the county of , on the Tuesday of , A. D. 19 , when and where you may appear and defend if you see fit.

Dated," (etc.)

"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.

**Sec. 13. Subsequent writs to be served by same officer, unless disqualified. R. S. c. 96, § 13.** On all writs made after the first attachment and while any lien attachment is pending, the attachment and services shall be made as afore-said by the same officer, or, if he is disqualified, by any qualified officer, by his giving notice thereof to the first attaching officer.

**Sec. 14. Entry of action; who may defend on giving bond. R. S. c. 96, § 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 a suit wherein it is attached for a lien, may appear 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.

**Sec. 15. Offer of default; owners may admit certain sum due; its effect. R. S. c. 96, § 15.** The defendant may offer to be defaulted as in other 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 recovers no costs against such owner or the

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vessel or its proceeds, after the admission is filed; but such owner recovers costs thereafter.

\*58 Me. 100; \*69 Me. 240.

**Sec. 16. Court to apportion costs as in equity. R. S. c. 96, § 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 of equity.

\*61 Me. 498.

**Sec. 17. Issue, how framed. R. S. c. 96, § 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.

\*58 Me. 100; \*69 Me. 240.

**Sec. 18. Judgment, against defendant. R. S. c. 96, § 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.

\*58 Me. 100; 61 Me. 567; \*69 Me. 240.

**Sec. 19. Exceptions, motions, etc. R. S. c. 96, § 19.** Parties have the same right of exceptions, motions for new trial and writs of error, as in other actions.

**Sec. 20. Court may order vessel sold, and proceeds paid into court. R. S. c. 96, § 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.

\*58 Me. 100; \*61 Me. 567; 76 Me. 447.

**Sec. 21. Distribution of proceeds, and of any surplus. R. S. c. 96, § 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 said 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.

\*76 Me. 447.

**Sec. 22. When proceeds are not enough, to be distributed pro rata, and double liens to be prevented. R. S. c. 96, § 22.** If such proceeds are not enough to pay in full the 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 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 will secure the just rights of all.

**Sec. 23. How vessel under attachment may be attached on lien claim. R. S. c. 96, § 23.** If the vessel has been already attached by a sheriff or his deputy,

when a writ is issued for such lien claim, such writ 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 precept 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.

See 1858, c. 15, § 21; \*61 Me. 567.

**Sec. 24. If attached for lien, how attached for non-lien claims. R. S. c. 96, § 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.

**Sec. 25. Sale of vessel, attached on both kinds of claims. R. S. c. 96, § 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 be held upon the writs not founded on the lien claims.

**Sec. 26. Admiralty powers of court. R. S. c. 96, § 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, Lime-rock, Granite, and Slate.

**Sec. 27. Enforcement of liens on lime and lime-rock, granite, and slate. R. S. c. 96, § 27.** Whoever 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; whoever labors in quarrying or cutting and dressing granite in any quarry, has a lien for his wages on all the granite quarried or cut and dressed in the quarry by him, or his colaborers, for thirty days after such granite is cut and dressed, or until such granite is sold or shipped on board a vessel; and whoever 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 colaborers for thirty days after the slate arrives at the port of shipment, and until it has been shipped on board a vessel or laden in a car; such liens have precedence of all other claims, and may be enforced by attachment within the times aforesaid.

See § 66; 72 Me. 423; \*73 Me. 161, 209; 107 Me. 136.

#### Liens on Brick.

**Sec. 28. Enforcement of lien on brick. R. S. c. 96, § 28.** Whoever performs labor, or furnishes labor or wood for manufacturing and burning bricks has a lien on such bricks for such labor and wood, for thirty days after the same are burned, suitable for use, provided, that said bricks remain in the yard where burnt; such lien shall have precedence of all other claims and of all attachments and encumbrances not made to secure a similar lien and may be enforced by attachment within the time aforesaid.

See § 66; 78 Me. 227.

#### Liens on Buildings and Lots, Wharves and Piers.

**Sec. 29. Liens on buildings and lots for labor and materials. R. S. c. 96, § 29.** Whoever performs labor or furnishes labor or materials in erecting, altering, moving, or repairing a house, building, or appurtenances, including any public building erected or owned by any city, town, county, school district, or other

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municipal corporation, or in constructing, altering, or repairing a wharf, or pier, or any building thereon, by virtue of a contract with or by consent of the owner, has a lien thereon, and on the land on which it stands and on any interest such owner has in the same, to secure payment thereof, with costs. If the owner of the building has no legal interest in the land on which the building is erected, or to which it is moved, the lien attaches to the building, and if the owner of the wharf or pier has no legal interest in the land on which the wharf or pier is erected, the lien attaches to the wharf or pier, and in either case may be enforced as hereinafter provided; and if the owner of such land, building, wharf or pier so contracting, is a minor or married woman, such lien shall exist, and such minority or coverture shall not bar a recovery in any proceeding brought to enforce it.

181 Fed. 735; 190 Fed. 700; 16 Me. 273; 28 Me. 520; 33 Me. 144, 374; 34 Me. 199; 35 Me. 74, 297, 482; 52 Me. 301; \*54 Me. 348; 71 Me. 292; \*73 Me. 353; \*74 Me. 552; 75 Me. 76; 83 Me. 136, \*503; 85 Me. 336, 359; 87 Me. 274; 91 Me. 116, 559; 92 Me. 22; 97 Me. 99; \*98 Me. 439; \*103 Me. 73; 107 Me. 135; 108 Me. 223, 438; 109 Me. 343; 112 Me. 406; 116 Me. 199; \*118 Me. 34; \*123 Me. 355; 124 Me. 133.

**Sec. 30. Lien, how prevented. R. S. c. 96, § 30.** If the labor or materials were not furnished by a contract with the owner of the property 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.

\*73 Me. 354; 75 Me. 79; 87 Me. 276; \*103 Me. 73; \*118 Me. 37.

**Sec. 31. Lien dissolved unless claim is filed in town clerk's office. R. S. c. 96, § 31.** The lien mentioned in the preceding section shall be dissolved unless the claimant within sixty days after he ceases to labor or furnish materials as aforesaid, files in the office of the clerk of the town in which such building, wharf, or pier 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, but this section shall not apply where the labor or materials are furnished by a contract with the owner of the property affected.

72 Me. 108; 79 Me. 285; 83 Me. 136, 503; 85 Me. 336; 91 Me. 116, 559; 94 Me. 534; 98 Me. 541; \*103 Me. 73; 108 Me. 223, 367; 123 Me. 423; 124 Me. 134, 207.

**Sec. 32. No inaccuracy avoids lien, if reasonably certain. R. S. c. 96, § 32.** No inaccuracy in such statement relating to said property, if the same can be reasonably recognized, or in stating the amount due for labor or materials, invalidates the proceedings, unless it appears that the person making it wilfully claims more than his due.

83 Me. 138, 503; 98 Me. 541.

**Sec. 33. Liens may be preserved and enforced by bill in equity. R. S. c. 96, § 33.** The liens mentioned in the four preceding sections may be preserved and enforced by bill in equity against the debtor and owner of the property affected, and all other parties interested therein, filed with the clerk of courts, in the county where the house, building, or appurtenances, wharf, pier, or building thereon, on which a lien is claimed, is situated, within ninety days after the last of the labor is performed, or labor or materials are so furnished, and not afterwards, except as provided in the following section.

35 Me. 297; 54 Me. 350; 71 Me. 293; 79 Me. 285; 87 Me. 436; \*89 Me. 231; 91 Me. 424; 98 Me. 488, 541; 103 Me. 73; 124 Me. 202.

**Sec. 34. In case of death, bankruptcy, or insolvency of owner before suit,**

**lien extended.** R. S. c. 96, § 34. When the owner dies, is adjudicated a bankrupt or a warrant in insolvency issues against his estate within the ninety days and before the commencement of a suit, the action in law or equity may be commenced within sixty days after such adjudication, or 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.

See c. 100, § 14; \*89 Me. 231; 122 Me. 146.

**Sec. 35. Necessary allegations of bill; other lienors may join and be made parties, also mortgagees.** R. S. c. 96, § 35. The bill shall state that the plaintiff claims a lien on the house, building, or appurtenances, or on the wharf, pier, or building thereon, as the case may be, described therein, and the land on which it stands, for labor performed, or for labor or materials furnished, in erecting, altering, moving, or repairing said house, building, or appurtenances, or in constructing, altering, or repairing said wharf, pier, or building thereon, as the case may be; whether it was by virtue of a contract with or by consent of the owner, and if not, that the claimant has complied with the provisions of section thirty-one. And the bill shall pray that the property be sold and the proceeds applied to the discharge of such lien. Two or more lienors may join in filing and prosecuting such a bill. Other lienors may be made parties; other lienors may become parties, and preserve and enforce their liens on said property, provided, their petitions therefor, setting forth their claims in substance, as required in a bill as aforesaid, be filed with the clerk within ninety days after the last labor is performed, or the last labor or materials are furnished by them, as aforesaid, or within the additional time prescribed in the preceding section. The court may consolidate two or more bills claiming liens on the same property, into one proceeding, if justice shall so require. Any mortgagee or other person having a claim upon, or interested legally or equitably in said property, may be made a party. The court shall have power to determine all questions of priority of lien or interest, if any, between parties to the proceeding.

123 Me. 352; 124 Me. 133.

**Sec. 36. Court may determine amount by jury trial, or otherwise.** R. S. c. 96, § 36. The court shall determine the amount for which each lienor has a lien upon the property, by jury trial, if either party so requests in bill, petition or answer; otherwise in such manner as the court shall direct. And such determination shall be conclusive as to the fact and amount of the lien subject to appeal and exceptions according to the practice in equity. Any lienor may contest another lienor's claim upon issues framed under direction of the court.

103 Me. 73.

**Sec. 37. Court may decree that property be sold; redemption; lienors to share pro rata.** R. S. c. 96, § 37. If it is determined that the parties or any of them, claiming a lien, have a lien upon said building and land, or upon said wharf, pier, building, and land, the court may decree that said property, or such interest in it as is subject to the liens, or any of them, shall be sold, and shall prescribe the place, time, terms, manner, and conditions of such sale; any justice, in term time or vacation, may order an adjournment of such sale from time to time; and a deed of the officer of the court, appointed to make such sale, recorded in the registry of deeds where the land lies, within three months after the sale, shall convey all the title of the debtor and the owner in the property ordered to be sold. If justice requires, the court may provide in the order of sale, that the owner shall have a right to redeem the property from such sale within a time fixed in the order of sale. If the court shall determine that the whole of the land, on which the lien exists is not necessary therefor, it shall describe in the order of sale a suitable lot therefor; and only so much shall be sold. The

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lienors shall share, pro rata; provided, their bills or petitions therefor are filed with the clerk of courts prior to the order of sale, and within the time mentioned in sections thirty-three, thirty-four and thirty-five. The court may make such decree in regard to costs as is equitable.

**Sec. 38. If proceeds are not sufficient to pay claims, court may render judgment for balance. R. S. c. 96, § 38.** If the proceeds of the sale after payment of costs and expenses of sale, are insufficient to pay the lien claims and costs in full, the court may render judgment against the debtor in favor of each individual lienor, for the balance of his claim and costs remaining unpaid, and may issue executions therefor. If the proceeds of sale after the payment of costs and expenses of sale, are more than sufficient to pay the lien claims and all costs in full, the balance remaining shall be paid to the person or persons legally or equitably entitled thereto.

124 Me. 206.

**Sec. 39. Court to file certificate with register of deeds. R. S. c. 96, § 39.** When any bill or petition provided for in this chapter in which a lien is claimed on real estate is filed with the clerk, he shall forthwith file a certificate, setting forth the names of the parties, the date of the bill or petition, and of the filing thereof, and a description of the said real estate as described in said bill or petition, in the registry of deeds for the county or district in which the land is situated.

See c. 126, §§ 4, 18; 108 Me. 372.

**Sec. 40. Liens mentioned in §§ 29-32 may be enforced by action at law. R. S. c. 96, § 40.** In addition to the remedy hereinbefore provided, the liens mentioned in sections twenty-nine, thirty, thirty-one and thirty-two may be enforced by attachment in actions at law commenced in any court having jurisdiction, in the county where the property, on which a lien is claimed is situated, which attachment shall be made within ninety days after the last of the labor is performed, or labor or materials are furnished, and not afterwards, except as provided in section thirty-four.

See § 66; 35 Me. 297; 54 Me. 350; 71 Me. 293; 79 Me. 285; 87 Me. 436; \*89 Me. 231; 91 Me. 424; 98 Me. 488; 108 Me. 372.

**Sec. 41. Owner may petition for release. R. S. c. 96, § 41.** Any owner of a building, wharf, pier, or real estate, upon which a lien is claimed, may petition in writing a justice of the supreme judicial court in term time or vacation, setting forth the name of the lienor, the court and county in which the bill in equity or action at law is returnable or pending, the fact that a lien is claimed thereon under sections twenty-nine, thirty, thirty-one and thirty-two of this chapter, the particular building, wharf, pier, or real estate, and his interests therein, its value and his desire to have it released from said lien. Such justice shall issue a written notice, which shall be served on the lienor, or his attorney, ten days at least, prior to the time fixed therein for a hearing. At the hearing, such justice may order such owner to give bond to the lienor, in such amount and with such sureties as he may approve, conditioned to pay the amount, for which such lienor may be entitled to a lien, as determined by the court, with his costs on the petition, within thirty days after final decree or judgment. 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 record of such copy and certificate in the registry of deeds, in the county or district where such real estate or interest therein lies, vacates the lien.

108 Me. 372.

**Sec. 42. Proceedings pending at the same time, may be transferred to supreme**

**judicial court. R. S. c. 96, § 42.** When two or more proceedings, either at law or in equity, are pending at the same time, in whatever court or courts, to enforce liens on the same house, building, or appurtenances, wharf, pier, and building thereon, upon petition of any lienor who has commenced such proceedings, or of the owner of the building, wharf, or pier, a justice of the supreme judicial court after notice and hearing, in term time or vacation, may, if justice requires it, order all such actions not then pending in the supreme judicial court to be transferred thereto, and require the parties in all such proceedings, in whatever court commenced, to plead in equity, substantially in the manner prescribed in section thirty-five, and thereafter all the proceedings shall be in accordance with the provisions of said section and the five following sections; and while such petition is pending all such actions shall stand continued.

**Sec. 43. Property may be taken and sold on execution to satisfy judgment; proceedings when two or more are rendered at same term; redemption. R. S. c. 96, § 43.** When a judgment is rendered in any suit authorized by this chapter, against any house, building, or appurtenances, wharf, pier, or building thereon, and the land on which it stands, or any interest that the owner of such house, building or appurtenances, wharf or pier has in such land, said property shall be taken and sold on execution in the same manner that rights of redeeming mortgaged real estate may be taken and sold. If two or more such judgments are rendered at the same term of the same court, the court shall direct in writing on which execution the property shall be sold, and in that event, and also in the event that the officer holding any execution recovered under the provisions of this chapter shall be notified in writing by any lienor who has caused said property to be attached as aforesaid, or who has filed his bill in equity as herein provided, that he claims a portion of the proceeds of the sale, said officer, unless all owners of such judgments, and all lienors so notifying such officer otherwise direct, shall thereupon sell said property as aforesaid, and after deducting the fees and expenses of sale, shall return the balance into the court of highest jurisdiction in which any such lien suit is pending or in which such a lien judgment has been rendered, and such court shall distribute such fund pro rata among the lienors who shall satisfactorily prove their right to share in the same. The court issuing execution on which the sale is made, may fix the time within which the owner shall have the right to redeem the property from such sale. The court distributing the fund may make such decree in regard to costs as is equitable. Any balance not required to pay such lien claims and costs shall be paid to the person or persons legally or equitably entitled thereto.

**Sec. 44. Lien on lands for landscape-gardening. R. S. c. 96, § 44.** Whoever performs labor or furnishes labor or materials in the laying out, or construction of any road, path, or walk, or in improving or beautifying any land in a manner commonly known as landscape-gardening, by virtue of a contract with or by consent of the owner, has a lien on the lot of land over which such road, path, or walk is laid out or constructed, or on the land so improved and beautified, to secure payment thereof, with costs. Such lien may be preserved and enforced in the same manner and under the same restrictions as liens on buildings and lots are preserved and enforced under sections twenty-nine to forty-three inclusive, and is made subject to all the provisions of said sections wherever applicable.

**Sec. 45. Lien for rent on buildings placed on leased land, how enforced. R. S. c. 96, § 45.** 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 are subject to a lien and liable to be attached for the rent due. Such attachment, made within six months after the rent becomes due, is effectual against any transfer of the property by the lessee.

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**Sec. 46. Lien on buildings for land rent. R. S. c. 96, § 46.** In all cases where land rent accrues and remains unpaid, whether under a lease, or otherwise, all buildings upon the premises while the rent accrues, are 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 except the lessee, is interested in said buildings, the proceedings shall be substantially in the forms directed for enforcing liens against vessels, with such additional notice to supposed or unknown owners, as any justice of the court having jurisdiction of the proceedings, orders, or the attachment and levy of execution shall not be valid except against the lessee.

See c. 97, § 11; 93 Me. 344.

### Liens on Logs, Lumber, Wood, and Bark.

**Sec. 47. Enforcement of lien on logs and lumber; and for shoring and running logs. R. S. c. 96, § 47.** Whoever labors at cutting, hauling, rafting, or driving logs or lumber, or at cooking for persons engaged in such labor, or in shoeing horses or oxen, or repairing property while thus employed, has a lien on the logs and lumber for the amount due for his personal services and the services performed by his team, which takes precedence of all other claims except liens reserved to the state; whoever both shores and runs logs by himself, his servants, or agents, has a lien thereon for the price of such shoring and running; such liens continue for sixty days after the logs or lumber arrive at the place of destination for sale or manufacture, and may be enforced by attachment.

See § 69; 9 Me. 22; 24 Me. 219; 33 Me. 291, 431; 34 Me. 276, 287; 35 Me. 128; 36 Me. 538, 544; 38 Me. 82, 131; 43 Me. 585; 45 Me. 319, 567; 46 Me. 365; 49 Me. 77; 56 Me. 152, 298; \*66 Me. 57, 67; 71 Me. 118; 72 Me. 440; 74 Me. 240; 77 Me. 135; 79 Me. 22; 81 Me. 136; \*89 Me. 174, 178; 90 Me. 227; 92 Me. 336, 338; 93 Me. 168; \*95 Me. 528; 97 Me. 506; \*106 Me. 93; 107 Me. \*389, 482; \*122 Me. 199.

**Sec. 48. Boomage may be paid by officer; lien not defeated by taking note; notice to owner. R. S. c. 96, § 48.** 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 is not defeated by taking a note, unless it is taken in discharge of the amount due and of the lien. Such notice of the suit, as the court orders, shall be given to the owner of the logs or lumber, and he may be admitted to defend it.

35 Me. 128; 41 Me. 471; 43 Me. 456, 585; 47 Me. 144, 156; 50 Me. 430; 61 Me. 489, 493; 66 Me. 140; 89 Me. 174.

**Sec. 49. Lien on logs for driving by contract; precedence and enforcement. R. S. c. 96, § 49.** Whoever drives logs or lumber by contract with the owner, or with any other person, has a lien on said logs or lumber for the amount payable under said contract, which takes precedence of all other claims, except liens for labor, for stumpage, and for towing, continues for sixty days after the logs or lumber arrive at the place of destination for sale or manufacture, and may be enforced by attachment. When the contract is made with any person other than the owner of the logs or lumber, actual notice in writing shall be given to the owner before work is begun, stating therein the terms of the contract. If the owner, at the time said notice is given him, or immediately thereafter, notifies said contractor in writing, that he will not be responsible for the amount payable or to become payable under said contract, then said contractor shall not have a lien on said logs or lumber so driven.

**Sec. 50. Lien on logs, for towing. R. S. c. 96, § 50.** Owners of steamboats

employed in towing logs or lumber on any of the inland waters of the state, have a lien on such logs or lumber for the amounts due for such towing; such lien continues for sixty days after the logs or lumber arrive at the place of destination for sale or manufacture, and may be enforced by attachment. Said lien shall take precedence of all other claims except liens reserved to the state, liens for labor and for stumpage.

**Sec. 51. Lien on hemlock bark, cord-wood, and pulp-wood.** R. S. c. 96, § 51. Whoever labors at cutting, peeling, or hauling hemlock bark, or cutting, yarding, or hauling cord-wood, or cutting, peeling, yarding, or hauling pulp-wood or any wood used in the manufacture of pulp-wood, or at cooking for persons engaged in such labor, has a lien thereon for the amount due for his personal labor and the services performed by his team, which takes precedence of all other claims, continues for thirty days after the contract is completed, and may be enforced by attachment.

93 Me. 168; 107 Me. 391; 127 Me. 243.

**Sec. 52. Lien on last blocks, shovel handle blocks, railroad ties, and ship knees.** R. S. c. 96, § 52. Whoever labors in the manufacturing of last blocks, shovel handle blocks, railroad ties, or ship knees, or is engaged in cooking for persons engaged in such labor, or cuts or furnishes wood for the manufacture of last blocks or shovel handle blocks, or furnishes a team for the hauling of last blocks or shovel handle blocks, or the lumber from which they are made, or for the hauling of railroad ties or ship knees, has a lien on said last blocks, shovel handle blocks, railroad ties and ship knees, as the case may be, for the amount due him for his personal labor thereon, and for the services of his team, and for the amount due for wood so cut or furnished for the manufacture of said last blocks or shovel handle blocks, which takes precedence of all other claims, except liens reserved to the state, and continues for thirty days after said last blocks are stored or housed for drying purposes, or for thirty days after said shovel handle blocks arrive at their destination either for shipment or to be turned, or for thirty days after said railroad ties are on the line of a railroad, or for thirty days after said ship knees are delivered in a shipyard; such lien may be enforced by attachment.

\*107 Me. 391.

**Sec. 53. Lien on shingles, staves, laths, dowels, and spool timber.** R. S. c. 96, § 53. Whoever labors at cutting, hauling, or sawing shingle, stave, lath, dowel, or spool timber, or in the manufacture of shingle, stave, lath, dowel, or spool timber into shingles, staves, laths, dowels, or spool bars, or at piling staves, laths, dowels, or spool bars, or at bunching shingles or dowels, or at cooking for persons engaged in such labor, has a lien thereon for the amount due for his personal labor thereon, and the services performed by his team, which takes precedence of all other claims, and continues for sixty days after such shingle, stave, lath, or dowel timber, and such shingles, staves, laths and dowels are manufactured, provided the same have not been sold and shipped, or for sixty days after such spool timber or spool bars arrive at the place of destination for sale or manufacture; such lien may be enforced by attachment.

See § 69; 100 Me. 74; \*107 Me. 391.

#### Lien on Hay.

**Sec. 54. Lien on hay, for cutting.** R. S. c. 96, § 54. Whoever labors in cutting or harvesting hay has a lien on all the hay cut or harvested by him and his collaborators for the amount due for his personal services and the services performed by his team, which takes precedence of all other claims except liens

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reserved to the state, continues for thirty days after the last of such services are performed and may be enforced by attachment.

<sup>108 Me. 540.</sup>

**Sec. 55. Lien on hay, for pressing.** R. S. c. 96, § 55. Whoever presses hay or straw has a lien on all the hay or straw so pressed for the amount due for such pressing, which takes precedence of all other claims except liens reserved to the state and the lien specified in the preceding section, continues for thirty days after said pressing is completed and may be enforced by attachment.

#### Lien on Vehicles.

**Sec. 56. Lien on vehicles.** R. S. c. 96, § 56. 1925, c. 171. Whoever performs labor by himself or his employees in manufacturing, or repairing the iron-work or woodwork of wagons, carts, sleighs, and other vehicles, or provides storage therefor, by direction or consent of the owner thereof, shall have a lien on such vehicle for his reasonable charges for said labor, [and for materials used in performing said labor,] and for said storage, which takes precedence of all other claims and incumbrances on said vehicles, not made to secure a similar lien, and may be enforced by attachment at any time within ninety days after the labor is performed and not afterwards, provided, that a claim for such lien is duly filed as required in the following section; said lien, however, shall be dissolved if said property has actually changed ownership prior to such filing.

<sup>114 Me. 120; \*121 Me. 432; 122 Me. 29; \*126 Me. 392.</sup>

**Sec. 57. Lien claim to be filed in office of town clerk; inaccuracy of statement does not invalidate lien.** R. S. c. 96, § 57. The lien mentioned in the preceding section shall be dissolved unless the claimant within thirty days after the labor is performed, files in the office of the clerk of the town in which the owner of such vehicle resides, a true statement of the amount due him for such labor and materials, with all just credits given, together with a description of the vehicle manufactured or repaired sufficiently accurate to identify it and the name of the owner, 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 the clerk, who is entitled to the same fees therefor as for recording mortgages. No inaccuracy in such statement relating to said property, if the same can be reasonably recognized, or in stating the amount due for labor or materials invalidates the proceedings, unless it appears that the person making it wilfully claims more than his due.

<sup>\*121 Me. 432; 126 Me. 392.</sup>

#### Lien on Canned Goods.

**Sec. 58. Lien on canned corn, grain, and fruit, by suppliers.** R. S. c. 96, § 58. Whoever furnishes corn or other grain or fruit, for canning or preservation otherwise, has a lien on such preserved article, and all with which it may have been mingled, for its value when delivered, including the cans and other vessels containing the same, and the cases, for thirty days after the same has been delivered, and until it has been shipped on board a vessel or laden in a car, which lien may be enforced by attachment within that time.

#### Lien on Leather.

**Sec. 59. Lien on leather, for wages.** R. S. c. 96, § 59. Whoever performs labor in any tannery where leather of any kind is manufactured completely or partially, whether such labor is performed directly on the hides and skins or in

any capacity in or about the establishment, has a lien for his wages on all leather so manufactured in such tannery for labor performed by him or his collaborators, which continues for thirty days after such leather is made and manufactured, and until such leather is shipped on board a vessel or taken in a car, and may be enforced by attachment within that time.

#### **Liens on Colts, and on Animals for Pasturage, Food, and Shelter.**

**Sec. 60. Lien on colts, for service fee. R. S. c. 96, § 60.** There shall be a lien on all colts foaled in the state, to secure the payment of the service fee, for the use of the stallion begetting the same. Such lien shall continue in force until the foal is six months old, and may be enforced during that time by attachment of such foal.

93 Me. 226.

**Sec. 61. Lien on animals for pasturage, food, and shelter. R. S. c. 96, § 61.** Whoever pastures, feeds, or shelters animals by virtue of a contract with or by consent of the owner, has a lien thereon for the amount due for such pasturing, feeding, or sheltering, and for necessary expenses incurred in the proper care of such animals and in payment of taxes assessed thereon, to secure payment thereof with costs, to be enforced in the same manner as liens on goods in possession and choses in action; and the court rendering judgment for such lien shall include therein a pro rata amount for such pasturage, feed, and shelter provided by the lienor from the date of the commencement of proceedings to the date of said judgment.

Lien on animals for entry fee at agricultural fairs and races, c. 38, § 39; on animals in transit for expenses of proper care, c. 135, §§ 62, 63; for food, shelter and care furnished to abandoned or neglected animals, c. 135, § 68; 63 Me. 533; 69 Me. 425; \*76 Me. 444; 79 Me. 220; 91 Me. 144; \*96 Me. 348.

#### **Lien on Monumental Work.**

**Sec. 62. Enforcement of lien on monumental work. R. S. c. 96, § 62.** Whoever under express contract fixing the price to be paid by the other party thereto, sells, erects, or furnishes any monument, tablet, headstone, vault, posts, curbing, or other monumental work, has a lien thereon to secure the payment of such contract price, which continues for two years after the completion, delivery or erection of such monument, tablet, headstone, vault, posts, curbing, or other monumental work, to be enforced by suit and attachment; such attachment shall be recorded within said two years by the clerk of the town in which the property subject to the lien is then situated; or such lien may be enforced by petition setting forth the names and residences of the parties to the contract, the contract price, the sum due, the description, and location of the property on which the lien is claimed and such other facts as are necessary to make it appear that such petitioner is entitled to an enforcement of such lien, and praying for judgment, for title and possession of the property therein described. Said petition, before service thereof, and within said two years, shall be recorded by the clerk of the town in which such property is situated, and a certificate of such record indorsed thereon. The sum alleged to be due shall be deemed to be the damage demanded, and the petition, after being recorded, may be inserted in a writ, and made returnable, like other writs in transitory actions, before any court of competent jurisdiction. If the defendant is a known resident of the state he shall be served with a summons and copy of said writ and petition, otherwise the court, in term time or vacation, may order notice. If the petitioner prevails, he shall recover judgment for title and possession of the property on which the lien is claimed,

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and for his costs, and a possessory execution may issue. By virtue of such judgment the judgment creditor if unopposed, may take possession and remove the property described in his execution, otherwise any officer qualified to serve civil process, having said execution, may take possession of said property and deliver the same to the judgment creditor, and shall make his return on said execution accordingly. Said lien may be discharged at any time before final judgment by tendering the petitioner the amount of the debt and costs.

#### Lien on Watches, Clocks, and Jewelry.

**Sec. 63. Mechanic's lien on watches, clocks, and jewelry, created.** 1917, c. 295, § 1. Every individual, partnership or corporation, having an established place of business in this state, engaged in making, altering, or repairing any watch, clock or jewelry or expending any labor or materials thereon, shall have a lien upon such watch, clock or jewelry for his reasonable compensation for said labor and materials, which shall take precedence of all other claims and incumbrances, and such watch, clock, or jewelry shall be exempt from attachment or execution until such lien and the cost of satisfying it are satisfied.

**Sec. 64. May be sold after one year; provisions.** 1917, c. 295, § 2. 1925, c. 210. The lien holder shall retain such watch, clock or jewelry for a period of one year, at the expiration of which time, if such lien is not satisfied, he may sell such watch, clock, or jewelry at public or private sale, after giving thirty days' notice in writing to the owner, specifying the amount due, describing the property to be sold and informing him that the payment of such amount within thirty days will entitle him to redeem such property. Such notice may be given by mailing the same addressed to the owner's place of residence if known, or if the owner's place of residence is unknown, a copy of such notice may be posted in two public places in the town, village, or city where the property is held.

**Sec. 65. Residue, if not claimed by owner, deposited with county treasurer.** 1917, c. 295, § 3. After satisfying the lien and any cost and expenses that may have accrued, any residue remaining from said sale shall on demand within six months, be paid to the owner, and if not so demanded within six months from such sale, such residue shall be deposited by such lien holder, with the treasurer of the county in which said property was held, together with a statement of said lien holder's claim and the cost of enforcing the same, a copy of the published notice, and of the amount received for the property sold at said sale; said residue shall by said county treasurer be credited to the general revenue fund of said county, subject to the right of said owner, or his representatives, to reclaim at any time within three years of the date of deposit with said treasurer.

#### General Provisions for Enforcement and Discharge.

**Sec. 66. Lien attachments have precedence; upheld although debtor dies and estate is insolvent.** R. S. c. 96, § 63. Suits to enforce any of the liens before named have precedence of attachments and encumbrances made after the lien attached, and not made to enforce a lien, and may be maintained although the employer or debtor is dead and his estate has been 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.

See c. 13, § 14, ¶ ii; 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. 81, 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; 77 Me. 421; 89 Me. 174, 178, \*232; 103 Me. 54; \*107 Me. 483.

**Sec. 67. Discharge.** R. S. c. 96, § 64. All liens named herein may be discharged by tender of the sum due, made by the debtor or owner of the property, or his agents.

66 Me. 59.

**Sec. 68. Appearance of owner.** R. S. c. 96, § 65. In all lien actions, when the labor or materials were not furnished by a contract with the owner of the property 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.

69 Me. 425; 78 Me. 79; \*89 Me. 174, 233; 103 Me. 53.

**Sec. 69. Judgment; discontinuance as to any defendant; costs.** R. S. c. 96, § 66. In any such action, judgment may be rendered against the defendant and the property covered by the lien, or against either, for so much as is found due by virtue of the lien, and if the amount due exceeds the amount so covered, then a separate execution shall be issued to the plaintiff against the defendant for such excess, and the plaintiff may discontinue as to any defendant. The court may apportion costs as justice requires.

79 Me. 285; \*89 Me. 175; \*107 Me. 483.

#### Enforcement of Liens on Goods in Possession and Choses in Action

**Sec. 70. Enforcement by sale.** R. S. c. 96, § 67. Whoever has a lien on or pledge of any stock or certificate thereof, bond, note, account or other chose in action, or on any other personal property in his possession, may enforce it by a sale thereof, in the manner provided in the contract creating such lien or pledge, if in writing, or as hereinafter provided.

69 Me. 428; \*76 Me. 445; 121 Me. 432.

**Sec. 71. Petition may be filed; contents thereof.** R. S. c. 96, § 68. The person claiming the lien may file, in the supreme judicial or superior 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 names and residences of its owners, if known to him, and a prayer for process to enforce his lien.

\*76 Me. 445; \*96 Me. 348; 100 Me. 450.

**Sec. 72. Service on owners within the state.** R. S. c. 96, § 69. If the owners are set forth in a petition filed in the clerk's office, and are residents of the state, the clerk may issue an order of notice, to be given by serving them with a copy of the petition and order thereon, fourteen days before the next term of the court in such county.

**Sec. 73. Service on owners, when unknown, or out of the state.** R. S. c. 96, § 70. If the owners are not known, or are not residents of the state, or if the petition is filed in court, the court may order reasonable notice of at least fourteen days to them and to others interested, returnable at the same or a subsequent term; to be given 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.

**Sec. 74. Appearance by owner; proceedings.** R. S. c. 96, § 71. 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.

\*96 Me. 348.

**Sec. 75. Owner may be required to give bond for costs.** R. S. c. 96, § 72.

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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 suit, the court may order the person appearing in defense 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.

**Sec. 76. Court may order property to be sold to pay lien. R. S. c. 96, § 73.** 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 he is known to the court, otherwise into court.

See c. 97, §§ 3-8; \*76 Me. 445.

**Sec. 77. Disposal of proceeds. R. S. c. 96, § 74.** 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.

**Sec. 78. Jurisdiction of trial justices; appeal. R. S. c. 96, § 75.** Liens for less than twenty dollars may be enforced before any trial justice for the county where the person having the lien resides, and all proceedings, rights and liabilities, shall be the same as hereinbefore provided, so far as the nature of the tribunal admits; and either party may appeal, as in other cases.

\*96 Me. 348.

**Sec. 79. Concurrent jurisdiction of municipal and police courts. R. S. c. 96, § 76.** Municipal and police courts have jurisdiction concurrent with the supreme judicial and superior courts and trial justices in their respective counties, of liens, and proceedings relative thereto, for an amount not exceeding their jurisdiction in other civil actions, to be enforced as provided in this chapter.

\*96 Me. 348; \*100 Me. 450.

### Pledges.

**Sec. 80. Pledge for payment of money; notice of sale. R. S. c. 96, § 77.** The holder of stocks, bonds, or other personal property in pledge for the payment of money or the performance of any other thing, may, after failure to pay or perform, sell such stocks, bonds, or other personal property in the manner provided in the contract creating the pledge, if in writing, or he may proceed as hereinafter provided. He may give written notice to the pledger that he intends to enforce payment by a sale of the pledge; and shall serve the same by leaving a copy with the pledger, if 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, if any, in the city or town where the pledgee resides, otherwise, 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.

96 Me. \*43, 430.

**Sec. 81. Sale; application of proceeds. R. S. c. 96, § 78.** 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.

96 Me. \*43, 430.

### Lien of Safe Deposit Companies.

**Sec. 82. Right of company to open box; proceedings; lien on package for payment. R. S. c. 96, § 79.** Whenever the amount due for the use of any safe or box, in the vaults of any safe deposit company, shall not have been paid for three years, such corporation may, at the expiration of such period, notify the person in whose name such safe or box stands on its books, by a notice in writing in a securely closed, post-paid, registered letter, directed to such person at his post-office address as recorded upon the books of the corporation, that if the amount then due for the use of such safe or box, is not paid within sixty days from the date of such notice, the corporation will then cause such safe or box, to be opened in the manner hereinafter provided; at the expiration of sixty days after the mailing of said notice, the corporation may then cause such safe or box, to be opened in the presence of its president, secretary, or treasurer, and of a notary public not an officer, or in the employ of the corporation, and the contents of said safe or box, shall then be sealed up by such notary public in a package and a certificate of such sealing shall be indorsed thereon, signed by such notary and attested by his seal, and said package shall be distinctly marked with the name and address of the person in whose name such safe or box stands upon the books of the corporation, and the estimated value thereof; said package shall then be placed in one of the general safes or boxes of the corporation, and shall be held subject to redemption by the owner thereof, who shall be required to pay the rent due for said safe or box, and all costs and damages attending the opening thereof together with reasonable charges for the custody of said package by the corporation, and the corporation shall have a lien upon said package to secure the payment of such rent, damages, and charges.

Note: Lien on crops of members of cooperative marketing associations, c. 58, §§ 32-39.

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## CHAPTER 105.

**The Right of Erecting Mills and Mill-Dams, of Flowing Lands and of Diverting Water for the Supply of Mills; and the Mode of Obtaining Damages. Protection of Ways from Overflow. Inspection of Dams and Reservoirs.**

Sections 1-38 Erection of Mills and Dams, and Rights of Flowage.

Sections 39-44 Protection of Ways from Overflow.

Sections 45-47 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. R. S. c. 97, § 1.** Any man may on his own land, erect and maintain a water-mill and dams to raise water for working it, 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

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water of any stream not navigable, upon the terms and conditions, and subject to the regulations hereinafter expressed.

5 Me. 12; 28 Me. 20; 36 Me. 43; 39 Me. 250; 42 Me. 155; 50 Me. 483; 52 Me. 261; 54 Me. 489; \*61 Me. 26; 62 Me. 456, 497; \*65 Me. 194; 68 Me. 542; 69 Me. 19; 70 Me. 246; 76 Me. 95, 200; 82 Me. 57; 86 Me. 104; 99 Me. 136; 100 Me. 196, 241; \*123 Me. 535.

**Sec. 2. Not to injure mill or canal previously built. R. S. c. 97, § 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.

31 Me. 254; 38 Me. 246; 44 Me. 173, 199; 54 Me. 489; \*95 Me. 321; \*99 Me. 136.

**Sec. 3. Restrictions and regulations. R. S. c. 97, § 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, may be restricted and regulated by the verdict of a jury, or report of commissioners, as is hereinafter provided.

38 Me. 239; 76 Me. 95.

**Sec. 4. Damages for flowing or by diversion of water, recoverable. R. S. c. 97, § 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 any part of the lands are; but no compensation shall be awarded for damages sustained more than three years before the institution of the complaint.

7 Me. 156; 10 Me. 236; 14 Me. 425; 28 Me. 20; 33 Me. 273, 480; 52 Me. 78; 54 Me. 489; 58 Me. 168; 59 Me. 256; \*61 Me. 29; 63 Me. 447; 68 Me. 221; 73 Me. 65; \*76 Me. 95; 82 Me. 346.

**Sec. 5. Complaint. R. S. c. 97, § 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.

16 Me. 412; 28 Me. 20; \*41 Me. 296; \*42 Me. 69; \*61 Me. 30.

**Sec. 6. Presentment and service of complaint; may be inserted in a writ. R. S. c. 97, § 6.** The complaint may be presented to the court in term time, or be filed in the clerk's office in vacation; and the proper officer shall serve the same, fourteen days before the return day, on the respondent, by leaving a copy thereof at his dwelling-house, if he has any in the state; otherwise, he shall leave it 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.

64 Me. 367; \*65 Me. 563; \*100 Me. 547.

**Sec. 7. Pleas in bar. R. S. c. 97, § 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.

4 Me. 323; 5 Me. 14; 6 Me. 283; 12 Me. 188; 21 Me. 230; 32 Me. 39, 385; 33 Me. 548; 36 Me. 44; \*42 Me. 70; 48 Me. 462; 56 Me. 399; \*65 Me. 563; 99 Me. 458.

**Sec. 8. Trial; costs. R. S. c. 97, § 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 at common law; and if judgment is for the respondent, he shall recover his costs.

6 Me. 283; \*65 Me. 562.

**Sec. 9. Proceedings if complainant recovers; commissioners to determine damages in gross; if owners do not elect to pay, annual damages stand as the**

**judgment of court. R. S. c. 97, § 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 the proceedings, 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 appraisal, 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 report for what portion of the year such lands ought not to be flowed, or water diverted, or what quantity of water shall be diverted. They shall also ascertain, determine, and report what sum in gross would be a 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 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 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.

39 Me. 460; 48 Me. 462; \*65 Me. 563; 68 Me. 222; \*74 Me. 70; \*76 Me. 95; 80 Me. 41; 107 Me. 530; 122 Me. 351.

**Sec. 10. Effect of payment of damages in gross. R. S. c. 97, § 10.** If the damages in gross are paid within the time fixed, the judgment is a bar to any further complaint so long as the dam and flash-boards remain at the same height, but if thereafter 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.

\*74 Me. 70; 123 Me. 547.

**Sec. 11. Owners may apply to have damages assessed in gross; proceedings. R. S. c. 97, § 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, to ascertain, determine and report the damages in gross, and like proceedings shall then be had as are provided in the two preceding sections.

\*74 Me. 70.

**Sec. 12. Commissioners' report is evidence in trial by jury. R. S. c. 97, § 12.** If either party requests that a jury may be impaneled to try the cause, 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.

36 Me. 44; \*42 Me. 70; 98 Me. 571.

**Sec. 13. Acceptance. R. S. c. 97, § 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. Verdict or report bars any future action. R. S. c. 97, § 14.** The verdict of the jury or the report of the commissioners so accepted, is 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.

64 Me. 367; \*76 Me. 95.

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**Sec. 15. Yearly damages.** R. S. c. 97, § 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.

36 Me. 44; 50 Me. 32; \*76 Me. 95.

**Sec. 16. Security may be required for yearly damages.** R. S. c. 97, § 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 such security shall have no benefit of this chapter; but is liable to be sued for the damages occasioned by such flowing, in an action at common law.

**Sec. 17. Complainant may sue for damages, if unpaid; lien upon mill and land.** R. S. c. 97, § 17. The party entitled to such annual compensation, may maintain an action of debt or assumpsit therefor against any person who owns or occupies 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.

15 Me. 243; 30 Me. 251; 34 Me. 403; \*65 Me. 561; 86 Me. 487.

**Sec. 18. Mill and land may be sold on execution; effect of sale.** R. S. c. 97, § 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 is effectual against all persons claiming the premises by any title which accrued within the time covered by the lien.

28 Me. 21.

**Sec. 19. Right of redemption.** R. S. c. 97, § 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 he might have had against a purchaser of an equity of redemption.

**Sec. 20. New complaint.** R. S. c. 97, § 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.

16 Me. 412; \*74 Me. 71.

**Sec. 21. Restriction of this right.** R. S. c. 97, § 21. No new complaint shall be brought, until one month after the payment of the preceding 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 is hereinafter provided.

50 Me. 33; \*74 Me. 71.

**Sec. 22. Owner may offer increased compensation.** R. S. c. 97, § 22. The

owner of the mill, dam, or canal, may, within said month, 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 recovers no costs, unless he obtains an increase greater than the offer.

**Sec. 23. Injured party may offer to accept less compensation. R. S. c. 97, § 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, and brings a new complaint to obtain a reduction, he shall recover no costs, unless such compensation is reduced to a sum less than was offered.

**Sec. 24. Tenants may make such offers. R. S. c. 97, § 24.** Such offers may be made by or to the tenants 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 bind the owners, unless made by their consent.

**Sec. 25. Remedy at common law limited. R. S. c. 97, § 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.

<sup>64 Me. 367.</sup>

**Sec. 26. Double damages, if restrictions are violated. R. S. c. 97, § 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.

**Sec. 27. Agreement of parties is binding, if recorded. R. S. c. 97, § 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 to the former judgment, and to the book where the agreement is recorded, such agreement is as binding as a verdict and judgment on a new complaint.

**Sec. 28. Judgment no bar to a new complaint. R. S. c. 97, § 28.** A judgment against a complainant as not entitled to any compensation is no bar to a new complaint for damages, arising after the former verdict, and for compensation for damages subsequently sustained.

**Sec. 29. Tender of damages and effect thereof. R. S. c. 97, § 29.** In case of an original complaint, the respondent may, with the same advantages to himself, tender and bring money into court, or if the issue is decided in favor of the complainant, or if the respondent is defaulted, or does not plead or show any legal objections to the proceedings, the respondent may, in writing entered of record with its date, offer to be defaulted for a specific sum for the yearly damages or a sum in gross as reasonable compensation for all damages, as in an action at common law; and if either is accepted, the judgment has the same effect as if rendered on a verdict. If not accepted 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 complainant fails to recover a sum greater than the sum tendered or offered, he recovers such costs only as accrued before the offer, and the respondent recovers costs accrued after that time, and his judgment for costs may be set off against the complainant's judgment for damages and cost.

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**Sec. 30. No abatement by death of either party.** R. S. c. 97, § 30. No complaint for so flowing lands or diverting water abates 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.

<sup>III Me. 342.</sup>

**Sec. 31. If complaint abates, rights preserved by new complaint.** R. S. c. 97, § 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 the three years preceding the institution of the first complaint, or at any time afterwards.

**Sec. 32. Streams forming boundary of state.** R. S. c. 97, § 32. 1925, c. 202. This chapter applies 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. Provided, however, that this chapter shall not apply to mills and dams erected upon streams whose waters ultimately reach the ocean at a point wholly outside the territorial limits of the United States of America unless said dams are authorized by act of legislature or by a decree of the public utilities commission made after public notice and hearing on petition for such authorization.

<sup>\*39 Me. 248.</sup>

**Sec. 33. Compensation of commissioners.** R. S. c. 97, § 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 recovers costs, except where it is otherwise expressly provided.

**Sec. 34. Owner or mortgagee in possession, liable for acts of tenants.** R. S. c. 97, § 34. The owner or mortgagee in possession, as well as any tenant, of any mill used for manufacturing lumber, is liable for the acts of such tenant in unlawfully obstructing or diverting the water of any river or stream, by the slabs or other mill waste from his mill, 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.

<sup>50 Me. 492; 77 Me. 297.</sup>

**Sec. 35. Damages by flowage for cranberry culture, how ascertained.** R. S. c. 97, § 35. When dams are erected and maintained on streams not navigable, for the purposes of cranberry culture, and lands are flowed thereby and injured by such flowage, the owners thereof shall proceed for the recovery of damages for such flowage in the same manner as in case of flowage by dams erected and maintained for mill purposes.

<sup>See § 36; III Me. 341.</sup>

**Sec. 36. Dams for ice cutting and harvesting, may be erected on certain streams; damages, how recovered.** R. S. c. 97, § 36. In order to create ponds for the cutting and harvesting of ice for the market, any persons or corporations may erect and maintain on their own land, dams on streams not navigable or floatable, but emptying into tide-waters navigable in the winter, and may flow the lands above during November, December, January, February, March and April; but they shall draw off the water to its natural state by the twentieth day of May yearly; and if any lands are injured by such flowing, the owners thereof have the same remedies as in case of lands flowed by dams erected and maintained for mill purposes; but no right is granted by this or

the preceding section to flow any mill-dam or any mill privilege improved or unimproved,—and this section shall not be construed as authorizing any persons or corporations to cut ice on any pond created as provided herein over any area the soil of which such persons or corporations do not own or lease or possess as tenants at will, or by reason of a valid agreement with the owner or lessee or tenant thereof when said owner or lessee is not the state and the pond is not a great pond.

**Sec. 37. Timber and other property on lands about to be flowed by the erection of a dam may be ordered removed on petition to supreme judicial court.** 1921, c. 196, § 1. When any person or corporation shall have decided to erect a dam across a non-navigable stream under the provisions of this chapter or under special authority granted by the legislature, and shall have filed the specifications required by section eleven of chapter sixty-one, and it appears that standing timber or other property of value upon the land intended to be flowed will constitute a menace to the safety of such person or corporation or to persons or property upon and along the banks of said stream below the intended location of said dam, the supreme judicial court shall have jurisdiction in equity, upon petition of such person or corporation, to authorize said petitioner to remove and sell such timber or other property and to order the payment to the owner thereof of the gross proceeds of such sale and such further sum, if any, as said court shall deem just. Said court shall require the petitioner to furnish security for such payment and for an additional penalty not less than double the amount to be received from such sale and shall include in its decree a condition that such additional sum shall be paid to said owner as damages if the dam is not completed and the land flowed within a time to be therein specified; provided, however, that such time may be extended for good cause shown.

**Sec. 38. How damages to be assessed.** 1921, c. 196, § 2. Damages caused by flowage of lands from which timber or other property shall have been removed under section thirty-seven shall be assessed as though there had been no severance, and the amount paid for such timber or other property with interest to the date of the judgment shall be credited thereon, provided that the owner of the land shall have the right to elect whether his damages shall be assessed for flowage as of the time of taking or of flowing.

#### Protection of Ways from Overflow.

**Sec. 39. Owners of mills or water power may petition for right to raise ways and enlarge water vents; notice of hearing.** R. S. c. 97, § 37. 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 highway or town way, they may petition the county commissioners for permission to raise such 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 twenty-seven, and such notice may be proved in the manner therein provided.

99 Me. 138.

**Sec. 40. Proceedings of commissioners.** R. S. c. 97, § 38. 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

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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.

**Sec. 41. If decision is in favor of petitioners, proceedings.** R. S. c. 97, § 39. 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 by the town or by the petitioners, it shall be done in a faithful manner and to the acceptance of the commissioners; and whichever party makes said alterations has a claim upon the other for the proportion fixed by the commissioners for said other party to pay, and if it 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.

**Sec. 42. Costs, if decision is in favor of petitioners, proceedings.** R. S. c. 97, § 40. 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.

**Sec. 43. Appeal.** R. S. c. 97, § 41. Any party aggrieved may appeal from the decision of said commissioners, in the same manner and subject to the same conditions as in case of highways.

See c. 27, § 59.

**Sec. 44. Flowage rights not affected.** R. S. c. 97, § 42. Nothing in the five preceding sections affects any right of flowage or damage therefor.

#### Inspection of Dams and Reservoirs.

**Sec. 45. Inspector of dams and reservoirs; appointment; duties.** R. S. c. 97, § 43. The governor, with the advice and consent of the council, shall annually appoint a competent and practical engineer, a citizen of the state, who shall hold said office until his successor is appointed and qualified, and who shall upon petition of ten resident taxpayers of any town or several towns, the selectmen or assessors of any town, or the county commissioners of any county, inspect any dam or reservoir located in such town or county, erected for the saving of water for manufacturing or other uses, and after personal examination and hearing the testimony of witnesses summoned for the purpose, he shall forthwith report to the governor his opinion of the safety and sufficiency thereof.

**Sec. 46. If dam or reservoir is reported unsafe, proceedings.** R. S. c. 97, § 44. If, after such personal survey and inspection, the engineer reports that such dam or reservoir is unsafe or dangerous to the lives or property of persons residing, carrying on business or employed near or below the same, then the owners, occupants or lessees thereof shall immediately make such alterations, repairs and additions to said dam or reservoir as such engineer recommends; 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 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 he directs as in his judgment most conducive to the safety of human life, and consistent with the protection of property.

**Sec. 47. Compensation of engineer.** R. S. c. 97, § 45. Said engineer shall receive, as full compensation for his services, five dollars a day while actually employed in such service, together with his actual traveling expenses, to be audited, allowed and paid from the state treasury, in cases where such dam or

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reservoir is by him adjudged safe and sufficient; and by the owners, occupants or lessees, of said dam or reservoir, in cases where said dam or reservoir is by him adjudged unsafe and insufficient, to be recovered by said engineer in an action on the case.

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## CHAPTER 106.

### Inquest of Office, and Information for Intrusion.

**Sec. 1. Proceedings to revest in state, lands granted on condition. R. S. c. 98, § 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.

**Sec. 2. Attorney-general to file information. R. S. c. 98, § 2.** When the legislature or governor and council direct, the attorney-general shall file an information in the supreme judicial court in the county where the lands lie, stating the grant and conditions, the breaches, and the claims of the state.

**Sec. 3. Scire facias to issue; service. R. S. c. 98, § 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.

**Sec. 4. Judgment on default. R. S. c. 98, § 4.** If the defendant does not appear and answer to such information, judgment shall be rendered that the state be resealed of its lands.

**Sec. 5. Consequence of disclaimer by defendant. R. S. c. 98, § 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. Proceedings, if defendant claims title. R. S. c. 98, § 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 resealed 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. Proceedings, if it is adjudged that defendant holds too much land. R. S. c. 98, § 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 admission, 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 adjudged reasonable by the court.

**Sec. 8. Location by direction of court. R. S. c. 98, § 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, it 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 resealed of the residue, and for costs.

**Sec. 9. Cases in which information may be filed. R. S. c. 98, § 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

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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. Proceedings, judgment, and costs.** R. S. c. 98, § 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. Information to recover escheats.** R. S. c. 98, § 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 it judges proper.

**Sec. 12. Tenant not to set up title of alien.** R. S. c. 98, § 12. In such case, the defendant shall not avail himself of the title of an alien, or of a subject of another nation or sovereign, or of any other person, unless he shows that he is his tenant or agent.

**Sec. 13. If defendant is tenant or agent, costs.** R. S. c. 98, § 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.

**Sec. 14. Defendant may hold by title subsequently acquired.** R. S. c. 98, § 14. If it is found that he was not the 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.

**Sec. 15. Effect of judgment, that the state be reseized.** R. S. c. 98, § 15. When judgment on information is rendered that the state be reseized 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 following section.

**Sec. 16. Tenant under the state to have betterments.** R. S. c. 98, § 16. If a person appears and 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; although the tenant and those claiming under the state had not been in possession during six years.

**Sec. 17. Proceedings by attorney-general to obtain betterments.** R. S. c. 98, § 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.

**Sec. 18. Execution, how to be levied.** R. S. c. 98, § 18. The sheriff, by virtue of such execution, shall sell at public auction so much of said land as is sufficient to satisfy the execution and charges, unless otherwise paid.

## CHAPTER 107.

## Forcible Entry and Detainer. Tenancies.

**Sec. 1. Forcible entry and detainer, against whom maintained. R. S. c. 99, § 1.** Process of forcible entry and detainer may be maintained against a disseizor who has not acquired any claim by possession and improvement; 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.

169 U. S. 308; 18 Me. 268; 25 Me. 285; 30 Me. 180; 35 Me. 217; 46 Me. \*278, \*550; 57 Me. 390; 65 Me. 226; 67 Me. 266; 69 Me. 482; 70 Me. 209; 72 Me. 28, 45; 84 Me. 532; 96 Me. 119; 97 Me. 308, 317, 318; \*107 Me. 386; 108 Me. 260, 529; 113 Me. 213.

**Sec. 2. Tenancy at will, how determined; applies to buildings on land of another party. R. S. c. 99, § 2.** Tenancies at will may be determined by either party, by thirty days' notice in writing for that purpose, given to the other party, and not otherwise save by mutual consent, excepting cases where the tenant, if liable to pay rent, shall not be in arrears at the expiration of the notice, in which case the thirty days' notice aforesaid shall be made to expire upon a rent day. Either party may waive in writing said thirty days' notice, or any part thereof. When the tenancy is terminated, the tenant is liable to the process 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 apply to tenancies of buildings erected on land of another party.

See c. 26, § 3; c. 105, § 34; c. 135, § 27.  
13 Me. 215; 21 Me. 116; 24 Me. 247; 35 Me. 506; \*36 Me. 135; \*46 Me. 552; 50 Me. 325; 62 Me. 117, 551; 67 Me. 266; 71 Me. 550; 72 Me. 28, 135; 74 Me. 560; 82 Me. 424; 84 Me. 532; 90 Me. 539; 93 Me. 188; 108 Me. 260, 529; 111 Me. 217.

**Sec. 3. Jurisdiction. R. S. c. 99, § 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 such cases within their cities or towns, unless interested.

38 Me. 484; 51 Me. 479; 53 Me. 159; 108 Me. 527.

**Sec. 4. How to be commenced; recognizance when plaintiff lives out of state. R. S. c. 99, § 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.

71 Me. 209; 108 Me. 530.

**Sec. 5. When writ of possession to issue; service. R. S. c. 99, § 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 be issued to remove him, which may be served by a constable.

**Sec. 6. Proceedings, when defendant files a brief statement of title. R. S. c. 99, § 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

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shall, except as hereinafter 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 or superior court, [having jurisdiction], 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.

36 Me. 431; \*49 Me. 41; \*53 Me. 159; \*65 Me. 229; 68 Me. 120; 84 Me. 191; 113 Me. 522.

**Sec. 7. Claimant may allege that brief statement is intended for delay. R. S. c. 99, § 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 shall then examine the case so far as to ascertain the truth of such allegation, and if satisfied of the truth thereof, he shall proceed to try the cause upon the plea of not guilty, and if it is 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.

**Sec. 8. Appeal; proceedings. R. S. c. 99, § 8.** Either party may appeal from a judgment to the supreme judicial or superior court [having jurisdiction] next to be held in the county. When the claimant appeals, he shall recognize in manner aforesaid to the defendant, except as hereinafter 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.

36 Me. 432; 68 Me. 120; 97 Me. 313.

**Sec. 9. When judgment is rendered for claimant, he to have immediate possession, on filing recognizance. R. S. c. 100, § 9.** When judgment is rendered for the claimant, a writ of possession shall issue in all cases, if the claimant recognizes to the defendant in the 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; 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.

97 Me. 313.

**Sec. 10. Sums due for rent and damages, how recovered. R. S. c. 99, § 10. 1917, c. 282.** 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, but no action or suit at law in assumpsit, debt, covenant broken, or otherwise, shall be maintained for any sum or sums claimed to be due for rental or for any claim for damages for the breach of any of the conditions claimed to be broken on the part of the lessee, his legal representatives, assigns, or tenant, contained in a lease or written agreement to hire or occupy any building, buildings, or part of a building, during a period when such building, buildings, or part of a building, which the lessee, his assigns, legal representatives, or tenant may occupy or have a right to occupy, shall have been destroyed or damaged by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use or habitation; and no agreement contained in a lease of any building, buildings or part of a building or in any written instrument, shall be valid and binding

upon the lessee, his legal representatives or assigns, to pay the rental stipulated in said lease or agreement, during a period when the building, buildings or part of a building described therein shall have been destroyed or damaged by fire or other unavoidable casualty, so that the same shall be rendered unfit for use and habitation.

76 Me. 497; \*84 Me. 538; 93 Me. 187; 96 Me. \*103, 373; \*112 Me. 479.

Note. Tenancies may be terminated on account of maintenance of nuisance as defined in c. 26, § 1, c. 26, § 3; upon conviction of keeping house of ill fame, c. 135, § 27. Tenancies of mills may be terminated on account of unlawful obstruction of streams, c. 105, § 34.

## CHAPTER 108.

### Waste and Trespass on Real Estate.

**Sec. 1. Remedy, if tenant commits waste. R. S. c. 100, § 1.** If a tenant in dower, by curtesy, 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 in the time of his ancestor.

12 Me. 436; 19 Me. 291; 51 Me. 436.

**Sec. 2. Jury assess damages; action may be on the case. R. S. c. 100, § 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 the nature of waste, may be substituted for the action of waste.

37 Me. 365; 51 Me. 436; 52 Me. 143.

**Sec. 3. Remainder man or reversioner may sue. R. S. c. 100, § 3.** The remainder man, or reversioner for life or for years only, or in fee simple, or fee tail, after an intervening estate for life, may maintain such action, and recover the damages which he has suffered by the waste.

37 Me. 365; 51 Me. 436.

**Sec. 4. Action lies against executor, etc. R. S. c. 100, § 4.** Such action may be originally commenced against the executors or administrators of the tenant, or if commenced against him, it may be prosecuted against them after his death.

**Sec. 5. Part owners not to commit waste, without giving notice; treble damages in such cases. R. S. c. 100, § 5.** If any joint tenant or tenant in common of undivided lands, cuts down, destroys, or carries away trees, timber, wood, or underwood, standing or lying on such lands, or digs up or carries away ore, stone, or other valuable thing found thereon, or commits 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; which notice to such persons interested as are unknown, or whose residence is unknown, or who are out of the state, 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 cotenants, without naming the others, may sue for and recover their proportion of such damages.

15 Me. 200; \*31 Me. 187; 44 Me. 79; 64 Me. 63; 86 Me. 118; 87 Me. 233; \*93 Me. 114; \*99 Me. 351; 112 Me. 235.

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**Sec. 6. Defendant to pay only single damages in certain cases.** R. S. c. 100, § 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 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.

**Sec. 7. Injunction to prevent waste, pending a process for the recovery of lands, and on lands attached.** R. S. c. 100, § 7. If a defendant in an action to recover possession of real estate, or a person whose real estate is attached in a civil action commits 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 by such process as may be employed in an equity case, and dissolve it when deemed proper.

66 Me. 53.

**Sec. 8. Treble damages for waste, pending a suit.** R. S. c. 100, § 8. If, during the pendency of an action for the recovery of land, the tenant commits strip or waste by cutting, felling, or destroying wood, timber, trees, or poles, standing thereon, he shall pay to the aggrieved party treble damages, to be recovered in an action of trespass.

\*31 Me. 187.

**Sec. 9. Trespass on lands of another; double damages.** R. S. c. 100, § 9. Whoever cuts down, destroys, injures, or carries away, any ornamental or fruit tree, 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 glass in any building, is liable in damages to the owner in an action of trespass. And if said acts are committed wilfully or knowingly, the defendant is liable to the owner in double damages.

See c. 11, § 14; c. 139, § 17; 3 Me. 15; 13 Me. 89; 14 Me. 440; 22 Me. 452; 39 Me. 29; 46 Me. 427; 48 Me. 247; 49 Me. 72; 54 Me. 363; 66 Me. 50; 119 Me. 79; \*119 Me. 367; 120 Me. 437.

**Sec. 10. Trespases on property of county, town, parish, actions for.** R. S. c. 100, § 10. Where trespases are committed on buildings, enclosures, monuments, or mile-stones, belonging to a county, town, or parish, the treasurer of such corporation may sue for the damages in its name; if the property injured belongs to a school district, the treasurer of the town may sue in the name of such district.

**Sec. 11. Trespass on improved or ornamental grounds.** R. S. c. 100, § 11. Whoever enters on any grass land, dooryard, 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, is liable in an action of trespass to the party injured in treble damages.

See c. 139, §§ 21, 23; 66 Me. 50; \*112 Me. 236.

**Sec. 12. Trespass on islands in salt waters, after notice; both exemplary and actual damages are imposed; evidence.** R. S. c. 100, § 12. Whoever, after notice by the owner, occupant, or lessee in any of the ways provided in the following section, trespasses upon any island within salt waters, for the purpose of shooting or hunting thereon, is liable to such owner, occupant or lessee, in exemplary damages to an amount not less than twenty, nor more than fifty dollars, in addition to all actual damage sustained by said owner, occupant or lessee, and shall also forfeit to said owner, occupant or lessee, five dollars for each

bird of any kind, shot, caught, taken or killed on such island, all 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 shooting or hunting.

**Sec. 13. Notices, how to be given; penalty for injuring sign-boards.** R. S. c. 100, § 13. 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 near one of the usual landing places on said island, reading as follows: "All persons are forbidden to shoot or hunt on this island;" with the name of the owner, occupant, or lessee; or such notice may be given, verbally or in writing, by the owner, occupant or lessee of the island, to any person, and shall be binding on the person so notified, whether the sign-boards herein named are erected and maintained or not; and whoever tears down, or in any way defaces or injures any such sign-board, forfeits one hundred dollars, to be recovered by the owner, occupant or lessee of such island, in an action of debt.

**Sec. 14. Damages and penalties, how and where to be recovered.** R. S. c. 100, § 14. Actions to recover any of the sums or penalties named in the two preceding sections, may be brought before the supreme judicial court, or either superior court, or any police or municipal court, or trial justice [having jurisdiction] 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. Imprisonment for non-payment.** R. S. c. 100, § 15. On non-payment of any of the penalties aforesaid, the defendant shall be imprisoned not less than five days, and at the rate of one day for each dollar of the amount of the judgment, if it is over five dollars.

Note. The provisions of sections twelve to fifteen inclusive are applicable to Petit Menan Point in the town of Steuben, special laws of 1875, c. 65.

**Sec. 16. Penalty for waste on lands of an insolvent deceased.** R. S. c. 100, § 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 as 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.

10 Me. 370; 15 Me. 206; \*77 Me. 247.

**Sec. 17. Liability of executor or administrator for waste.** R. S. c. 100, § 17. If such executor or administrator, being heir or devisee, 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 the executor or administrator, or adjudged against him by the judge of probate, shall be accounted for in the administration account.

See c. 76, §§ 11, 22; c. 79, § 22.

**Sec. 18. One or more tenants in common may join in actions; notice to others.** R. S. c. 100, § 18. All or any of the tenants in common or joint tenants of lands may join or sever in personal actions for injuries done thereto, setting forth in the declaration the names of all other cotenants, if known, and the court may order notice to be given in such actions to all other cotenants known, and all or any of them, at any time before final judgment, may become plaintiffs in the action, and prosecute the suit for the benefit of all concerned.

29 Me. 204; 43 Me. 253; \*57 Me. 409; \*93 Me. 115.

**Sec. 19. Judgment for damage; execution for plaintiff's share; scire facias**

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**by cotenants. R. S. c. 100, § 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 cotenants 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.

83 Me. 103; \*93 Me. 115.

**Sec. 20. If one or more joint tenants take the whole rent, others may recover. R. S. c. 100, § 20.** If any one or more of the joint tenants or tenants in common take the whole rents or income in the joint estate, or more than their share, without the consent of their cotenants, and refuse, for a reasonable time after demand, to pay such cotenants their share thereof, any one or more of them may have an action of special assumpsit against the refusing cotenants, to recover their proportion thereof.

64 Me. 465; 72 Me. 406; \*79 Me. 89; \*92 Me. 604.

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## CHAPTER 109.

### Replevin of Beasts and Chattels.

#### Replevin of Beasts.

**Sec. 1. Owners of beasts distrained may replevy. R. S. c. 101, § 1. 1921, c. 159.** Any person, whose beasts are distrained to obtain satisfaction for damages alleged to be done by them, may maintain a writ of replevin therefor against the distrainer, before any trial justice or judge of any municipal or police court in the county, in the form prescribed by law; or, if the value of the beasts distrained are more than twenty dollars, in the supreme judicial court or superior court *of said county*. [having jurisdiction in said county]

See 1821, c. 63, § 9; 17 Me. 189; 18 Me. 249; \*28 Me. 489.

**Sec. 2. Writ, service and return. R. S. c. 101, § 2.** The writ shall be sued out, served, and returned, and the cause heard and determined like other civil actions before a trial justice or municipal or police court, except as otherwise prescribed.

114 Me. 225.

**Sec. 3. Bond must be given before service; when new sureties must be furnished. R. S. c. 101, § 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, or with a surety company authorized to do business in this state, as surety, 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 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.

See c. 59, § 156.

**Sec. 4. Judgment, if the beasts are lawfully restrained. R. S. c. 101, § 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 damages for which the beasts were distrained, with legal fees, costs, and expenses occa-

sioned by the distress, and costs of the replevin suit; or instead thereof, the justice or court 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.

\*28 Me. 491.

**Sec. 5. If unlawfully restrained. R. S. c. 101, § 5.** If it appears that the beasts were taken or distrained without justifiable cause, the plaintiff shall have judgment for his damages and costs.

**Sec. 6. Appeal. R. S. c. 101, § 6.** Either party may appeal as in other civil actions.

22 Me. 558.

**Sec. 7. Certain causes transferred to the supreme judicial court. R. S. c. 101, § 7. 1921, c. 159.** When it appears that the sum demanded as damages exceeds twenty dollars, or that the property in 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, if originally brought before any trial justice or judge of any municipal or police court, shall be transferred to the supreme judicial or superior court, [having jurisdiction] to be there disposed of like 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.

See c. 96, § 3.

### Replevin of Goods.

**Sec. 8. Goods, unlawfully detained, may be replevied. R. S. c. 101, § 8.** When goods, unlawfully taken or detained from the owner or person entitled to the possession thereof, or attached on mesne process, or taken on 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.

See c. 94, § 45; 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; 56 Me. 293, 558; \*59 Me. 114; 63 Me. 465; 64 Me. 315; 65 Me. 564; 67 Me. 209; \*103 Me. 136.

**Sec. 9. Jurisdiction. R. S. c. 101, § 9.** Actions of replevin of goods shall be brought in the county where they are detained. The action may be brought before any municipal or police court or trial justice in said county, if the value of the goods does not exceed the amount to which the civil jurisdiction of such court or justice is limited.

12 Me. 262; 40 Me. 581; 113 Me. 104; \*115 Me. 116.

**Sec. 10. Bond given before service. R. S. c. 101, § 10.** Before serving the writ, the officer shall take from the plaintiff, or some one in his behalf, a bond to the defendant, with sufficient sureties or with a surety company authorized to do business in this state, as surety 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 or surety company may be required thereon as provided in section three.

See 1821, c. 63, § 9; 11 Me. 132; 16 Me. 35; 20 Me. 97; 27 Me. 447; \*28 Me. 251; 34 Me. 88; 37 Me. 26; \*39 Me. 517; \*54 Me. 119; \*63 Me. 464; 72 Me. 375; 73 Me. 124; \*86 Me. 220; 92 Me. 202; 106 Me. 525; 120 Me. 508; 123 Me. 117.

**Sec. 11. If defendant prevails, he to have a writ of return, with damages and cost; judgment, when property is held as security. R. S. c. 101, § 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

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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 costs; and judgment shall be for a return without costs, unless his title has become absolute by a legal foreclosure.

15 Me. 246, 375; 31 Me. 298; 47 Me. 522; 53 Me. 316; 55 Me. 364; 56 Me. 138;  
\*58 Me. 478; \*62 Me. 361; 86 Me. 221; \*123 Me. 119; \*124 Me. 383; 125 Me. 190.

**Sec. 12. Damages, on judgment for return of property attached or taken on execution.** R. S. c. 101, § 12. If the goods, when replevied, had been taken in execution, or were under attachment, 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 a year on the value of the goods while the service of the execution is so delayed.

\*58 Me. 478; 69 Me. 446.

**Sec. 13. Disposal of money recovered by officer, for goods attached or taken on execution.** R. S. c. 101, § 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:

I. 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.

II. To pay the creditor, at whose suit the goods were attached or taken on execution, the sum, if any, recovered by him in that suit, or what remains unpaid, with interest at the rate of twelve per cent a year for the time that the money was withheld from the creditor, or the service of his execution was delayed by reason of the replevin.

III. 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 have been applied if such goods had been sold on execution.

123 Me. 119.

**Sec. 14. Appropriation of the money received by the creditor.** R. S. c. 101, § 14. All sums received by such creditor from the sale of goods attached or taken in execution, and afterwards returned; all sums received for the value of any of such goods as are not returned; and all sums recovered from the officer for 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. Judgment, if plaintiff recovers.** R. S. c. 101, § 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.

6 Me. 262; 12 Me. 54; 15 Me. 21, 246; 20 Me. 88; 21 Me. 509; 40 Me. 286; \*56 Me. 173; 123 Me. 118.

**Sec. 16. Continuance of attachment, if goods are replevied.** R. S. c. 101, § 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; and if such final judgment is rendered before the return of the goods, or if the goods when replevied had been 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.

See c. 94, § 72.

**Sec. 17. When writ of reprisal may issue.** R. S. c. 101, § 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.

See 1821, c. 63, § 9. Writ of Withernam.

**Sec. 18. Defendant's remedy on the replevin bond. R. S. c. 101, § 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 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.

11 Me. 69; 18 Me. 261; 21 Me. 509; 33 Me. 387; 46 Me. 410; 53 Me. 425; \*54 Me. 121; 55 Me. 364; \*56 Me. 173; 69 Me. 446; 72 Me. 477; 73 Me. 128, 386; 79 Me. 452; \*123 Me. 119.

**Sec. 19. Limitation of surety's liability on a replevin bond. R. S. c. 101, § 19.** No action shall be maintained against any surety in a replevin bond, unless the writ is served on him within one year after final judgment in 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.

62 Me. 534.

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## CHAPTER 110.

### Bastard Children and Their Maintenance.

**Sec. 1. Accusation by a woman pregnant with a bastard child, and her examination. R. S. c. 102, § 1.** When a woman pregnant with a child, which, 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, 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 such other circumstances as he deems useful in the discovery of the truth.

8 Me. 164; 16 Me. 40; 36 Me. 488; \*39 Me. 471; 64 Me. 373; 66 Me. 271; \*70 Me. 418; 81 Me. 65; 83 Me. 146; 105 Me. 411; 116 Me. 359; 125 Me. 439.

**Sec. 2. Justice may issue a warrant. R. S. c. 102, § 2.** He may issue his warrant for the apprehension of the accused, directed to the sheriff of any county in which the accused is supposed to reside, or to either of his deputies, or to a constable of any town in such county accompanied by such accusation and examination.

See c. 93, § 61.

**Sec. 3. Justice to take bond or commit; expense of support in jail. R. S. c. 102, § 3.** When the accused is brought before such or any other justice, he may be required to give bond to the complainant, with sufficient sureties, in such reasonable sum as the justice orders, conditioned for his appearance at the next term of the supreme judicial or superior court for the county in

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which she resides, and for his abiding the order of the court thereon; and if he does not give it, he shall be committed to jail until he does. The cost of commitment and board of the accused while so in jail shall be paid by the county in which said jail is situated. If he gives the required bond after said commitment, he shall be liberated upon the payment of cost of commitment and board.

2 Me. 169; 3 Me. 433; 19 Me. 411; 26 Me. 380; 36 Me. 488; 37 Me. 548; 56 Me. 415; \*66 Me. 271; \*70 Me. 418; 76 Me. 249; \*80 Me. 361; 85 Me. 287; 116 Me. 396.

**Sec. 4. Case continued, if complainant is not yet delivered; surrender of principal. R. S. c. 102, § 4.** If at such next or any subsequent term, the complainant is not delivered of her child, or is unable to attend court, or shows 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.

76 Me. 249; 80 Me. \*357, \*361; \*116 Me. 396.

**Sec. 5. Declaration must be filed before trial; its form. R. S. c. 102, § 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, and the time and place when and where it was begotten, with as much precision as the case admits; and that being put on the discovery of the truth during the time of her travail, she accused the respondent of being the father of her child, and that she has been constant in such accusation.

1 Me. 305; 6 Me. 461; 12 Me. 29; 37 Me. 548; 55 Me. 361; 56 Me. 317; \*70 Me. 416; 83 Me. 146; 92 Me. 126; 125 Me. 55.

**Sec. 6. On what conditions complainant may maintain her prosecution. R. S. c. 102, § 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.

8 Me. 164; 18 Me. 307, 374; 23 Me. 574; 33 Me. 481; 34 Me. 238; 35 Me. 434; \*39 Me. 471; 44 Me. 347; \*56 Me. 317; 57 Me. 491; 64 Me. 372; 67 Me. 246; 83 Me. 147; 92 Me. 125, 126.

**Sec. 7. Proceedings after verdict. R. S. c. 103, § 7. 1917, c. 84.** 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 said child; stand charged with its maintenance, with the assistance of the mother, as the court orders; and shall be ordered to pay the complainant her costs of suit and for the expense of her delivery, and of her nursing, medicine, and medical attendance, during the period of her sickness and convalescence, and of the support of such child to the date of rendition of judgment; and shall give a bond, with sufficient sureties approved by the court, or by the clerk of said court in term time, or in vacation, 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 until he gives them. The latter bond shall be deposited with the clerk of the court for the use of such town. If the respondent does not comply with that part of the order relative to payment of expenses and costs of suit, execution may issue therefor as in actions of tort.

2 Me. 170; 37 Me. 548; 61 Me. 406; 70 Me. 415; 72 Me. 255; \*80 Me. 357, \*361; 112 Me. 106.

**Sec. 8. Complainant not to settle with the father, if the town objects in**

**writing. R. S. c. 102, § 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.

18 Me. 151; 61 Me. 406.

**Sec. 9. Town, failing in suit, pays costs. R. S. c. 102, § 9.** A town prosecuting in behalf of the complainant, is 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 motion, enter judgment against the town for such costs, and issue execution thereon.

61 Me. 406.

**Sec. 10. Discharge of father from imprisonment after six months; action to recover sums due. R. S. c. 102, § 10. 1917, c. 158.** When the father of such bastard child has remained for six months in jail, without being able to comply with the order of the 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 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 the court.

**Sec. 11. Complainant dying before trial. R. S. c. 102, § 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 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.

85 Me. 224.

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## CHAPTER 111.

### Personal Property Forfeited. Lost Goods and Stray Beasts.

#### Personal Property Forfeited.

**Sec. 1. Seizure of forfeited personal property. R. S. c. 103, § 1.** When personal property is forfeited for an offense, and no special mode is prescribed for recovering it, any person entitled to the whole or part thereof may seize and keep it until final judgment, unless restored on the bond as herein provided.

C. 34, § 20; c. 37, § 111; c. 49, §§ 49, 86; c. 50, §§ 2, 4, 14, 16, 19, 20, 24; c. 138, § 15.

**Sec. 2. Restoration to claimant, on giving bond. R. S. c. 103, § 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.

**Sec. 3. Appraisal. R. S. c. 103, § 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 in the county.

**Sec. 4. Inventory and appraisal, if no claimant. R. S. c. 103, § 4.** If no person claims the property after such seizure, the party seizing shall cause an inventory and appraisement thereof to be made by three disinterested persons,

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under oath, appointed by a justice of the peace in the county; which shall be the rule for deciding in what court the libel shall be filed.

**Sec. 5. If the value exceeds twenty dollars, libel to be filed in supreme judicial or superior court; notice of libel. R. S. c. 103, § 5.** If the value of the property seized exceeds twenty dollars, the party seizing, within twenty days, shall file a libel in the clerk's office of the supreme judicial or superior court in the county where the offense 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 notice 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.

<sup>62 Me. 37.</sup>

**Sec. 6. Court may order party seizing to give bond; proceedings, and decree thereon. R. S. c. 103, § 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, 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 disposal of the property according to law, and a sale and distribution of the proceeds, after deducting all proper charges.

**Sec. 7. If libel is not supported, property restored with damages. R. S. c. 103, § 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.

**Sec. 8. If value is less than twenty dollars, libel must be filed before trial justice. R. S. c. 103, § 8.** When the value of the property seized does not exceed twenty dollars, the libel shall be filed before a trial justice or municipal or police court, of the county where the offense 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, such justice or the judge of such court shall try and decide the cause, and make such decree therein as law requires.

**Sec. 9. Appeal; if not prosecuted, decree to be affirmed. R. S. c. 103, § 9.** Either party may appeal to the next supreme judicial or superior 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 appealed from, with costs.

#### Lost Goods and Stray Beasts.

**Sec. 10. Duty of finder of money, or goods worth three dollars or more. R. S. c. 103, § 10.** Whoever finds lost money or goods of the value of three dollars or more shall, if the owner is unknown, within seven days give notice thereof in writing to the clerk of the town where they are found and post a notification thereof in some public place in said town. If the value is ten dollars or more, the finder, in addition to the notice to the town clerk and the notification to be posted as aforesaid, shall, within one month after finding, publish a notice thereof in some newspaper published in the town, if any, otherwise in some newspaper published in the county.

<sup>104 Me. 268.</sup>

**Sec. 11. Notice to be given when stray beasts are taken up. R. S. c. 103,**

§ 11. Whoever takes up a stray beast shall, within seven days give notice thereof in writing, containing a description of its color and its natural and artificial marks, to the clerk of the town where such beast is taken, and shall cause a notice thereof, containing a like description of the beast to be posted and, if such beast is of the value of ten dollars or more, published, in the manner provided in the preceding section; otherwise he shall not be entitled to compensation for any expenses which he may incur relative thereto.

**Sec. 12. Appraisal, if value is ten dollars or more. R. S. c. 103, § 12.** Every finder of lost goods or stray beasts of the value of ten dollars or more shall, within two months after finding, and before using them to their disadvantage, 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 at said clerk's office, within seven days from its date, to appraise said goods under oath.

**Sec. 13. Proceedings, if owner appears. R. S. c. 103, § 13.** If the owner of such lost money or goods appears within six months, and if the owner of such stray beasts appears within two months after said notice to the town clerk, and gives reasonable evidence of his ownership to the finder, he shall have restitution of them or the value of the money or goods, paying all necessary charges and reasonable compensation to the finder for keeping, to be adjudged by a justice of the peace of the county, if the owner and finder cannot agree.

**Sec. 14. Proceedings, if no owner of money or goods appears. R. S. c. 103, § 14.** If no owner appears within six months, such money or lost goods shall belong to the finder, by paying one-half their value after deducting all necessary charges, to the treasurer of said town; 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.

**Sec. 15. Sale of strays, if owner does not appear. R. S. c. 103, § 15.** If the owner does not appear and prove his title to the beasts within said two months, the finder may sell them at public auction, first giving notice of such sale at least four days before the time of sale, in two public places in the town in which the beasts were taken up; and the proceeds of the sale, after deducting all lawful charges, shall be deposited in the town treasury.

**Sec. 16. Proceedings, if owner of strays appears. R. S. c. 103, § 16.** If such owner appears within six months after such notice is filed with the town clerk, and prove his title to the beasts, he shall, if they have not been sold, have restitution of the same, after paying the charges arising thereon as provided in section thirteen; and if the beasts have been sold, he shall be entitled to receive the money so deposited in the treasury from the proceeds of the sale. If no owner appears within six months, the beasts or the value or price thereof, after deducting said charges, shall, as prescribed in section fourteen be equally divided between the finder and the town.

**Sec. 17. Penalty, if finder neglects to give notice. R. S. c. 103, § 17.** If the finder of lost money or goods, of the value of three dollars or more, or if the person taking up such stray beast neglects to give notice to the town clerk and to cause them to be advertised as herein provided, he forfeits to the owner the full value thereof, unless he delivers or accounts therefor to the owner, in which case he shall forfeit not more than twenty dollars, half to the town, and half to the prosecutor.

**Sec. 18. Penalty for taking away strays without paying charges. R. S. c. 103, § 18.** Whoever takes away a beast held as a stray, without paying all

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lawful charges incurred in relation to the same, shall forfeit to the finder double the amount of said charges, not exceeding the value of the beast, and in addition thereto shall be liable for any trespass committed by him in so doing.

**Sec. 19. Damages, how recovered by sufferers; beasts may be taken up; lien. R. S. c. 103, § 19.** Any person injured in his land by sheep, swine, horses, asses, mules, goats, or neat cattle, in a common or general field, or in a close by itself, may recover his damages by taking up any of the beasts doing it, and giving the notice provided in section eleven, or in an action of trespass against the person owning or having possession of the beasts at the time of the damage, and there shall be a lien on said beasts, and they may be attached in such action and held to respond to the judgment as in other cases, whether owned by the defendant or only in his possession. But if the beasts were lawfully on the adjoining lands, and escaped therefrom in consequence of the neglect of the person suffering the damage to maintain his part of the partition fence, their owner shall not be liable therefor.

<sup>2</sup> Me. 74, 409; <sup>5</sup> Me. 360; <sup>13</sup> Me. 376; <sup>14</sup> Me. 420; <sup>15</sup> Me. 241; <sup>29</sup> Me. 286; <sup>35</sup> Me. 28; <sup>48</sup> Me. 375; <sup>\*59</sup> Me. 456; <sup>\*63</sup> Me. 89, 155; <sup>86</sup> Me. 342.

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## CHAPTER 112.

### Habeas Corpus.

**Sec. 1. Right to the writ. R. S. c. 104, § 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.

<sup>48</sup> Me. 127; <sup>72</sup> Me. 202; <sup>\*104</sup> Me. 81; <sup>110</sup> Me. 77.

**Sec. 2. Minors enlisted into the army or navy are entitled to writ. R. S. c. 104, § 2.** A minor enlisted within the state into the army or navy of the United States, without the written consent of his parent or guardian, shall have all the benefits of this chapter on the application of himself, parent or guardian.

**Sec. 3. Parent or guardian of minor may have writ. R. S. c. 104, § 3.** The parent 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.

**Sec. 4. Courts may grant writ, on application in behalf of one incapable of applying. R. S. c. 104, § 4.** The supreme judicial court, or either of the superior courts, or any of the justices thereof, on application of any person, may issue the writ of habeas corpus to bring before them any party alleged to be imprisoned or restrained of his liberty, who would be entitled to it on his own application, when from any cause he is incapable of making it.

<sup>\*104</sup> Me. 81.

**Sec. 5. Persons not entitled of right. R. S. c. 104, § 5.** The following persons shall not of right have such writ:

I. 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.

II. Persons convicted, or in execution upon legal process, criminal or civil.

III. Persons committed on mesne process on any civil action, on which they are liable to be arrested and imprisoned.

<sup>95</sup> Me. 453; <sup>115</sup> Me. 513.

**Sec. 6. Application, how to be made. R. S. c. 104, § 6.** 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 be heard and determined by him.

\*104 Me. 81.

**Sec. 7. Writ of habeas corpus, how returnable.** R. S. c. 104, § 7. When awarded by a justice of the supreme judicial court, it may issue, under his hand and seal, or upon his order from any clerk's office in vacation, as if issued by the court, and run throughout the state, and may be returnable before the court, or before himself, or any other justice thereof, and shall be entered upon the docket of the court in the county where returnable, and the judgment shall there be recorded by the clerk. When awarded by a judge of a superior court, it may issue, and shall be entered and the judgment recorded in like manner.

**Sec. 8. Application, how made; when the writ shall not issue.** R. S. c. 104, § 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 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, 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; unless from examination of the whole case, the court or justice is of opinion that it ought to issue.

65 Me. 131.

**Sec. 9. Proceedings, if excessive bail is demanded.** R. S. c. 104, § 9. If it appears that he is imprisoned on mesne process for want of bail, and the court or justice thinks that excessive bail is demanded, reasonable bail shall be fixed, and on giving it to the plaintiff, he shall be discharged.

61 Me. 419.

**Sec. 10. If officer refuses a copy of precept, writ to issue.** R. S. c. 104, § 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 as prayed for.

**Sec. 11. Form of writ in cases mentioned in section five.** R. S. c. 104, § 11. When such writ is issued on an 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 ——, within 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, our ——, at ——, this —— day of ——, in the year 19—.

——, Clerk.”

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The like form shall be used by any justice of said court, changing what should be changed, when such writ is awarded by him.

**Sec. 12. Time of service, return and tender of fees. R. S. c. 104, § 12.** When such writ is offered to the officer to whom it is directed, he shall receive it; 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 obey the writ without payment or tender of expenses.

**Sec. 13. Officer, when he makes return, to bring the body of person restrained; proceedings, if person is sick, and cannot be brought. R. S. c. 104, § 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 such 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 require.

**Sec. 14. Examination of the causes of restraint. R. S. c. 104, § 14.** On 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.

\*101 Me. 401.

**Sec. 15. Persons interested, must be notified, before prisoner is discharged. R. S. c. 104, § 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 sees 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.

**Sec 16. Proceedings in court. R. S. c. 104, § 16.** The party imprisoned or restrained may deny allegations of fact 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.

6 Me. 466; 32 Me. 441; \*36 Me. 428; 47 Me. 86; \*101 Me. 401.

**Sec. 17. Party detained for any reliable offense to be admitted to bail. R. S. c. 104, § 17.** If the party is imprisoned and detained for aailable offense, 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.

\*95 Me. 453.

**Sec. 18. Form of writ, if the restraint is not by an officer. R. S. c. 104,**

§ 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:

“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” (or superior) “court, held at ———, within and for our county of ———, 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 19—.

110 Me. 81.

**Sec. 19. Issue and service of writ. R. S. c. 104, § 19.** Such writ may be issued by the supreme judicial or superior 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 may be served in any county in the state.

**Sec. 20. If the person restraining is unknown, how to be designated. R. S. c. 104, § 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.

**Sec. 21. If person restrained is unknown. R. S. c. 104, § 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. Form of return, in cases mentioned in sections eleven and eighteen. R. S. c. 104, § 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,—

I. Whether he has or has not the party in his custody or power, or under restraint;

II. 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,

III. 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.

**Sec. 23. Authentication of return. R. S. c. 104, § 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.

**Sec. 24. How party is to be kept. R. S. c. 104, § 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. Neglect of officer to deliver copy of precept, penalty. R. S. c. 104, § 25.** If an officer refuses or neglects, for four hours, to deliver a true

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and attested copy of the warrant or process, by which he detains a prisoner, to any person who demands it and tenders the fees therefor, he forfeits to such prisoner two hundred dollars.

<sup>\*71 Me. 407.</sup>

**Sec. 26. Penalty is officer neglects to serve writ; contempt proceedings. R. S. c. 104, § 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 forfeits to the aggrieved party four hundred dollars; and the court or justice, 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. Attachment against a sheriff; service. R. S. c. 104, § 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. Proceedings when officer refuses to obey writ. R. S. c. 104, § 28.** If the person to whom the writ is directed refuses to obey and execute it, the court or justice 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 such court or justice; and the prisoner shall thereupon be discharged, bailed, or remanded as if brought in on habeas corpus.

**Sec. 29. Persons discharged on habeas corpus, not to be rearrested. R. S. c. 104, § 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 unless, after a discharge for defect of proof, or some material defect in the commitment in a criminal case, he is arrested on sufficient proof, and committed by legal process for the same offense.

<sup>101 Me. 401.</sup>

**Sec. 30. Conveyance to prison of persons ordered to be committed; penalty for eluding service. R. S. c. 104, § 30.** A person ordered to be committed to prison on a 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, having in his custody or under his power a 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 forfeits four hundred dollars to the party aggrieved.

**Sec. 31. Penalty is no bar to action. R. S. c. 104, § 31.** No penalty established by this chapter shall bar any action at common law for damages for false imprisonment.

**Sec. 32. Third person may appear for party, by stipulating for costs. R. S. c. 104, § 32.** When a person is unlawfully carried out of the state or is imprisoned in a secret place, any other person may appear for him in an action therefor in his name, who shall stipulate for the payment of costs as the court orders.

**Sec. 33. Bail; exceptions. R. S. c. 104, § 33.** Nothing in this chapter shall restrain the supreme judicial or *either of the* superior courts in term time, or any justice thereof in vacation, from bailing a person for any offense, when the circumstances of the case require it; except persons committed by the governor and council, senate or house of representatives, for causes mentioned in the constitution.

See Const. of Me., Art. 1, § 10; Art. iv, part 3, § 6.

**Sec. 34. Bail commissioners appointed by court.** R. S. c. 104, § 34. The supreme judicial court sitting in each county shall appoint from the number of justices of the peace resident in the county, one or more bail commissioners, who shall hold office during the pleasure of the court.

**Sec. 35. Commissioners admit to bail persons committed for not finding sureties.** R. S. c. 104, § 35. 1923, c. 183. When a person is confined in a jail for a bailable offense, or for not finding sureties on a recognizance, except when a verdict of guilty has been rendered against him for an offense punishable in the state prison, and except when such person is committed pending decision on report or exceptions as provided in section twenty-seven of chapter one hundred forty-six, any such commissioner, on application, may inquire into the case and admit him to bail, and exercise the same power as any justice of the supreme judicial court or superior court can; and may issue a writ of habeas corpus, and cause such person to be brought before him for this purpose, and may take such recognizance; provided, however, that during a term of the supreme judicial court or superior court a bail commissioner is not authorized to admit to bail any person confined in jail or held under arrest by virtue of a precept returnable to said term; and when a person is confined in jail for a bailable offense, or for not finding sureties on a recognizance, and the amount of his bail has been fixed by a justice of the supreme judicial court or by the judge of a superior court, or by a judge of a municipal court, a bail commissioner is not authorized to change the amount of such bail. Such bail commissioner shall receive not exceeding the sum of five dollars in each case in which bail is so taken, the same to be paid by the person so admitted to bail; but the person admitted to bail shall not be required to pay any other fees or charges to any officer for services connected with the giving of such bail.

No attorney at law who has acted as bail commissioner in any proceeding shall act as attorney for or in behalf of any respondent for whom he has taken bail in such proceeding; nor shall any attorney at law who has acted as such attorney for a respondent in any offense act as bail commissioner in any proceeding growing out of the offense with which the respondent is charged or for not finding sureties on a recognizance growing out of such proceeding.

See c. 146, § 27; 85 Me. 544.

**Sec. 36. May admit to bail before commitment; and on Lord's Day.** R. S. c. 104, § 36. 1921, c. 34. Any person under arrest for a bailable criminal offense, may, before commitment to jail, 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. And any person arrested on the Lord's Day, or on the afternoon or evening preceding, for a bailable offense, may be admitted to bail on that day by such commissioner.

**Sec. 37. Habeas corpus may issue to bring a prisoner as a witness.** R. S. c. 104, § 37. A court may issue a writ of habeas corpus, when necessary, to bring before it a prisoner for trial in a cause pending in such court, or to testify as a witness, when his personal attendance is deemed necessary for the attainment of justice.

**Sec. 38. Habeas corpus may issue on application in behalf of insane person.** R. S. c. 104, § 38. When an insane person is arrested or imprisoned on mesne process or execution in a civil suit, a justice of the supreme judicial or superior 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 it is proved to the satisfaction of said

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justice or judge that the person is insane, he may discharge him from arrest or imprisonment; and the creditor may 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, he is forever after exempt from arrest therefor.

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## CHAPTER 113.

### Writ of Audita Querela.

**Sec. 1. Form of writ.** R. S. c. 105, § 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.

**Sec. 2. In what court and county to be sued out.** R. S. c. 105, § 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 it shall be sued in the county and court having jurisdiction of the case according to the provisions of law as to personal actions.

<sup>59 Me. 567; 62 Me. 13.</sup>

**Sec. 3. Proceedings.** R. S. c. 105, § 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.

**Sec. 4. Complainant may recover special damages.** R. S. c. 105, § 4. The complainant may declare in his writ for any special damages that 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.

<sup>24 Me. 306.</sup>

**Sec. 5. Pleadings, and filing exceptions.** R. S. c. 105, § 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.

**Sec. 6. Proceedings, if complainant in prison.** R. S. c. 105, § 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.

**Sec. 7. Effect of a surrender to jail.** R. S. c. 105, § 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.

## CHAPTER 114.

## Writ for Replevying a Person.

**Sec. 1. Persons entitled to the writ, and from what court. R. S. c. 106, § 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 justice of the supreme judicial court, or either of the superior courts, in term time or vacation, at the discretion of such justice and not otherwise.

13 Me. 411; 32 Me. 563; 34 Me. 130; 35 Me. 271; 37 Me. 132; 48 Me. 127; 49 Me. 18.

**Sec. 2. Issue and service of writ. R. S. c. 106, § 2.** The writ shall issue from and be returnable to such court in the county where the plaintiff is confined, and be directed to a proper officer and served as soon as may be, fourteen days at least before the return day.

**Sec. 3. Form of writ. R. S. c. 106, § 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" (or superior) "court, next to be held at ——, within and for the county of S——, on the —— day of —— next, then and there in our said court to demand right and justice against said G. H. for the duress and imprisonment aforesaid, and to prosecute his replevin, as the law directs; provided that the said C. D.," (the plaintiff,) "before his deliverance, gives bond to the defendant, in such sum as you judge reasonable, with two sufficient sureties, with condition to appear at said court to prosecute his replevin against the defendant, and to have his body there to be redelivered, if thereto ordered by the court, and to pay all such damages and costs as are awarded against him; and if the plaintiff is delivered by you at a day before the sitting of said court, you shall summon the defendant to appear at said court.

Witness J. S., Esquire, our ——, at ——, the —— day of ——, in the year of our Lord nineteen hundred and ——.

L. M., Clerk."

**Sec. 4. Bond to be given before writ issues. R. S. c. 106, § 4.** No person shall be delivered by such writ until a bond is given by the plaintiff or person suing in his behalf, to be returned to the court with the writ, for the sufficiency of which the officer shall be answerable, as in case of bail in civil actions.

**Sec. 5. Judgment, if action is or is not maintained. R. S. c. 106, § 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.

**Sec. 6. If defendant is entitled to custody of plaintiff. R. S. c. 106, § 6.** If

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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 redelivery of his body, to be held or disposed of according to law.

**Sec. 7. If defendant has eloigned the plaintiff, he may be arrested and give bail. R. S. c. 106, § 7.** If it appears that the defendant has eloigned 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 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.

**Sec. 8. Defendant, if guilty, to be imprisoned; writ of reprisal to issue; suggestion of plaintiff's death. R. S. c. 106, § 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 the state, on which he shall be committed to jail to remain irrepleviable, until 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.

See 1821, c. 63, § 10. Writs of Withernam.

**Sec. 9. Proceedings, if plaintiff is produced. R. S. c. 106, § 9.** If the defendant, after the return of eloignment, produces the body of the plaintiff in court, the court shall deliver him from imprisonment, upon his giving the defendant such bond as hereinbefore 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 replevying the plaintiff; and, in either case, the suit shall be tried as aforesaid.

See § 4.

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## CHAPTER 115.

### Writs of Error, Certiorari, Mandamus, and Quo Warranto.

- Sections 1-10 Writs of Error.
- Sections 11-12 Writs of Error in Criminal Cases.
- Sections 13-16 Writs of Certiorari.
- Sections 17-20 Writs of Mandamus.
- Sections 21-22 Quo Warranto.

### Writs of Error.

**Sec. 1. Issued from supreme judicial court. R. S. c. 107, § 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.

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, 368, 511; 36 Me. 200; \*59 Me. 149; 60 Me. 521; \*64 Me. 204.

**Sec. 2. Execution not stayed, unless bond is given and approved. R. S. c. 107, § 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.

47 Me. 175.

**Sec. 3. Filing of bond is deemed a delivery; effect thereof. R. S. c. 107, § 3.** When the bond is given, the filing of it in the clerk's office for the defendant's use is a delivery thereof; 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, further proceedings thereon shall be stayed.

**Sec. 4. Costs to prevailing party; damages and costs, if defendant prevails. R. S. c. 107, § 4.** The prevailing party in such writ in a civil action shall be entitled to 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.

12 Me. 459; 14 Me. 196; 72 Me. 260.

**Sec. 5. Reversal of judgment does not vitiate sale of real estate; levy is void. R. S. c. 107, § 5.** When a debtor's property has been sold on an execution, and the judgment on which it was issued is afterwards reversed on writ of error, the title of the purchaser 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 is void, when the original judgment upon which it issued is reversed by writ of error, brought within a year thereafter; and a copy of the final judgment duly certified by the clerk of courts in the county where such judgment is rendered shall be recorded within thirty days from the rendition thereof, in the registry of deeds where such levy is recorded.

51 Me. 152, 556.

**Sec. 6. One codefendant may bring writ of error, on giving security to the others. R. S. c. 107, § 6.** When there were several defendants in the original judgment, either may bring a writ of error in the name of all, on furnishing to each codefendant 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 codefendant, require such security.

**Sec. 7. Form of writ of error. R. S. c. 107, § 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 the ——— day of ———, A. D., 19—, wherein said ——— was plaintiff, and said ———, defendant, there occurred the errors hereinafter specified, by which the present plaintiff was injured, and for which he therefor seeks that said judgment may be reversed, recalled or corrected, as law

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and justice require; that is to say, the following errors: \_\_\_\_\_

Hereof fail not, and have you there this writ with your doings thereon.

Witness, \_\_\_\_\_, Esq., our \_\_\_\_\_, at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 19—.

\_\_\_\_\_, Clerk."

\*85 Me. 370.

**Sec. 8. Scire facias to specify the errors of fact and law. R. S. c. 107, § 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 rendering the judgment, without further authentication or the introduction of the record, is competent evidence in such trial; and in case of mistake in the transcript, the court may grant leave to amend.

30 Me. 199; 35 Me. 99; 42 Me. 571; 43 Me. 345; 44 Me. 89; 48 Me. 265; 78 Me. 91, 112; \*85 Me. 370; 92 Me. 391.

**Sec. 9. Proceedings. R. S. c. 107, § 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 the state, and the general rules of court.

23 Me. 254; 24 Me. 438.

**Sec. 10. Limitation of writs of error; exceptions. R. S. c. 107, § 10.** No writ of error shall be sustained, unless brought within six years after the entering up of the judgment sought to be reversed or avoided; but if the person entitled to such writ is a minor, 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 Error in Criminal Cases.

**Sec. 11. Writ of error in criminal cases. R. S. c. 107, § 11.** No writ of error upon a judgment for an offense punishable by imprisonment for life 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.

**Sec. 12. Effect; custody of plaintiff; release on bail. R. S. c. 107, § 12.** 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 justice 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 thereto, he may procure his enlargement by giving bail.

\*115 Me. 227.

#### Writs of Certiorari.

**Sec. 13. Issued from supreme judicial court. R. S. c. 107, § 13.** All writs of certiorari, to correct errors in proceedings not according to the course of the common law, shall be issued from the supreme judicial court according to the practice heretofore established, subject to such further regulations, as are made, from time to time, by such court.

8 Me. 293; 19 Me. 48, 343; 23 Me. 11, 513; 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. 76; 37 Me. 562; 39 Me. 53, 356; 42 Me. 400; 43 Me. 258; 49 Me. 145, 418; 51 Me. 110; 56 Me. 180; \*60 Me. 268, \*538; 62 Me. 366; 63 Me. 314, \*550; 65 Me. 161; 67 Me. 43, \*433; 68 Me. 226, 552; 77 Me. 243; 79 Me. 269; 114 Me. 466.

**Sec. 14. Proceedings on writ of certiorari. R. S. c. 107, § 14.** When the proceedings of any tribunal are brought up by a writ of certiorari, the court

may quash or affirm such proceedings, or enter such judgment as the court below should have rendered, or may make such order, judgment, or decree in the premises as law and justice may require.

\*85 Me. 308; 109 Me. 167.

**Sec. 15. Costs. R. S. c. 107, § 15.** 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.

\*67 Me. 435; 72 Me. 18; \*85 Me. 309; 109 Me. 167.

**Sec. 16. Limitation of applications. R. S. c. 107, § 16.** 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 ten.

### Writs of Mandamus.

**Sec. 17. Presentation of petition; questions of law reserved; issue and return of writ. R. S. c. 107, § 17.** A petition for a writ of mandamus may be presented to a justice of the supreme judicial court in any county in term time or vacation, who may, upon notice to all parties, hear and determine the same, or may reserve questions of law arising thereon, upon exceptions or otherwise, for the determination of the full court, which may hear and determine the same as hereinafter provided; but in all cases where exceptions are alleged to any rulings, findings, or decrees made upon such petition, the case shall be proceeded with as if no exceptions had been taken, until a decision shall be had and the peremptory writ shall have been ordered, so that the overruling of such exceptions would finally dispose of the case, which shall then be certified to the chief justice of said court as provided in the following section. If on such hearing such writ is ordered, it may be issued from the clerk's office in any county and be made returnable as the court directs.

92 Me. 151; 102 Me. 519; \*104 Me. 81; 111 Me. 96; 114 Me. 259; \*116 Me. 408; 119 Me. 400; \*125 Me. 144.

**Sec. 18. Return to writ; answer; judgment and peremptory writ; costs; no action for false return; exceptions and proceedings thereon. R. S. c. 107, § 18.** When a writ of mandamus issues, the person required to make return thereto shall make his return to the first writ, and the person suing the writ may by an answer traverse any material facts contained in such return, or may demur. If the party suing the writ maintains the issue on his part, his damages shall be assessed, and a judgment rendered that he recover the same with costs, and that a peremptory writ of mandamus be granted; otherwise the party making the return shall recover costs. No action shall be maintained for a false return to a writ of mandamus. After judgment and decree that the peremptory writ be granted, the justice of said court before whom the proceedings are pending shall forthwith certify to the chief justice for decision, all exceptions which may be filed and allowed to any rulings, findings, or decrees made at any stage of the proceedings. The excepting party shall, within fifteen days thereafter, forward to the chief justice his written argument upon such exceptions and shall, within said fifteen days, furnish the adverse party, or his attorney, with a copy of such argument; the adverse party shall, within fifteen days after receipt of such copy, forward to the chief justice his written argument in reply; and thereupon the justices of said court shall consider said cause immediately, and decide thereon and transmit their decision to the clerk of the court where the petition is pending, and final judgment shall be entered accordingly. If

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the judgment is in favor of the petitioner, the peremptory writ of mandamus shall thereupon be issued.

102 Me. 519; 108 Me. 524; 111 Me. 96; 113 Me. 283; 116 Me. 408; \*122 Me. 91; 125 Me. 123.

**Sec. 19. Third person may be cited to show cause; and be heard, and stand as real party.** R. S. c. 107, § 19. The court may make rules, on a petition for the writ or upon and after the issuing of the first writ, calling upon any person having or claiming a right or interest in the subject matter, other than the party to whom the writ is prayed to be or has been directed, to show cause against the issuing thereof. If such person appears, he shall be heard in such manner as the court may direct, and in proper cases he may be allowed to frame and sign the return to the first writ, and to stand as the real party in the proceedings.

**Sec. 20. Proceedings do not abate by death, resignation, or removal.** R. S. c. 107, § 20. If such third person is admitted, the proceedings shall not abate or be discontinued by the death, resignation, or removal from office by lapse of time or otherwise, of the person to whom the writ was directed, and any peremptory writ shall be directed to his successor.

### Quo Warranto.

**Sec. 21. Quo warranto proceedings regulated.** R. S. c. 107, § 21. Petitions, informations, and other processes in quo warranto proceedings may be made returnable before the supreme judicial court, in term time or in vacation, as and when the court or any justice thereof may order, and by like order the cause may be heard in vacation if the justice hearing the same shall determine that justice so requires.

115 Me. 268.

**Sec. 22. Proceedings when attorney-general need not be a party.** R. S. c. 107, § 22. When in quo warranto proceedings the title to office in a private corporation is involved, the petition or information may be brought in the name of the interested party and the attorney-general need not be a party thereto.

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## CHAPTER 116.

### Actions of Dower.

**Sec. 1. Widow may sue for dower.** R. S. c. 108, § 1. When a woman is entitled to dower, and it is not lawfully set out to her by the heir or tenant of the freehold, she may recover it by a writ of dower as herein provided.

39 Me. 428; 69 Me. 546.

**Sec. 2. Demand and time of bringing action.** R. S. c. 108, § 2. 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 one month, nor after 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.

35 Me. 95; 36 Me. 435; 37 Me. 514; 41 Me. 231; 45 Me. 487; 51 Me. 368; 55 Me. 372; 64 Me. 242; 70 Me. 180, 234; \*82 Me. 236; \*106 Me. 379.

**Sec. 3. Demand on a corporation.** R. S. c. 108, § 3. When a corporation is the tenant of the freehold, she must demand her dower in writing of any officer thereof, on whom a writ in a civil action against it may be served; and

the time between the demand and the suit shall be sixty days; but a second demand may be made as aforesaid.

70 Me. 181; \*106 Me. 379.

**Sec. 4. Non-tenure. R. S. c. 108, § 4.** The defendant may plead in abatement, but not in bar, that he is not tenant of the freehold.

33 Me. 346; \*106 Me. 379.

**Sec. 5. Damages for detaining dower. R. S. c. 108, § 5.** If the demandant recovers judgment for her dower, she may, at the same time, recover damages for its detention to the time when the action was commenced, and subsequent damages, in a separate action.

28 Me. 510; 41 Me. 531; 69 Me. 518, \*547.

**Sec. 6. Suit to be against tenant of the freehold, but prior tenant is liable for damages. R. S. c. 108, § 6.** 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 that 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.

62 Me. 576; 70 Me. 234.

**Sec. 7. Demandant dying, pending action for dower, executor or administrator may prosecute. R. S. c. 108, § 7.** If the demandant dies during the pendency of an action of dower, her executor or administrator may prosecute the action to final judgment, and recover therein the damages to which she would be entitled, up 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. 8. Writ of seizen, and proceedings in setting off dower. R. S. c. 108, § 8.** 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 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, is conclusive.

See c. 89, § 1; 16 Me. 81; 27 Me. 394; 38 Me. 449; 45 Me. 30; 69 Me. 519, \*546;  
72 Me. 313; 90 Me. 571.

**Sec. 9. Assignments of rents and profits in certain cases. R. S. c. 108, § 9.** 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. 10. Costs, how apportioned. R. S. c. 108, § 10.** In 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.

**Sec. 11. Penalty, if waste committed. R. S. c. 108, § 11.** If any woman, endowed of lands, commits or suffers any waste thereon, she forfeits 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 the taking of 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, is not waste.

13 Me. 278; 51 Me. 435; 52 Me. 142.

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**Sec. 12. Remedy, if evicted of dower. R. S. c. 108, § 12.** 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 by will or otherwise instead of dower, she may be endowed anew, as though no such assignment or provision had been made.

23 Me. 277; 27 Me. 392.

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## CHAPTER 117.

### Real Actions. Proceedings at Law to Quiet Title. Statutory Equity Proceedings to Quiet Title.

Sections 1-47 Real Actions.

Sections 48-51 Proceedings at Law to Quiet Title.

Sections 52-55 Statutory Equity Proceedings to Quiet Title.

**Sec. 1. Recovery of estates by writ of entry; mode of service. R. S. c. 109, § 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 an action of dower, shall be served by attachment and summons, or [attested] copy of the writ, on the defendant, but if he is not in possession, [or cannot be found in the county by reasonable diligence,] the officer shall give the tenant in hand, or leave at his last and usual abode, [a summons or] an attested copy of the writ; and if the defendant is not an inhabitant of the state, the service on the tenant shall be sufficient notice to the defendant, or the court may order further notice.

See c. 94, § 17; 6 Me. 439; 7 Me. 232; 17 Me. 220; 20 Me. 279; 24 Me. 527; 32 Me. 175; 51 Me. 366; \*66 Me. 250.

**Sec. 2. Declaration. R. S. c. 109, § 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.

20 Me. 284; \*58 Me. 335; 84 Me. 324, 435; 95 Me. 245; 123 Me. 15.

**Sec. 3. Demandant to set forth the estate that he claims in the premises. R. S. c. 109, § 3.** He shall set forth the estate which 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.

50 Me. 143; 57 Me. 344; 58 Me. 105; 59 Me. 133, 254; 63 Me. 415; 64 Me. 57; 73 Me. 472; 122 Me. 166.

**Sec. 4. Proof of seizin. R. S. c. 109, § 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, is sufficient proof of his seizin.

23 Me. 419; 24 Me. 526; 38 Me. 79; \*58 Me. 335; 59 Me. 450; 84 Me. 435; 113 Me. 528; \*119 Me. 577.

**Sec. 5. Demandant must have right of entry. R. S. c. 109, § 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.

83 Me. 49; \*100 Me. 562; 106 Me. 219; 112 Me. 474.

**Sec. 6. Who may be considered as a disseizor; disclaimer in abatement, but**

**not in bar. R. S. c. 109, § 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 he may plead it by a brief statement under the general issue, filed within the time allowed for pleas in abatement; but by leave of court the time therefor may be enlarged, or permission to file such disclaimer may afterwards be granted by the court; 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.

17 Me. 16; 22 Me. 317; 24 Me. 308; 34 Me. 174; 43 Me. 281; 44 Me. 48; 49 Me. 103; \*58 Me. 335; 68 Me. 21; 69 Me. 52; \*71 Me. 543; \*75 Me. 431; 82 Me. 388; 85 Me. 316; 103 Me. 61; \*108 Me. 140; \*114 Me. 374.

**Sec. 7. Defendant ousting demandant may be deemed disseizor. R. S. c. 109, § 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, although he claims an estate therein less than a freehold.

3 Me. 324.

**Sec. 8. Proof to entitle the demandant to recover. R. S. c. 109, § 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.

5 Me. 225; 12 Me. 349; 19 Me. 386; 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; 56 Me. 96; 57 Me. 344; \*58 Me. 335; 63 Me. 104; \*64 Me. 57; 102 Me. 228; 106 Me. 219.

**Sec. 9. Joinder of demandants. R. S. c. 109, § 9.** Persons claiming as tenants in common or joint tenants may all, or any two or more, join in a suit for recovery of lands, or one may sue alone.

30 Me. 359; 59 Me. 324; 108 Me. 526.

**Sec. 10. Demandant may recover specific, or undivided part. R. S. c. 109, § 10.** The demandant may recover a specific part or undivided portion of the premises to which he proves a title, although less than he demanded.

56 Me. 95; \*63 Me. 542; \*64 Me. 57; \*75 Me. 432; 80 Me. 116; 84 Me. 4; 85 Me. 316; 89 Me. 468; 104 Me. 431; \*114 Me. 374; 123 Me. 26.

**Sec. 11. May recover damages in same action. R. S. c. 109, § 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 when 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.

34 Me. 84; 36 Me. 443; \*63 Me. 546; 72 Me. 126; 76 Me. 202; \*92 Me. 603; 112 Me. 464.

**Sec. 12. Estimation of rents and profits. R. S. c. 109, § 12.** The rents and profits, for which the tenant is liable, are 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, cultivation of the land, or collection of the rents and profits.

76 Me. 202; 112 Me. 464.

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**Sec. 13. Same subject. R. S. c. 109, § 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. Tenant not liable for over six years' rents; exception. R. S. c. 109, § 14.** The tenant is not liable for the rents and profits for more 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. Recovery of damages against other persons. R. S. c. 109, § 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.

<sup>36 Me. 445.</sup>

**Sec. 16. No abatement by death or intermarriage. R. S. c. 109, § 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 served upon all interested in his estate, personally, or by publication in some newspaper.

<sup>2 Me. 128; 23 Me. 236; 33 Me. 175; 76 Me. 577; 78 Me. 105; \*95 Me. 194.</sup>

**Sec. 17. Guardians to be appointed for minors. R. S. c. 109, § 17.** In such case, if any heir is a minor, the court shall 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. Writs of possession to issue; judgment conclusive. R. S. c. 109, § 18.** If the demandant recovers judgment in any such case, the court may order one or more writs of possession to issue, as may be necessary, against all such as have been so notified, whether they appeared and defended or not; and such judgment is conclusive on them.

**Sec. 19. Allowance of costs and stay of execution in such cases. R. S. c. 109, § 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. Betterments to be allowed after six years' possession. R. S. c. 109, § 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 him whom he claims, to be ascertained and adjusted as hereinafter provided.

<sup>12 Me. 376; 21 Me. 523; 22 Me. 111; 23 Me. 194; 25 Me. 413; \*75 Me. 434; \*107 Me. 386; 116 Me. 468.</sup>

**Sec. 21. Premises must be clearly defined and described. R. S. c. 109, § 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.

<sup>61 Me. 367; \*118 Me. 352.</sup>

**Sec. 22. Consent to recovery of a specified part; effect thereof.** R. S. c. 109, § 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. Tenant may have betterments, upon demurrer or default.** R. S. c. 109, § 23. The tenant shall have the benefit of the provisions in the following sections as to the increased value of premises, when the cause, including all real actions brought by a reversioner or remainder man, or his assigns, after the termination of a 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, is determined in favor of the plaintiff upon demurrer, default, or by verdict.

\*58 Me. 563; \*68 Me. 571; 72 Me. 45.

**Sec. 24. Request of either party for appraisal of improvements, and its effect.** R. S. c. 109, § 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.

101 Me. 463; 106 Me. 91; 111 Me. 298; 116 Me. 468.

**Sec. 25. Rule for valuation of betterments.** R. S. c. 109, § 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.

\*75 Me. 434; 116 Me. 468.

**Sec. 26. Election by demandant to abandon.** R. S. c. 109, § 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.

1 Me. 314; 3 Me. 377; 4 Me. 297; 16 Me. 127; 50 Me. 322; 101 Me. 466; 111 Me. 300; 116 Me. 468.

**Sec. 27. Tenant may pay one-third value of land, interest and costs, the first year.** R. S. c. 109, § 27. At the end of one year, execution may issue for such sum with one year's interest thereon and costs, unless the tenant shall have deposited with the clerk of the court, or in his office for the demandant's use, one year's interest of said sum, and one-third 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. At the end of two years, another third interest.** R. S. c. 109, § 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. At the end of three years, may pay the balance; effect thereof.** R. S. c. 109, § 29. If the tenant, within three years after 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 issue 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; 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, although it is more than a year after the rendition of judgment.

**Sec. 30. Tenant's remedy, if he is evicted.** R. S. c. 109, § 30. If the tenant or his heirs are evicted by a better title from the land so abandoned to him, and they had notified the demandant or his heirs to aid him in his defense 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. If demandant does not abandon, he pays for improvement.** R. S. c. 109, § 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, 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.

111 Me. 300.

**Sec. 32. Restriction of the right to betterments.** R. S. c. 109, § 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 into possession of the premises and occupied under a contract with the owner, which was known to the tenant when he entered.

70 Me. 240.

**Sec. 33. Tenant not to commit waste after judgment.** R. S. c. 109, § 33. No tenant, after judgment is entered against him for the appraised value of the premises, shall unnecessarily cut wood, take away timber, or make any strip or waste on the land, until the amount of such judgment is satisfied.

**Sec. 34. Parties may agree upon reference as to value of improvements.** R. S. c. 109, § 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, is equal in its effect to a verdict.

<sup>111</sup> Me. 299.

**Sec. 35. Tenant may propose a value for premises and betterments; its effect.** R. S. c. 109, § 35. When the tenant, at 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 following section.

<sup>2</sup> Me. 355.

**Sec. 36. Set-off of costs against improvements.** R. S. c. 109, § 36. In all cases where the demandant does not abandon the premises to the tenant, the court may, on 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.

**Sec. 37. Juror is disqualified, if interested in similar questions.** R. S. c. 109, § 37. No person, who, as proprietor or occupant, is interested in a similar question, shall sit as 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.

**Sec. 38. What constitutes a possession and improvement.** R. S. c. 109, § 38. A possession and improvement of land by a tenant are within this chapter, although a portion of it is woodland and uncultivated, and although 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.

<sup>2</sup> Me. 281; <sup>31</sup> Me. 345; <sup>\*101</sup> Me. 138.

**Sec. 39. Proceedings, if either party dies before the cause is disposed of.** R. S. c. 109, § 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.

**Sec. 40. How writ of possession to issue in such case.** R. S. c. 109, § 40. The writ of possession shall be issued in the name of the original demandant against the original tenant, although either or both are dead; and when executed, it shall inure to the use and benefit of the demandant, or of the person who is then entitled to the premises under him, as if executed in the lifetime of the parties.

<sup>89</sup> Me. 94.

**Sec. 41. Either party may have a view by the jury.** R. S. c. 109, § 41. Either party may have a view by the jury of the place in question, if in the

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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.

**Sec. 42. Proceedings, if a life estate is demanded. R. S. c. 109, § 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, is 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 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.

**Sec. 43. If tenant is ousted, after six years' possession, he may recover for improvements. R. S. c. 109, § 43.** When a 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, and withholds from such tenant, the possession thereof, the tenant may recover of the person 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 by those under whom he claims, to be ascertained by the principles hereinbefore provided; these provisions extend to the grantee or assignee of the tenant in dower and of any other life estate; and a lien is created on the premises in favor of such claim, to be enforced by an action commenced within three years after such entry; and it is no bar to such action, if the tenant, to avoid cost, yields to the superior title.

74 Me. 513; 118 Me. 62.

**Sec. 44. Cases in which defendant may impeach plaintiff's title deeds. R. S. c. 109, § 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.

**Sec. 45. If tenant and his grantors have been in possession for forty years, no costs for plaintiff. R. S. c. 109, § 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 preceding the commencement of the action, and the jury so find, the demandant recovers no costs.

**Sec. 46. Court may appoint and protect surveyors. R. S. c. 109, § 46.** The court may appoint a surveyor to run lines and make plans of lands demanded in a real or mixed action, or in an action of trespass in which the title to land is involved, as shown by the pleadings filed, 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 prevent such opposition; and in the execution of such warrant, he may exercise all the power pertaining to his office; and all persons refusing their aid when called for by him are liable to the same penalties as in other like cases.

\*58 Me. 410.

**Sec. 47. Fees of surveyor; court may determine amount to be paid by parties. R. S. c. 109, § 47.** The amount of the fees and necessary expenses of such surveyor shall be fixed and determined by the court upon the acceptance of the report, and shall be paid as follows: If the court is of the opinion that

such fees and expenses, or some portion of the same, ought to be paid by the county, then the amount thereof to be paid by the county, whether the whole or a part, shall be fixed and determined by the court and the amount so fixed and determined shall be paid by the county on presentation of the proper certificate of the clerk of courts for that county. If the court is of the opinion that the whole or any part or portion of such fees and expenses should be paid by the parties to the suit or action, or by either of such parties, then the court may fix and determine the amount to be paid by such parties, or by either of such parties, and the parties shall be liable to the surveyor in an action of money had and received for the amount to be paid by them jointly, and each of the parties shall likewise be liable to the surveyor in the same kind of an action for the amount to be severally paid.

### Proceedings at Law to Quiet Title.

#### **Sec. 48. Summary proceedings to quiet title to real estate. R. S. c. 109, § 48.**

A person in possession of real property, claiming an estate of freehold therein or an unexpired term of not less than ten years, or a person who has conveyed such property or any interest therein with covenants of title or warranty, upon which he may be liable, may, if he, or those under whom he claims, or those claiming under him, have been in uninterrupted possession of such property for four years or more, file a petition in the supreme judicial court setting forth his estate, stating the source of his title, describing the premises and averring that an apprehension exists that persons named in the petition, or persons unknown claiming as heirs, devisees or assigns or in any other way, by, through, or under a person or persons named in the petition, claim, or may claim, some right, title or interest in the premises adverse to his said estate; and that such apprehension creates a cloud upon the title and depreciates the market value of the property; and praying that such persons be summoned to show cause why they should not bring an action to try their title to the described premises. If any such supposed claimants are unknown, the petitioner or his attorney shall so allege under oath, but the truth of the allegation shall not after decree has been filed, be denied, for the purpose of defeating the title established thereby. A person in the enjoyment of an easement is in possession of real property within the meaning and for the purposes of this section.

77 Me. 585; 78 Me. 153; 83 Me. 178, \*272; 84 Me. 98; \*93 Me. 534; \*101 Me. 340;  
102 Me. 164; 104 Me. 81; 105 Me. 290; 125 Me. 40.

**Sec. 49. Proceedings when easement is claimed. R. S. c. 109, § 49.** A person in possession of real property, claiming an estate of freehold therein or an unexpired term of not less than ten years, or a person who has conveyed such property or any interest therein with covenants of title or warranty, upon which he may be liable, may, if he, or those under whom he claims, or those claiming under him, have been in uninterrupted possession of such property for four years or more, file a petition in the supreme judicial court setting forth his estate, describing the premises and averring that an apprehension exists that persons named in the petition, or persons unknown, claim by continued and uninterrupted use for twenty years or more, by grant, prescription, custom, or in any other way, an easement through or on such real property adverse to the estate of the said petitioner and that such apprehension creates a cloud upon the title and depreciates the market value of such property; and praying that such persons be summoned to show cause why they should not bring an action to determine their legal rights in and to such easement over or upon said real estate. If such supposed claimants are unknown, the petitioner,

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or his attorney, shall so allege under oath, but the truth of the allegation shall not, after the decree has been filed, be denied, for the purpose of defeating the title established thereby.

**Sec. 50. Proceedings on petition; grantee may become party. R. S. c. 109, § 50.** Upon a petition filed under either of the two preceding sections the court, or any justice thereof in vacation, shall order notice returnable at a term of the supreme judicial court to be held in the county where the real estate lies. Personal service by copy of the petition and order of notice, shall be made upon all such supposed known claimants residing in the state, fourteen days before the return day; and upon all such supposed unknown claimants residing in the state, and upon all such supposed claimants, known or unknown, residing out of the state, service may be made by personal service of copy of the petition and order of notice; by publication for such length of time, in such newspaper or newspapers or by posting in such public places as the court may direct; or in any or all of these ways at the discretion of the court. If the petitioner prefers, the petition may be inserted like a declaration in a writ, and served by copy like a writ of original summons. Upon the filing of the petition the clerk of courts in the county where such proceedings are pending shall file a certificate in the registry of deeds in the county or district where said land is situated, setting forth the names of the parties, the date of the petition and the filing thereof, and the description of the real estate as given in the petition, which said certificate shall be recorded by the register of deeds, who shall receive therefor the same fee as for recording a deed. The proceedings on the petition shall not be abated by the death of any party thereto, and the issues may be determined after such personal or public notice, as the court orders, has been given to all persons interested in his estate, and they may become or be made parties; nor shall the proceedings be abated by the conveyance of the premises by the respondent by deed recorded after said certificate is recorded. The grantee of any defendant named or described in the petition, or any person claiming under such grantee, may voluntarily appear and become a party, and make any defense that would have been open to the defendant under whom he claims. If any person who becomes such grantee by conveyance recorded after the filing of the certificate aforesaid, does not voluntarily appear, no such conveyance by the defendant shall be given in evidence, either in the proceedings on the petition or in any action brought thereunder to try title to the premises as provided in the following section, and the issue shall be determined as though no such conveyance were made.

104 Me. 81; 105 Me. 290.

**Sec. 51. Proceedings if claimant appears; record of decree; action on case by claimant of easement. R. S. c. 109, § 51.** If any person so summoned appears and claims title, or an easement in the premises, or voluntarily appears as aforesaid and claims title, or such easement, he shall by answer show cause why he should not be required to bring an action and try such title, or his title to such easement; and the court shall make such decree respecting the bringing and prosecuting of such action as seems equitable and just; if any person so summoned appears and disclaims all right and title adverse to the petitioner, he recovers his costs. If the court upon hearing, finds that the allegations of the petition are true, and that notice by publication has been given as ordered, it shall make and enter a decree that all persons named in the petition and all persons alleged to be unknown claiming by, through, or under persons so named, and all persons named as grantees in any deed given by the defendant and recorded after the filing of the certificate aforesaid and all persons claiming under such grantee who have not so appeared, or who, having appeared,

have disclaimed all right and title adverse to the petitioner, or who, having appeared, shall disobey the order of the court to bring an action and try their title, shall be forever debarred and estopped from having or claiming any right or title adverse to the petitioner in the premises described in the petition; which decree shall within thirty days after it is finally granted be recorded in the registry of deeds for the county or district where the land lies, and shall be effectual to bar all right, title, and interest, and all easements, of all persons, whether adults or minors, upon whom notice has been served, personally or by publication, as herein provided, and all persons named as grantees in any deed given by the defendant and recorded after the filing of said certificate and all persons claiming under such grantees. The court may in its discretion appoint agents or guardians ad litem, to represent minors or other supposed claimants. If any person appears and claims an easement, however acquired, in such premises, he may bring an action on the case to try the title thereto, alleging in his declaration how said easement was acquired and issue shall be framed accordingly.

77 Me. 585; 78 Me. 153; 83 Me. 178, \*272; 84 Me. 98; 102 Me. 164; 105 Me. 290.

### Statutory Equity Proceedings to Quiet Title.

**Sec. 52. Suits in equity to quiet title; description of defendants; joinder of plaintiffs.** R. S. c. 109, § 52. If, in a suit in equity to quiet or establish the title to land situated in this state or to remove a cloud from the title thereto, the plaintiff, or those under whom he claims, has been in uninterrupted possession of the land described in the bill for four years or more, claiming an estate of freehold therein, and seeks to determine the claims or rights of any persons who are unascertained, not in being, unknown, or out of the state, or who cannot be actually served with process and made personally amenable to the decree of the court, such persons may be made defendants and, if they are unascertained, not in being, or unknown, they may be described generally as the heirs or legal representatives of A B, or such persons as shall become heirs, devisees or appointees of C D, a living person, or persons claiming under A B. It shall not be necessary for the maintenance of such suit that the defendants shall have a claim or the possibility of a claim resting upon an instrument, the cancelation or surrender of which would afford the relief desired; but it shall be sufficient that they claim or may claim by purchase, descent, or otherwise, some right, title, interest, or estate in the land which is the subject of the suit and that their claim depends upon the construction of a written instrument or cannot be met by the plaintiffs without the production of evidence. Two or more persons who claim to own separate and distinct parcels of land in the same county by titles derived from a common source, or two or more persons who have separate and distinct interests in the same parcel, may join as plaintiffs in any suit brought under the provisions of this section.

See c. 90, § 6. 125 Me. 40.

**Sec. 53. Service when defendant cannot be found; appointment of agent; expenses.** R. S. c. 109, § 53. If in such suit the court finds that actual service cannot be made upon a defendant, it may order notice of the suit to be posted in a conspicuous place on the land or to be published in a newspaper within or without the state, or both, or to be given in such other manner as it considers most effectual, and may also require personal notice to be given. Notice given under the provisions of this section shall be constructive service on all the defendants. If, after notice has been given or served as ordered by the court and the time limited in such notice for the appearance of the defendants has

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expired, the court finds that there are or may be defendants who have not been actually served with process within the state and who have not appeared in the suit, it may of its own motion, or on the representation of any party, appoint an agent, guardian ad litem, or next friend of any such defendant, and if any such defendants have or may have conflicting interests, it may appoint different agents, guardians ad litem or next friends to represent them. The cost of appearance of any such agent, guardian ad litem, or next friend, including the compensation of his counsel, shall be determined by the court and paid by the plaintiff, against whom execution may issue therefor in the name of the agent, guardian ad litem, or next friend.

**Sec. 54. Proceedings in court.** R. S. c. 109, § 54. After all the defendants have been served with process or notified as provided in the preceding section and after the appointment of an agent, guardian ad litem, or next friend, if such appointment has been made, the court may proceed as though all the defendants had been actually served with process. Such suit shall be a proceeding in rem against the land, and a decree establishing or declaring the validity, nature, or extent of the plaintiff's title may be entered, and shall operate directly on the land and shall have the force of a release made by or on behalf of all defendants of all claims inconsistent with the title established or declared thereby. The provisions of this and the two preceding sections shall not prevent the court from also exercising jurisdiction in personam against the defendants who have been actually served with process and who are personally amenable to its decrees.

See c. 90, § 6.

**Sec. 55. Bill by owners of wild land.** R. S. c. 109, § 55. Any person or persons claiming an estate of freehold in wild land or in an interest in common and undivided therein, if the plaintiff and those under whom he claims, has for four years next prior to the filing of the bill held such open, exclusive, peaceable, continuous, and adverse possession thereof as comports with the ordinary management of wild lands in Maine, may maintain a suit in equity to quiet or establish the title thereto or to remove a cloud from the title thereto, as provided in the three preceding sections.

Note. No judgment divesting any person of title to real estate effectual unless recorded, c. 90, § 31.

Tenant in real action may be enjoined from committing waste, c. 108, § 7; liable in treble damages for strip or waste, c. 108, § 8.

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## CHAPTER 118.

### Limitations of Real Actions, and Right of Entry.

**Sec. 1. Rights of entry and action are barred in twenty years.** R. S. c. 110, § 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 herein-after provided.

<sup>20 Me. 211; 21 Me. 204; 25 Me. 471; 35 Me. 463; 82 Me. 237.</sup>

**Sec. 2. When right begins to run.** R. S. c. 110, § 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.

<sup>14 Me. 165; 21 Me. 374.</sup>

**Sec. 3. When such right to be deemed to accrue.** R. S. c. 110, § 3. The right of entry, or of action to recover land, as used in this chapter, first accrues at the times hereinafter mentioned:

I. When a person is disseized, at the time of such disseizin.

\*83 Me. 178.

II. 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.

III. 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.

\*58 Me. 557; \*109 Me. 76.

**Sec. 4. Any person may enter for condition broken.** R. S. c. 110, § 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. Cases not specially provided for.** R. S. c. 110, § 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. Action by a minister or other sole corporation.** R. S. c. 110, § 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. Saving in favor of minors, and other disabled persons.** R. S. c. 110, § 7. When such right of entry or action first accrues, if the person thereto entitled is a minor, 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.

13 Me. 402; \*82 Me. 329; \*83 Me. 178.

**Sec. 8. Further saving, if the person first entitled dies during such disability.** R. S. c. 110, § 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 that hereinbefore prescribed, shall be allowed by reason of the disability of any other person.

**Sec. 9. Consequence, if tenant in tail or remainder man dies, before expiration of the limitation.** R. S. c. 110, § 9. When a tenant in tail, or a remainder man in tail, dies before the expiration of the period hereinbefore limited for making an 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. What to constitute a disseizin to bar right of recovery.** R. S. c.

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**110, § 10.** To constitute a disseizin, or such exclusive and adverse possession of lands as to bar or limit the right of the true owner thereof to recover them, such lands need not be surrounded with fences or rendered inaccessible by water; but it is 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 enclosed.

13 Me. 135; 29 Me. 131; 57 Me. 269; 61 Me. 419; 72 Me. 333; \*83 Me. 102; 87 Me. 319; \*118 Me. 242; 121 Me. 265; 126 Me. 298.

**Sec. 11. Limitation not to take effect in certain cases, when first suit fails. R. S. c. 110, § 11.** If a writ in a real or mixed action fails of sufficient service or return by unavoidable cause; or if by the default or negligence of any officer to whom it was delivered or directed for service, the writ is abated; or if the action is defeated for any matter of form, or by the death or other disability of either party; or if 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. 12. Right of way, or other easement, is not acquired but by adverse use; how prevented by notice. R. S. c. 110, § 12.** 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 uninterruptedly 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.

63 Me. 436.

**Sec. 13. Right of way not to be acquired by public, but by adverse use; interruption by notice. R. S. c. 110, § 13.** No right of way or other easement through, in, upon, or over the land of another shall be acquired by the adverse use and enjoyment thereof by the public or any class of persons, unless such use and enjoyment is continued uninterruptedly for twenty years; and if the owner of such land apprehends that such right or easement may be acquired, he may give notice in writing of his intention to contest such right or easement, which being served by posting a copy thereof, and recorded, as provided in section fifteen, shall be deemed an interruption of such use, and prevent the acquisition of a right thereto.

**Sec. 14. Right of way not to be extinguished by adverse obstruction, unless such obstruction has continued for twenty years; interruption by notice. R. S. c. 110, § 14.** No right of way or other easement existing in, upon, over, or through the land of another, shall be extinguished by the adverse obstruction thereof, unless such adverse obstruction has been continued uninterruptedly for twenty years; and a notice in writing given by the owner of such right of way or other easement to the person whose land is subject thereto, setting forth said owner's intention to contest the extinguishment of such right of way or other easement, and duly served and recorded as hereinafter stated, shall be deemed an interruption of such obstruction and prevent the extinguishment of such right of way or other easement.

**Sec. 15. Notice, how given. R. S. c. 110, § 15.** The notice mentioned in sections twelve and fourteen may be given by the owner of the land, or of the right of way or other easement, his agent, or guardian, or by an officer, by giving in hand to the claimant, or to the owner of the land subject to such right of way or other easement, his agent, or guardian, if in the state, an at-

tested copy thereof, or by leaving it at his dwelling-house; or, if the person to whom such notice is to be given is not in the state, such copy may be left with the tenant or occupant of the estate, if any; if there is no such tenant or occupant, such copy shall be posted in some conspicuous place upon said estate. The person serving or posting said notice shall make his return, verified by affidavit, on the original notice, and the whole shall be recorded in the registry of deeds in the county or district where the land lies, within three months from the time of such service.

**Sec. 16. Trespassers of wild lands; notice to quit may be served; return and record; effect of proceedings.** R. S. c. 110, § 16. If any person without right dwells upon or in any manner occupies any lands which on the first day of April, eighteen hundred and eighty-three, were wild lands, any owner of such wild lands or of any legal or equitable interest therein may cause a notice to quit such lands to be served upon such person by any sheriff or deputy sheriff, by giving the same to such person in hand. Such officer shall make his return upon a copy of such notice certified by him to be a true copy, and within sixty days thereafter such owner may cause such copy and return to be recorded in the registry of deeds in the county or district where said land is located. Proceedings had and taken as above specified shall bar such person who has so entered or dwells upon such wild land from obtaining any rights by adverse possession to the land upon which he has so entered; provided, however, such person shall be entitled to the benefits of all the provisions of law relating to betterments.

**Sec. 17. No action, for recovery of land, after forty years' possession.** R. S. c. 110, § 17. No real or mixed action, for the recovery of 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.

14 How. 501; \*109 Me. 67.

**Sec. 18. Limitations of actions for uncultivated lands in incorporated places.** R. S. c. 110, § 18. No real or mixed action, for the recovery of uncultivated lands or of any undivided fractional part thereof, situated in any place incorporated for any purpose, shall be commenced or maintained against any person, or entry made thereon, when such person or those under whom he claims have, continuously for the twenty years next prior to the commencement of such action, or the making of such entry, claimed said lands or said undivided fractional part thereof under recorded deeds; and have, during said twenty years, paid all taxes assessed on said lands, or on such undivided fractional part thereof, however said tax may have been assessed whether on an undivided fractional part of said lands or on a certain number of acres thereof equal approximately to the acreage of said lands or of said fractional part thereof; and have, during said twenty years, held such exclusive, peaceable, continuous, and adverse possession thereof as comports with the ordinary management of such lands or of undivided fractional parts of such lands, in this state. *This section shall not apply to actions pending in court on the twenty-seventh day of April, nineteen hundred and seven, nor to those commenced before the first day of January, nineteen hundred and twelve.*

118 Me. 129; 119 Me. 90; 119 Me. 269; 122 Me. 409; 126 Me. 305.

## CHAPTER 119.

### The Selection and Service of Jurors.

- Sections 1-7 List of Jurors; its Preparation.  
Sections 8-10 Issue and Service of Venires.  
Sections 11-16 Draft of Jurors; their Attendance.  
Sections 17-22 Penalties.

#### List of Jurors; Its Preparation.

**Sec. 1. Board for preparing list of jurors; action of town.** R. S. c. 111, § 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 voters assembled, may strike out such names as they think proper from such lists, but shall not insert any others.

See § 16.

**Sec. 2. Preparation of lists of persons qualified to serve as jurors; indorsement on old tickets transferred to new.** R. S. c. 111, § 2. 1921, c. 180, § 1. 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, but no person shall be disqualified by reason of sex. When a new list is made, the municipal officers shall transfer from the old to the new tickets of the same persons, the minutes of the draft made within the three preceding years.

79 Me. 126; \*125 Me. 327.

**Sec. 3. Persons exempted from serving as jurors.** R. S. c. 111, § 3. 1921, c. 180, § 2. The following persons are exempt from serving as jurors, and their names shall not be placed on the lists; the governor, councilors, judges, and clerks of 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, nurses, cashiers of incorporated banks, sheriffs and their deputies, coroners, counselors and attorneys at law, county commissioners, constables, all persons engaged in the unlawful traffic in intoxicating liquors, or who are known to be habitually addicted to the use of intoxicating liquors as a beverage, and constant ferrymen.

See c. 18, § 75, c. 34, § 3; 26 Me. 360; 79 Me. 120; \*125 Me. 327.

**Sec. 4. Tickets of names kept in jury-box, liable to be drawn once in three years.** R. S. c. 111, § 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 are 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.

\*125 Me. 325.

**Sec. 5. Number kept in jury-box; for what causes, names may be withdrawn.** R. S. c. 111, § 5. 1921, c. 145. Each town shall provide, and con-

stantly keep in the box, a number of names ready to be drawn when required, not less than one nor more than two for every fifty 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.

See § 16; 64 Me. 549.

**Sec. 6. Counties divided into jury districts. R. S. c. III, § 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 courts in their county.

65 Me. 161.

**Sec. 7. Rule by which clerk to issue venires. R. S. c. III, § 7.** The grand and traverse jurors shall be drawn from each jury district in such manner as to cause jurors, at each term of court, to come from every part of the county as equally as may be, and so 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 courts shall issue venires to the constables of towns and organized plantations, and the constables, marshals and deputy marshals of cities accordingly.

#### Issue and Service of Venires.

**Sec. 8. Venires for grand jurors; for traverse jurors. R. S. c. III, § 8.** Venires for grand jurors to serve at the terms of the supreme judicial court, shall be issued annually by each clerk for his respective county, forty days at least before the first criminal term to be held in said county on or after the first day of September; and the grand jurors 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.

See c. 90, § 101; 66 Me. 148; \*67 Me. 332.

**Sec. 9. Distribution of venires and notice of meetings to draw jurors. R. S. c. III, § 9.** The constables of the towns and organized plantations, and the constables, marshals, or deputy marshals of cities, on receipt of such venires, shall notify the voters of the town, organized plantation, or city, and especially the municipal officers and town, plantation, and city clerk, by posting notices in two public and conspicuous places therein, and by delivering to at least two of the municipal officers and the town, plantation, or city clerk written notice of said meeting at least four days before such meeting to assemble and be present at the draft of jurors called for, which shall be fourteen days at least before the time when they are ordered to attend court.

64 Me. 533; \*67 Me. 335.

**Sec. 10. Grand jurors irregularly drawn or incompetent to be discharged by court. Vacancies, how filled. R. S. c. III, § 10.** When any justice of the court in term time or vacation, is satisfied that any persons returned or acting on the grand jury, were irregularly drawn, or are otherwise incompetent to act thereon, he shall discharge them, and send a certificate stating their names, to the clerk of courts for such county, which shall be recorded by him, and ordering him to issue venires for such number of new jurors, as the justice

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deems necessary. The clerk shall issue venires as directed, which shall be served ten days at least before the time when such jurors are ordered to attend court, and the jurors thus drawn shall serve, with those not discharged, for the remainder of the year. When the number of grand jurors is reduced by death or otherwise, such justice shall direct venires to be issued and served as aforesaid, for the additional number that he deems necessary to serve for the remainder of the year.

### Draft of Jurors; Their Attendance.

**Sec. 11. Mode of drawing jurors.** R. S. c. 111, § 11. The town clerk, or, in his absence, one of the municipal officers, shall carry the jury-box into the meeting, and it shall there be unlocked, and the tickets mixed by a majority of said officers present; 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.

See § 16; 125 Me. 326.

**Sec. 12. The same subject.** R. S. c. 111, § 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, although 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.

\*125 Me. 326.

**Sec. 13. Date of draft to be indorsed on ticket.** R. S. c. 111, § 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.

**Sec. 14. Notice to jurors, and return of venires.** R. S. c. 111, § 14. A constable of a town or organized plantation, or the constables, marshals or deputy marshals of cities, shall notify the persons thus drawn ten days at least before the sitting of the court by giving them in hand, 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 must attend; and shall make a seasonable return of the venire with his doings thereon.

5 Me. 335.

**Sec. 15. Attendance by jurors.** R. S. c. 111, § 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.

**Sec. 16. Application to organized plantation.** R. S. c. 111, § 16. The provisions of this chapter in relation to the selection and service of jurors, shall apply to organized plantations as well as to towns and cities.

### Penalties.

**Sec. 17. Penalty for neglect of town officers and clerk.** R. S. c. 111, § 17. 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.

**Sec. 18. Penalty for neglect of constable, or of town.** R. S. c. 111, § 18. 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. 19. Penalty for neglect of clerk, or of sheriff.** R. S. c. 111, § 19. If the clerk of courts 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.

\*67 Me. 335.

**Sec. 20. Penalty for neglect of juror to attend.** R. S. c. 111, § 20. Any juror, who, after being notified and returned, unnecessarily fails in his attendance, shall be fined as for contempt, not exceeding twenty dollars.

**Sec. 21. Penalty for fraud by town officers.** R. S. c. 111, § 21. 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, which had been fairly drawn, into the box, and drawing another in its stead, or in any other mode, shall be fined not exceeding two hundred dollars.

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## CHAPTER 120.

### Depositions.

**Sec. 1. In what cases depositions may be used.** R. S. c. 112, § 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, libels for forfeiture of personal property, prosecutions for the maintenance of bastard children, petitions for review, and in trials before probate courts, arbitrators, referees, and county commissioners; and in cases of contested senatorial or representative elections. Depositions or affidavits may also be taken in applications for pensions, bounties, or arrears of pay under any law of the United States.

See c. 8, § 87; c. 62, § 55; c. 76, § 6; c. 102, § 1, ¶ iv.

**Sec. 2. Before whom to be taken.** R. S. c. 112, § 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 is then nor was previously, counsel.

25 Me. 439; \*66 Me. 352; \*68 Me. 219.

**Sec. 3. When a cause is deemed pending.** R. S. c. 112, § 3. No suit, petition, libel or prosecution, is, for the purposes of this chapter, pending, 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 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 given to the adverse party.

15 Me. 451; 16 Me. 258; 37 Me. 413; 69 Me. 338.

**Sec. 4. Reasons for taking.** R. S. c. 112, § 4. Depositions may be taken for any of the following causes:

I. When the deponent is so aged, infirm, or sick, as to be unable to attend at the place of trial.

II. When the deponent resides out of, or is absent from the state.

III. 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,

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or more than sixty miles from the place of trial, and is not expected to return in season to attend it.

<sup>21</sup> Me. 215.

IV. When the deponent is a justice of the supreme judicial, or a superior court, or is judge of a court of probate, and is prevented by official duty from attending the trial.

V. When the deponent resides in a town other than that in which the trial is to be held; 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, or that he has become so infirm or sick since the taking of the deposition as to be unable to attend the place of trial.

VI. When the deponent is confined in prison, and such imprisonment is continued until after the trial.

**Sec. 5. Summons to deponent, and notice to adverse party.** R. S. c. 112, § 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 as is provided for taking depositions of other witnesses by commission.

See § 21; 41 Me. 600.

**Sec. 6. Service of notice.** R. S. c. 112, § 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.

37 Me. 413; 72 Me. 471.

**Sec. 7. Who to be considered attorney of adverse party.** R. S. c. 112, § 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.

29 Me. 69; 33 Me. 423; 36 Me. 359; \*52 Me. 480.

**Sec. 8. Notice to one adverse party sufficient; time of notice; verbal notice; notice to take deposition out of state.** R. S. c. 112, § 8. Where there are several plaintiffs or defendants, notice is sufficient, if given by the justice or notary to one or more of them; the adverse party shall be allowed not less than 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 notary is 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.

16 Me. 43; 36 Me. 283; 61 Me. 509; \*63 Me. 52, \*53; 64 Me. 533; 72 Me. 471.

**Sec. 9. Form of notice to adverse party.** R. S. c. 112, § 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 ———, 19—, at ——— 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 ———, 19—.

—————, Justice of the Peace."

<sup>22 Me. 358.</sup>

**Sec. 10. Form of summons to deponent. R. S. c. 112, § 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 ———, 19—, at ——— 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 19—.

—————, Justice of the Peace."

The summons may be served and the service thereof proved as in section six.

**Sec. 11. Witness may be compelled to give his deposition. R. S. c. 112, § 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.

<sup>36 Me. 283.</sup>

**Sec. 12. Deponent to be sworn; manner of examination. R. S. c. 112, § 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 written interrogatories, and then by the adverse party, and by the justice or the parties afterwards, if they see cause.

<sup>24 Me. 173; 34 Me. 71; 35 Me. 133, 372, 511; 38 Me. 144; 44 Me. 75.</sup>

**Sec. 13. Deposition to be signed. R. S. c. 112, § 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.

<sup>See § 31; 66 Me. 353.</sup>

**Sec. 14. Rejected for deception; closing. R. S. c. 112, § 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 until the expiration of one hour after the time appointed for the taking.

<sup>53 Me. 180.</sup>

**Sec. 15. Form and requisites of caption. R. S. c. 112, § 15.** The justice or notary shall make out a certificate and annex it to the deposition, therein stating the following facts:

I. That the deponent was first sworn according to law, and when.

II. 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.

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III. Whether the adverse party was notified to attend, and did or did not attend.

IV. The cause in which the deposition is to be used and the names of the parties thereto.

V. The court or tribunal in which it is to be tried, and the time and place of trial.

VI. The cause of taking the deposition.

28 Me. 33; 31 Me. 587; 33 Me. 381; 34 Me. 71, 210; 36 Me. 73, 283, 467; 38 Me. 146; 41 Me. 335; 44 Me. 75; 45 Me. 470; \*68 Me. 219.

**Sec. 16. To be delivered in court, or sealed up.** R. S. c. 112, § 16. The deposition shall be delivered by the justice or notary to the court or referees before whom the cause is to be tried, or shall be enclosed and sealed up by him, and directed to such court or referees, and kept sealed until opened by their order.

70 Me. 292.

**Sec. 17. When not to be used.** R. S. c. 112, § 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.

20 Me. 259; 28 Me. 41; 63 Me. 419.

**Sec. 18. Objections to competency.** R. S. c. 112, § 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 were testifying 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 the objection is not withdrawn, it shall be noted thereon, otherwise it shall not afterwards be allowed.

14 Me. 153; 37 Me. 215; 45 Me. 468; 47 Me. 253; 82 Me. 29.

**Sec. 19. When depositions may be used in second suit.** R. S. c. 112, § 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 until the commencement of the second.

55 Me. 172; 65 Me. 13.

**Sec. 20. Taken out of the state.** R. S. c. 112, § 20. The court may admit or reject depositions taken out of the state by a justice, notary, or other person empowered to take them.

29 Me. 167; 31 Me. 506; 32 Me. 180; 41 Me. 107; 50 Me. 421; 52 Me. 480; \*63 Me. 52; 108 Me. 62; 124 Me. 281; 125 Me. 262.

**Sec. 21. Commissions to take such depositions.** R. S. c. 112, § 21. The justices of the supreme judicial court or of the superior courts may issue commissions to take depositions without the state, to be used in suits pending in the state, on such terms and conditions as they think proper.

32 Me. 179.

### Depositions in Perpetuam.

**Sec. 22. Application for taking a deposition in perpetuam, and notice to persons interested.** R. S. c. 112, § 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, 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, 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.

4 Me. 90, 486; 17 Me. 354; 72 Me. 470; 85 Me. 423.

**Sec. 23. How such deposition to be taken and certified.** R. S. c. 112, § 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 nearly 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. Record in registry of deeds.** R. S. c. 112, § 24. The statement, deposition and certificate, shall within ninety days after the taking, 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.

19 Me. 153.

**Sec. 25. Use in evidence.** R. S. c. 112, § 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 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. Commission to take such depositions out of the state.** R. S. c. 112, § 26. Depositions, to perpetuate the testimony of witnesses living out of this state, may be taken in any other state, or foreign country, upon a commission issued by the supreme judicial court; and the persons desiring 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.

72 Me. 470.

**Sec. 27. Court after notice and hearing may issue commission.** R. S. c. 112, § 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.

72 Me. 470-1.

**Sec. 28. Taken on interrogatories; application may be filed in vacation, and notice given.** R. S. c. 112, § 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.

72 Me. 470.

#### **Penalty for Refusing to Appear, or to Give Deposition.**

**Sec. 29. Proceedings, to compel a deponent to appear and depose.** R. S. c. 112, § 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

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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 county jail 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.

16 Me. 256; 22 Me. 358; \*68 Me. 219.

**Sec. 30. Appointment of stenographers as commissioners to take depositions; powers.** R. S. c. 112, § 30. The governor, with the advice and consent of the council, may, upon the written recommendation of any judge of the supreme judicial court, appoint competent stenographers of either sex, as commissioners to take depositions in all cases and disclosures of trustees, who shall hold office for four years. They may act throughout the state and shall have and exercise the same powers in taking depositions and disclosures of trustees as are exercised and possessed by justices of the peace.

**Sec. 31. Depositions and disclosures, how taken.** R. S. c. 112, § 31. Depositions and disclosures of trustees may be taken by such commissioners stenographically by the consent of the parties to the suit or proceeding, and their notes shall be transcribed in full by questions and answers, and read to the deponent or trustee and signed by him. If the deponent or trustee, in writing, waives such reading, the transcript shall be admissible as his deposition or disclosure, without his signature. No change of or addition to the transcript shall be made by the deponent or trustee except in the presence of the counsel who attested the taking of the deposition. The commissioner shall state the facts in his certificate, as to reading, signature or waiver, and what, if any, changes or additions were made.

**Sec. 32. Fees.** R. S. c. 112, § 32. They shall receive the same fees for travel, swearing witnesses, notifying parties and deponents as are received by justices of the peace, and in addition thereto, twenty cents a page for their transcripts.

See c. 126, § 2.

**Note.** Depositions to prove copy of lost deed, c. 86, § 35.  
Depositions may be taken out of the state before commissioners appointed by governor, c. 86, § 26.

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## CHAPTER 121.

### Reference of Disputes by Consent of Parties.

**Sec. 1. What controversies may be preferred; powers of referees; revocation only by consent.** R. S. c. 113, § 1. All controversies which may be the subject of a personal action, may be submitted to one or more referees, with 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, although 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” (or “superior”) “court for the said 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., 19—.”

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.

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, 120; 64 Me. 367.

**Sec. 2. Submission of all demands, and of a specific demand. R. S. c. 113, § 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 be so stated as to be readily understood.

9 Me. 15; 22 Me. 241; 30 Me. 114; 35 Me. 358; 45 Me. 375; 55 Me. 246; 68 Me. 324.

**Sec. 3. Authority of referees. R. S. c. 113, § 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 dissenting 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.

1 Me. 66; 30 Me. 553; 35 Me. 284; 50 Me. 65.

**Sec. 4. Report, how and when to be returned. R. S. c. 113, § 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.

36 Me. 595; 37 Me. 505; 59 Me. 285; 60 Me. 102.

**Sec. 5. Action on report; exceptions; writ of error. R. S. c. 113, § 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 for a new hearing; 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.

6 Me. 25; 8 Me. 290; 23 Me. 437; 27 Me. 128; 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. 285.

## CHAPTER 122.

### Prevention of Frauds and Perjuries in Contracts, and Actions Founded Thereon.

|                |                                    |
|----------------|------------------------------------|
| Sections 1- 5  | Statute of Frauds.                 |
| Sections 6- 7  | Bulk Sales Act.                    |
| Section 8      | Conditional Sales.                 |
| Section 9      | Assignment of Wages.               |
| Sections 10-11 | Public Accounts.                   |
| Sections 12-17 | Contracts for Sale of Real Estate. |

#### Statute of Frauds.

**Sec. 1. Cases in which promise must be in writing; consideration need not be expressed therein.** R. S. c. 114, § 1. No action shall be maintained in any of the following cases:

I. To charge an executor or administrator upon any special promise to answer damages out of his own estate;

\*122 Me. 514.

II. To charge any person upon any special promise to answer for the debt, default or misdoings of another;

7 Me. 360; 21 Me. 412, 550; 22 Me. 397; 26 Me. 349; 36 Me. 114; 41 Me. 559; 46 Me. 143; 58 Me. 442; 62 Me. 245; 69 Me. 101, 154; 74 Me. 505; 87 Me. 82; 89 Me. 476; 92 Me. 554; 93 Me. 262; 112 Me. 278; \*115 Me. 11; \*121 Me. 478; 124 Me. 34.

III. To charge any person upon an agreement made in consideration of marriage;

121 Me. 420; 125 Me. 292.

IV. Upon any contract for the sale of lands, tenements or hereditaments, or of any interest in or concerning them;

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; 63 Me. 584; 64 Me. 193; 68 Me. 374; 70 Me. 31; 71 Me. 484, 532; 92 Me. 27; 98 Me. 373; 107 Me. 129; \*115 Me. 262; 121 Me. 474; 122 Me. 83; \*123 Me. 288.

V. Upon any agreement that is not to be performed within one year from the making thereof;

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; 74 Me. 400; 102 Me. 243; 117 Me. 519.

VI. 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, and may be proved otherwise.

See c. 165, § 4; 3 Me. 415; 4 Me. 9, 263; 53 Me. 24; \*66 Me. 343; \*73 Me. 195; 80 Me. 243; 96 Me. 309.

**Sec. 2. No action on a contract of a minor, unless ratified in writing.** R. S. c. 114, § 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 necessities, or real estate of which he has received the title and retains the benefit.

79 Me. 530; 86 Me. 194; 92 Me. 164; 101 Me. 582; \*123 Me. 1; 124 Me. 13; 124 Me. 414; 126 Me. 70.

**Sec. 3. Representation of another's credit, must be in writing. R. S. c. 114, § 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.

84 Me. 281.

**Sec. 4. Acceptance of bill, draft, or written order, also waiver of demand and notice, must be in writing. R. S. c. 114, § 4.** No person shall be charged as acceptor of a bill of exchange, draft, or written order, unless his acceptance is in writing, signed by him or his lawful agent; and no waiver of demand and notice, by an indorser of a promissory note or bill of exchange, is valid unless it is in writing and signed in like manner.

69 Me. 91; 83 Me. 243, \*290, 579; 85 Me. 493; 87 Me. 307.

**Sec. 5. Certain contracts for sale of goods must be in writing. R. S. c. 114, § 5.** No contract for the sale of goods, wares, or merchandise, 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.

9 Me. 81; 12 Me. 476; 13 Me. 427; 19 Me. 139; 26 Me. 399; 39 Me. 101; 41 Me. 69, 527; 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; \*73 Me. 194; 94 Me. 462; 98 Me. 166; 105 Me. 513; 106 Me. 519; 108 Me. 200; 109 Me. 507; 122 Me. 188, 418, 511; \*123 Me. 90.

### Bulk Sales Act.

**Sec. 6. Sales in bulk of stocks of merchandise, regulated; inventory; written list of creditors; amount of indebtedness; notice to creditors. R. S. c. 114, § 6.** The sale in bulk of any part or the whole of a stock of merchandise, otherwise than in the ordinary course of trade and in the regular and usual prosecution of the seller's business, shall be void as against the creditors of the seller, unless the seller and purchaser, at least five days before the sale, make a full, detailed inventory, showing the quantity, and, so far as possible with exercise of reasonable diligence, the cost price to the seller of each article to be included in the sale; and unless the purchaser preserve such inventory for inspection by the creditors, or any of them, for thirty days after the completion of the sale; and unless the purchaser demand and receive from the seller a written list of names and addresses of creditors of the seller, with the amount of indebtedness due or owing to each and certified by the seller, under oath to be, to the best of his knowledge and belief, a full, accurate, and complete list of his creditors and of his indebtedness; and unless the purchaser, at least five days before taking possession of such merchandise or paying therefor, notify personally or by registered mail every creditor whose name and address are stated in said list, of the proposed sale and of the price, terms and conditions thereof. Provided, however, that the preceding provisions of this section shall not apply if the purchaser, before any such sale of merchandise, shall demand and receive from the seller a written list of names and addresses of creditors of the seller, with the amount of indebtedness due or owing to each, and certified by the seller under oath to be, to the best of his knowledge and belief, a full, accurate, and complete list of his creditors, and of his indebtedness, and the seller, prior to such sale, shall deliver to the purchaser a certificate signed

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and sworn to by the seller that he has in good faith given notice of the proposed sale to all of the creditors whose names are stated in such verified list, and shall also deliver to the purchaser a written waiver of the provisions of this section signed by a majority in number of such creditors, and by creditors holding a majority of the total indebtedness shown by such list.

110 Me. 163; 119 Me. 172; \*123 Me. 327; 124 Me. 413.

**Sec. 7. Corporations, associations, copartnerships, and individuals included; exceptions. R. S. c. 114, § 7.** Sellers and purchasers under the preceding section shall include corporations, associations, copartnerships, and individuals, but said section shall not apply to sales by executors, administrators, receivers, assignees under voluntary assignments for the benefit of creditors, trustees in bankruptcy, or by any public officer under judicial process, or to mortgages made in good faith for the purpose of security only.

### Conditional Sales.

**Sec. 8. Agreement that goods sold and delivered to remain the property of seller; record. R. S. c. 114, § 8.** No agreement that personal property bargained and delivered to another, shall remain the property of the seller till paid for, is valid unless the same is in writing and signed by the person to be bound thereby. And when so made and signed, whether said agreement is, or is called a note, lease, conditional sale, purchase on instalments, or by any other name, and in whatever form it may be, it shall not be valid, except as between the original parties thereto, unless it is recorded in the office of the clerk of the city, town, or plantation organized for any purpose, in which the purchaser resides at the time of the purchase; but if any of the purchasers are not residents of the state, or reside in an unorganized place in the state, then in the registry of deeds in the county where the seller resides at the time of the sale. The fee for recording the same shall be the same as that for recording mortgages of personal property. All such property, whether said agreements are recorded or not, shall be subject to redemption and to trustee process as provided in section fifty of chapter ninety-nine, but the title may be foreclosed in the same manner as is provided for mortgages of personal property.

See c. 63, § 101; c. 90, § 6, ¶ 1; c. 104, §§ 4, 5; 59 Me. 394; 62 Me. 254; 65 Me. 491; 70 Me. 59; 73 Me. 90; 74 Me. 539; 76 Me. 26; \*80 Me. 273; 82 Me. 147, 200, 421; 86 Me. 459, 547; 87 Me. 206; 91 Me. 248; \*92 Me. 70; 95 Me. 85, 148; 97 Me. 362; 101 Me. 220; 102 Me. 495; 106 Me. 351, 354; 111 Me. 565; 113 Me. 64; 114 Me. 390; \*117 Me. 95; \*117 Me. 150.

### Assignment of Wages.

**Sec. 9. Assignment of wages, not valid unless recorded. R. S. c. 114, § 9.** No assignment of wages is valid against any other person than the parties thereto unless such assignment is recorded by the clerk in the town where the assignor is employed while earning such wages; provided, that if said assignor is employed in an unorganized place while earning such wages, said assignment to be valid against any other person than the parties thereto, shall be recorded in the office of the register of deeds for the registry district in which said unincorporated place is located. No such assignment of wages shall be valid against the employer unless he has actual notice thereof.

68 Me. 428; 71 Me. 512; 74 Me. 496; 76 Me. 415; 80 Me. 370; 82 Me. 415; \*83 Me. 290; 85 Me. 105, 125; 96 Me. 297; 99 Me. 75; \*104 Me. 319.

**Public Accounts.**

**Sec. 10. Accounts and claims against state and municipalities, how verified.** R. S. c. 114, § 10. A 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, if required 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. 11. Expense accounts of state and county officers.** R. S. c. 114, § 11. Every state and county officer whenever required by law to render a bill of expenses, shall itemize the same and make oath, before presenting it for auditing or payment, that it includes only actual cash outlay while in the performance of his official duties.

**Contracts for Sale Real Estate.**

**Sec. 12. Contracts for sale of real estate, when to terminate.** R. S. c. 114, § 12. All contracts entered into after the first day of August, nineteen hundred and eleven, for the sale or transfer of real estate and all contracts whereby a person, company, or corporation becomes an agent for the sale or transfer of real estate shall become void in one year from the date such contract is entered into unless the time for the termination thereof is definitely stated.

112 Me. 90; \*123 Me. 33.

**Sec. 13. Specific performance of a contract to convey real estate, after death of contractor.** R. S. c. 114, § 13. 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, provided that written notice of the existence of the contract is given to the executor or administrator within one year after the grant of administration.

63 Me. 402; \*77 Me. 141; 97 Me. 400.

**Sec. 14. Decree; effect.** R. S. c. 114, § 14. 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 conveyance shall pass the estate as fully as if made by the contractor.

**Sec. 15. Enforcement of decree.** R. S. c. 114, § 15. 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 decree; or the court may enforce its decree by any other process according to chancery proceedings.

**Sec. 16. Provision, in case of death of obligee, before conveyance.** R. S. c. 114, § 16. 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.

123 Me. 509.

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**Sec. 17. Administrator may petition for authority to make conveyance. R. S. c. 114, § 17.** If the party to whom any such conveyance was to be made, or those claiming under him, does 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 its 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 the part of the other party.

Note. Recording officer shall not draft any instrument which he is by law required to record. c. 15, § 14.

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## CHAPTER 123.

### Relief of Poor Debtors.

|          |       |  |
|----------|-------|--|
| Section  | 1     | Exemption from Arrest.                                   |
| Sections | 2-7   | Arrests and Disclosures on leaving the State.            |
| Sections | 8-14  | Disclosures on Mesne Process before Judgment.            |
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| Sections | 19-44 | Disclosure Commissioners.                                |
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| Section  | 66    | Arrests for Taxes.                                       |
| Sections | 67-75 | General Provisions.                                      |
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| Sections | 78-79 | Damages on Bonds.  |
| Section  | 80    | Wilful Trespass.   |
| Sections | 81-82 | Support of Debtor in Jail.                               |
| Sections | 83-89 | Provisions Relating to Debtors to the State.             |

### Exemption from Arrest.

**Sec. 1. Arrests upon mesne process. R. S. c. 115, § 1.** No person shall be arrested upon 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 ninety-eight.

\*66 Me. 251; 71 Me. 28, \*169, \*232.

Note. No execution issued on a judgment recovered for the collection of a poll-tax shall run against the body of the judgment debtor, c. 14, § 64; person committed to jail on warrant for expense of abating nuisance may have benefit of this chapter, c. 26, § 21.

### Arrests and Disclosures on Leaving the State.

**Sec. 2. Debtor about to leave the state, may be arrested, in certain cases. R. S. c. 115, § 2.** Any person, whether a resident of 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 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.

16 Me. 399; 20 Me. 80, 467; 28 Me. 48; 38 Me. 129; 52 Me. 591; 57 Me. 411; 61 Me. 280; 62 Me. 525; 63 Me. 50, \*58; 65 Me. 146; 68 Me. 257; \*71 Me. 406; \*86 Me. 214; 91 Me. 64; 112 Me. 497; 115 Me. 168; \*116 Me. 22.

**Sec. 3. Disclosure on such arrest. R. S. c. 115, § 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, to be selected as provided in section sixty-seven, to disclose the actual state of his affairs.

15 Me. 56.

**Sec. 4. Notice to be given to the plaintiff. R. S. c. 115, § 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. Justices may adjourn. R. S. c. 115, § 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.

18 Me. 144; 28 Me. 460; 91 Me. 151.

**Sec. 6. Mode of making disclosure; adjudication of justices; effect of discharge. R. S. c. 115, § 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 fifty-five, 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.

14 Me. 477.

**Sec. 7. Lien on property disclosed, how to be preserved; section fourteen applies. R. S. c. 115, § 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 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.**

**Sec. 8. Defendant may, in all cases, disclose before judgment; notice. R. S. c. 115, § 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; and the court may continue the cause to permit such disclosure to be taken.

14 Me. 477; 65 Me. 556; \*115 Me. 168.

**Sec. 9. Effect thereof; lien on property disclosed. R. S. c. 115, § 9.** On such examination, the court, justice or commissioner, except as provided in section fourteen, may determine that the defendant shall forever thereafter be exempt from arrest on any execution issued on the judgment recovered in the suit, and that such execution shall run against the property only of the defendant, or otherwise, as justice requires, on the facts so disclosed or proved; and all attachable property so disclosed, from the time of the disclosure, shall be held attached as provided in section seven, subject to the provisions of the two following sections.

See § 20.

**Sec. 10. Certificate of real estate disclosed, to be filed in registry of deeds. R. S. c. 115, § 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 of real estate, and shall be entitled to the same fees from the plaintiff.

**Sec. 11. How to preserve lien on personal estate. R. S. c. 115, § 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 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 the order accordingly.

20 Me. 221.

**Sec. 12. Disclosure on mesne process by consent of parties. R. S. c. 115, § 12.** At any time before or after the return day of such writ or process, the parties to the suit, by a written agreement, may appear before a justice of the peace 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, before final judgment, be returned to the court or justice before which the suit is pending, where the proceedings shall be the same as if the disclosure had been before a commissioner appointed for the purpose.

**Sec. 13. When execution issues against body. R. S. c. 115, § 13.** If the result of such disclosure and examination is adverse to the defendant's right to exemption from arrest, the execution shall run against his body.

**Sec. 14. Certain property which cannot be attached, must be delivered up,**

or assigned by the debtor. R. S. c. 115, § 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 exempt 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 fifty-six and fifty-seven.

#### Bonds on Mesne Process and Disclosures After Judgment.

**Sec. 15. Debtor arrested, may give bond to disclose after judgment. R. S. c. 115, § 15.** When a person is arrested or imprisoned on mesne process in a civil action, he may disclose as provided in sections three, four, five, six and seven of this chapter, or 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 of the county where the arrest or imprisonment is made, selected and proceeding, as prescribed in section sixty-seven, 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.

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; 72 Me. 261; 78 Me. 418; 115 Me. 357; 119 Me. 280.

**Sec. 16. Proceedings, if debtor has given bond on mesne process. R. S. c. 115, § 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 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.

15 Me. 338; 21 Me. 442; 22 Me. 401; 48 Me. 103; 51 Me. 109.

**Sec. 17. Debtor may go at large for thirty days, during lien on property disclosed. R. S. c. 115, § 17.** If the debtor, on such examination, does not, in the opinion of the justices, entitle himself, to the benefit of the oath hereinafter provided, and it appears that at that time he has real or personal estate, liable to attachment, or any such property as is described in section fifty-six, 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.

20 Me. 468.

**Sec. 18. Effect of creditor's election, to arrest on execution, or otherwise.**

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**R. S. c. 115, § 18.** If the creditor elects so to 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.

**Disclosure Commissioners.**

**Sec. 19. Appointment of disclosure commissioners; qualification and tenure; seal; number that may be appointed; renewal of former executions.** **R. S. c. 115, § 19.** The governor shall from time to time appoint disclosure commissioners in different localities within and for each county of the state who shall have jurisdiction within the county for which they are appointed. Such commissioners shall be attorneys at law and shall hold office for the term of seven years. They shall have an official seal which shall have engraved thereon the name of the commissioner, the words "disclosure commissioner" and the word "Maine" and the name of the county and the town or city where the commissioner resides. Each town or city of not more than four thousand inhabitants as shown by the last preceding census of the United States, shall be entitled to one such commissioner and not more than one, and for every additional five thousand inhabitants thus shown, or fraction thereof, an additional commissioner shall be allowed, provided that the total number of commissioners in any one town or city shall in no case exceed six. Any commissioner appointed under this section shall have power to renew executions issued by any former commissioner within and for the same county, and executions issued by himself.

\*92 Me. 88; \*105 Me. 298.

**Sec. 20. Executions on contract not to run against body of debtor; exceptions.** **R. S. c. 115, § 20.** No execution issued on a judgment founded on a contract, express or implied, or on a prior judgment on contract, shall run against the body of the judgment debtor, except as hereinafter provided, unless otherwise determined in proceedings under section eight, or unless the debtor was arrested on the original writ as provided in section two of this chapter.

See § 13.

**Sec. 21. Owner of judgment may have disclosure any time.** **R. S. c. 115, § 21.** The owner of any judgment remaining unsatisfied in any part may have a disclosure of the business and property affairs of any judgment debtor, at any time, by proceedings as hereinafter provided, but married women, and judgment debtors not liable to arrest, as provided in section sixty-four of chapter fourteen or by virtue of proceedings under sections six or eight, thus cited shall not be arrested except for contempt or upon capias issued to bring them before the magistrate as provided by section thirty-three.

See c. 83, § 68; \*92 Me. 89.

**Sec. 22. Owner may make application for subpoena to debtor to make disclosure.** **R. S. c. 115, § 22.** Such owner, or his attorney, may make application in writing to a disclosure commissioner, judge of probate, register of probate, judge of a municipal or police court in the county in which the judgment debtor resides, or, if the judgment debtor is a non-resident of this state, in the county in which he is commorant, stating the amount of the debt and of the costs for which said judgment was rendered, the court and term at which it was rendered, the names of the original parties, the title of the petitioner, and praying for subpoena to issue to the debtor to appear and make disclosure.

\*92 Me. 89.

**Sec. 23. Subpoena to issue to debtor to appear and disclose; errors in application or subpoena may be amended.** R. S. c. 115, § 23. 1917, c. 267. Such magistrate shall thereupon issue under his hand and seal a subpoena to the debtor commanding him to appear before any such disinterested magistrate within said county in the town in which the debtor, the petitioner or his attorney resides, and in case there is no such magistrate in the town where the debtor, petitioner or his attorney resides then in the shire town of said county, at a time and place therein named to make full and true disclosure, on oath, of all his business and property affairs. And a judge of any municipal court may hold disclosure court upon a subpoena returnable as aforesaid in any town in which the regular terms of the court of which he is judge are held. The application shall be annexed to the subpoena. Any town in which the regular sessions of the supreme judicial court are held, shall be considered a shire town for the purpose of this section. No application or subpoena shall be deemed incorrect for want of form only, or for circumstantial errors or mistakes, when the person and the case can be rightly understood. Such errors and mistakes may be amended on application of either party.

<sup>\*92 Me. 89; \*101 Me. 400; \*104 Me. 21; \*105 Me. 297.</sup>

**Sec. 24. Service of subpoena.** R. S. c. 115, § 24. The subpoena may be served by any officer qualified to serve civil process in said county by giving to the debtor in hand an attested copy of the petition and subpoena, which said service shall be at least twenty-four hours before the time of said disclosure for every twenty miles' travel from his home or place of abode at the time of service to the place of disclosure.

<sup>\*92 Me. 89.</sup>

**Sec. 25. Debtor to appear and submit to examination.** R. S. c. 115, § 25. At such time and place, the debtor shall appear and submit himself to examination on oath concerning his estate and effects, their disposal and his ability to pay the judgment. Should the owner of said judgment or his attorney neglect to have the original petition and subpoena before said magistrate at the time therein designated for said disclosure, upon prayer therefor, said magistrate shall issue an execution against said judgment owner in favor of said debtor for his travel at six cents per mile and attendance at one dollar and fifty cents, if he actually attends at said time and place, and said debtor shall not thereafter be compelled to disclose on said judgment until said execution has been satisfied.

<sup>See c. 83, § 68.</sup>

**Sec. 26. Proceedings at examination.** R. S. c. 115, § 26. The petitioner may propose to the debtor any interrogatories pertinent to the inquiry, and if either party requires it, the examination shall be in writing and signed and sworn to by the debtor. If the petitioner is absent or does not propose interrogatories, the magistrate shall conduct the examination.

<sup>\*92 Me. 89.</sup>

**Sec. 27. When magistrate may administer oath.** R. S. c. 115, § 27. If, on such examination and hearing, the magistrate is satisfied that the debtor's disclosure is true, and does not discover anything therein inconsistent with his taking the oath, the magistrate may administer to him the oath prescribed by section fifty-five of this chapter.

**Sec. 28. Attachable property disclosed, which cannot be come at, how appraised and set off; debtor not to be required to assign wages.** R. S. c. 115, § 28. 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

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to be attached, and the petitioner and debtor cannot agree to apply the same towards the debt the magistrate hearing the disclosure, shall appraise and set off enough of such property to satisfy the debt, cost and charges; and the petitioner or his attorney, if present, may select the property to be appraised. If the petitioner accepts it, it may be assigned and delivered to him by the debtor, and applied towards the satisfaction of his demand. The debtor shall not be required to assign any sums due him as wages for his personal labor which would be exempt from attachment on trustee process under the provisions of section fifty-five of chapter ninety-nine. 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 petitioner may take it, by paying the overplus to the debtor or securing it to the satisfaction of the magistrate.

<sup>\*92 Me. 89; 97 Me. 148; 98 Me. 340; 110 Me. 160.</sup>

**Sec. 29. Petitioner may demand it within thirty days; if not demanded, to be returned to debtor. R. S. c. 115, § 29.** If the petitioner is absent, or does not so accept it, the debtor shall deposit with the magistrate a written assignment to the petitioner, of all the property thus appraised and set off; and the magistrate 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 petitioner with the assignment, on demand, within that time. If not so demanded, they shall be returned to the debtor.

**Sec. 30. Preservation of petitioner's lien on real estate disclosed. R. S. c. 115, § 30.** If an execution debtor discloses real estate liable to be seized on execution, the magistrate shall give the petitioner a certificate thereof, stating the names of the parties and the amount of the execution; and the petitioner 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.

**Sec. 31. Lien on personal estate disclosed; effect, if debtor or other person conceals it. R. S. c. 115, § 31.** If he discloses personal estate liable to be seized on execution, the petitioner shall have a lien on it, or so much of it as the magistrate in his record judges 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-seven; and the petitioner 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 bodies of the debtor and other persons so aiding, but the payment thereof is a satisfaction of the original debt.

<sup>88 Me. 117.</sup>

**Sec. 32. Persons holding property in trust, or in fraud of creditors, may be compelled to appear and testify; petitioner to have lien; how enforced. R. S. c. 115, § 32.** If said magistrate 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 magistrate shall issue a similar subpoena to such person to appear and testify in relation thereto, the same to be served as subpoenas 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

magistrate, 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 petitioner 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 finds such property or credits to be so held as aforesaid, it may order 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 petitioner; and if the parties cannot agree upon the value of such property or credits, they shall be assigned to the petitioner, 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.

See c. 90, § 6, ¶ xi.

**Sec. 33. Debtor or other person refusing to appear, to be adjudged in contempt. R. S. c. 115, § 33.** If the debtor or any other person duly served with subpoena as above provided, refuses or neglects to appear, the magistrate shall upon the request of the petitioner issue a *capias* to bring said debtor or other person before him, and if upon hearing, said debtor or other person does not show good cause for his failure to appear, he may be ordered to pay the costs of issuing and serving said *capias*. After the question of costs of issuing and serving said *capias* has been thus determined, such debtor or other person shall submit himself to the examination required by his original subpoena.

\*92 Me. 89.

**Sec. 34. If the debtor refuses to testify, he to be committed for contempt. R. S. c. 115, § 34.** If the debtor, or other person duly served with subpoena, refuses to testify in obedience thereto, or refuses to answer any proper questions, or if the debtor refuses to make full disclosure upon all matters named in section twenty-five, or if said debtor refuses to comply with any proper order of the magistrate, or perform the duty imposed upon him by section twenty-nine, he shall be adjudged to be in contempt and be committed to jail until he purges himself of such contempt by compliance, or is otherwise discharged by due process of law. The warrant of commitment shall state specifically the contempt of which the prisoner is guilty.

**Sec. 35. Magistrate unable to attend. R. S. c. 115, § 35.** In case the magistrate who issued the summons is unable to attend, any justice of the peace may continue the case not exceeding twice, or any other magistrate qualified to take disclosures may attend and take the disclosure, and, for cause shown by either party, the examination may be adjourned from time to time.

\*92 Me. 89; \*105 Me. 298.

**Sec. 36. Evidence may be introduced by either party. R. S. c. 115, § 36.** After the examination of the debtor, other competent evidence may be introduced by either party, and the debtor may then be further examined. Depositions may be used in such disclosures, and the magistrate may, at the request of either party, issue subpoenas to witnesses, who are entitled to the same fees as witnesses before a trial justice.

**Sec. 37. When property disclosed is secured and debtor has complied with all orders, proceedings; body of debtor to be free from arrest. R. S. c. 115, § 37.** After the oath mentioned in section fifty-five is administered, and the property disclosed is secured, and the debtor has complied with all proper orders of such magistrate, a certificate of the fact of such disclosure shall be indorsed by the magistrate under his hand and seal, on the execution issued upon the judgment upon which the disclosure is had, and a copy of said certificate shall be indorsed on every subsequent execution issued on said judgment or on any judgment

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founded thereon, and the body of the debtor shall thereafter be forever free from arrest on any execution so issued, except as provided in sections thirty-one and seventy-six.

**Sec. 38. If debtor fails to obtain benefit of oath, proceedings.** R. S. c. 115, § 38. If upon such disclosure the debtor fails to obtain the benefit of the oath provided for in section fifty-five, the magistrate shall, under his hand and seal, indorse a certificate of that fact upon the execution in force at the time of said disclosure, and a copy of said certificate shall be indorsed on every subsequent execution issued on said judgment, or on any judgment founded thereon, and such subsequent execution shall run against the body of said debtor, where the original debt exclusive of costs exceeds ten dollars and not otherwise. The magistrate shall also issue a *capias* under his hand and seal, and annex the same to said execution in force at the time of said disclosure, and the debtor may be arrested and imprisoned on said *capias* and execution, the same as upon executions issued in actions of tort, where the original debt exclusive of costs exceeds ten dollars and not otherwise. But no execution shall run against the body of a judgment debtor who is exempt from arrest by the provisions of section twenty-one, or of section sixty-four of chapter fourteen.

\*63 Me. 58; 80 Me. 537; \*87 Me. 437; \*92 Me. 89; 104 Me. 21; \*124 Me. 21.

**Sec. 39. If debtor fails to appear, default may be recorded; proceedings.** R. S. c. 115, § 39. If a debtor cited to disclose on a judgment where the original debt exclusive of costs exceeds ten dollars, fails to appear and submit himself to examination, at the time and place named in subpoena, the petitioner may have a default recorded and then proceed as in the preceding section or have a *capias* to bring in such debtor and proceed as in section thirty-three.

\*92 Me. 89.

**Sec. 40. Proceedings for release of debtor when arrested.** R. S. c. 115, § 40. When a debtor is arrested upon said *capias* and execution, or upon any subsequent execution upon which a copy of either of the certificates required by the two preceding sections has been indorsed, all subsequent proceedings for his release shall be the same as in case of arrest or imprisonment on executions in actions of tort; but if said debtor fails to obtain his discharge at any subsequent examination before justices of the peace, he shall not a second time disclose before such justices, but may thereafter apply to a justice of the supreme judicial court and disclose as provided in section seventy-one of this chapter.

**Sec. 41. Fees; costs to be taxed and endorsed on execution.** R. S. c. 115, § 41. The magistrate shall be entitled to twenty-five cents for each subpoena, seventy-five cents for entry, twenty-five cents for *capias*, twenty-five cents for certificate, and three dollars for each day in hearing the disclosure and other testimony, and for entering default, twenty-five cents. The fees of officers shall be the same as for service of other process of similar nature. The petitioner may if the magistrate authorizes it, procure an officer to be in attendance during the proceedings, and the fees for such attendance shall be seventy-five cents a day. The above fees shall be paid by the petitioner, and in case the oath named in section fifty-five is administered, shall be added to the costs on the judgment and execution and taxed in detail thereon by the magistrate. In case said oath is not administered to the debtor, the petitioner shall recover his costs and said fees, as in actions before a trial justice. Whenever the petitioner recovers costs or costs and fees against the judgment debtor, either on hearing, default or otherwise, the magistrate shall tax such costs or costs and fees in detail, and make a record thereof, and under his hand and official seal shall indorse upon or annex to the execution in force at the time of disclosure, hearing or default, a certificate certifying that the petitioner has recovered costs or costs and fees and

stating therein, in detail, the costs or costs and fees recovered, and also the date of such recovery. A copy of said certificate shall be indorsed upon or annexed to every subsequent execution issued upon the same judgment, or upon any judgment founded thereon. Costs or costs and fees recovered, taxed and certified, as aforesaid, shall be deemed a part of the original judgment for costs recovered against the judgment debtor. *Any execution for costs or for costs and fees, legally issued by any magistrate before January one, nineteen hundred and four, may be renewed as provided by law when such execution was issued.*

\*87 Me. 437; 97 Me. 149.

**Sec. 42. Debtor may be required to disclose again after three years, and while judgment remains in force.** R. S. c. 115, § 42. At any time after the expiration of three years from the termination of any such proceedings, and while the judgment remains in force, the judgment creditor may again avail himself of all the provisions of the twenty-one preceding sections, where the original debt exclusive of costs exceeds ten dollars, and may cause like proceedings to be had as if there had been no previous proceedings under the provisions of this chapter.

**Sec. 43. Magistrate who has once refused oath, is incompetent to again hear disclosure.** R. S. c. 115, § 43. Any magistrate who has once refused to administer to the debtor the oath named in section fifty-five, shall be incompetent to sit as a justice of the peace or commissioner under section seventy-one, to hear the disclosure of the debtor, in any subsequent proceedings upon the same judgment or any judgment founded thereon.

**Sec. 44. Commissioner to keep a full record of all proceedings.** R. S. c. 115, § 44. Every magistrate shall keep a correct and sufficient record of the proceedings under each citation, stating the names of the parties, the amount of the judgment on which the disclosure is sought, the dates of application, of the issuance of subpoena and of the return day thereof, and of all hearings, adjournments and continuances; also whether the debtor appeared or was brought in on *capias* or was defaulted; whether a disclosure was had and if so what property was disclosed; whether the oath was administered or refused, and if refused the record shall state the reason for such refusal.

#### Arrests and Bonds on Execution, and Disclosures Thereon.

**Sec. 45. When execution to run against body.** R. S. c. 116, § 45. In actions of tort and 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.

See §§ 76, 80; c. 74, § 4; \*63 Me. 61; \*71 Me. 407; 80 Me. 537; 91 Me. 481.

**Sec. 46. Debtor may disclose without bond.** R. S. c. 115, § 46. When so arrested, he may, without giving bond, disclose as provided in section fifty-one and the following sections, by serving the citation provided for in said section fifty-one upon the creditor or his attorney, allowing at least twenty-four hours for every twenty miles' travel from the residence of such creditor or attorney to the place of disclosure. The debtor shall pay the officer for serving the notice and keeping him from the arrest until the disclosure, before he can be discharged.

\*66 Me. 124.

**Sec. 47. Disclosure in jail.** R. S. c. 115, § 47. 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.

\*66 Me. 124.

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**Sec. 48. Debtor to be remanded, or oath to be allowed.** R. S. c. 115, § 48. If, in either case, the debtor is not permitted to take the oath, he shall be remanded; otherwise, the justices shall administer the oath prescribed in section fifty-five, and give him the certificate provided in section fifty-eight; and the officer shall make return thereof on the execution; and no subsequent execution shall authorize his arrest.

**Sec. 49. Bond may be given on such arrest; condition and effect thereof.** R. S. c. 115, § 49. 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, in the county where he is arrested or imprisoned, selected and proceeding as provided in section sixty-seven, conditioned that he will, within six months thereafter, cite the creditor before two justices of the peace; submit himself to examination, and take the oath prescribed in section fifty-five; 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.

5 Me. 355; 6 Me. 232; 10 Me. 125; 15 Me. 131; 20 Me. 468; 21 Me. 388, 432; 24 Me. 124, 167, 212, 451, 547, 552; 29 Me. 482; 36 Me. 421; 44 Me. 24, 98; 48 Me. 40, 297; 49 Me. 18, 99; 57 Me. 591; \*60 Me. 268; \*61 Me. 36; \*63 Me. 166; 65 Me. 220; 66 Me. 483; 68 Me. 77, \*376, 483; 71 Me. 405, 578; \*77 Me. 17; 87 Me. 256; 91 Me. \*149, 481; 106 Me. 123; 107 Me. 40; 109 Me. 102; 124 Me. 20; 125 Me. 4.

**Sec. 50. When valid.** R. S. c. 115, § 50. Such bond is a valid statute bond although the penalty varies not exceeding five per cent from the sum aforesaid; and judgment in a suit thereon shall be rendered according to section sixty-five.

See § 73; 92 Me. 550.

**Sec. 51. Application by a debtor under bond or imprisoned; citation to creditor.** R. S. c. 115, § 51. 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 fifty-five; 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:

"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., 19—, at — o'clock in the — noon, and the — of — in —, in said county, as the time and place for said examination. And you are hereby notified to be present and select one of the justices, and be heard in said examination.

Given under my hand and seal at —, in said county, the — day of —, A. D., 19—.

—, Justice of the Peace."

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; 73 Me. 558; 81 Me. 430; 125 Me. 4.

**Sec. 52. Citation, how to be served on one of the creditors, his attorney or agent.** R. S. c. 115, § 52. The citation shall be served on the creditor, or one of them if there is more than one, or 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 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.

22 Me. 401; 48 Me. 102; \*51 Me. 109; 61 Me. 72; 68 Me. 201; 71 Me. 188; \*74 Me. 329.

**Sec. 53. Examination to be before two justices; remedy for errors and defects in citation. R. S. c. 115, § 53.** The examination shall be before two disinterested justices of the peace 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.

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. 388; 56 Me. 545; 68 Me. 376; \*72 Me. 486; 73 Me. 44; 74 Me. 104, 329; \*81 Me. 103; 91 Me. 151; 125 Me. 5.

**Sec. 54. Examination may be in writing and sworn to. R. S. c. 115, § 54.** 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 certified by the justices, on paying therefor twelve cents a page.

73 Me. 273.

**Sec. 55. Administration of oath. R. S. c. 115, § 55.** If, on such examination and hearing, the justices are satisfied that the debtor's disclosure is true, and they do not discover anything therein inconsistent with his taking the oath, they may administer it to him as follows:—

“I, ———, solemnly swear” (or “affirm”) “that I have not 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 entrusted to any person, any of my real or personal property, to secure it, or to receive any benefit from 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.”)

21 Me. 55, 110; 24 Me. 512; 25 Me. 426; 26 Me. 201; 27 Me. 426; 39 Me. 356; 57 Me. 413; 61 Me. 36; 66 Me. 483; 67 Me. 44; 68 Me. 376; 87 Me. 438; 91 Me. 150; 104 Me. 18; 106 Me. 124.

**Sec. 56. Attachable property disclosed, which cannot be come at, how appraised and set off. R. S. c. 115, § 56.** When, from such disclosure, it appears that the debtor possesses or has under his control bank-bills, notes, accounts, bonds or other contracts, or other 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, the property may be assigned and delivered by the debtor to him, and applied toward 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 there-

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on, 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.

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; 78 Me. 310.

**Sec. 57. Creditor may accept it with thirty days; if not, it to be returned to the debtor. R. S. c. 115, § 57.** 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 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.

**Sec. 58. Form of justices' certificate of discharge. R. S. c. 115, § 58.** After the oath is administered and the property disclosed is secured, the justices shall make out and deliver to the debtor a certificate under their hands and seals in the form following:

## "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.)

[L. s.] "We, the subscribers, two disinterested justices of the peace in

[L. s.] 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, 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 twenty-third chapter of the revised statutes; that in our opinion he is clearly entitled to the benefit of the oath prescribed in section fifty-five thereof; and that we have, after due caution, administered it to him.

Witness our hands and seals, this — day of —, A. D. 19—.

— —, chosen by the —.

— —, chosen by the —."

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. 194; 66 Me. 483; 74 Me. 329.

**Sec. 59. Effect of such certificate. R. S. c. 115, § 59.** 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 such 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 sixty-three and seventy-six.

20 Me. 75; 24 Me. 452; 87 Me. 120.

**Sec. 60. Release by creditor. R. S. c. 115, § 60.** 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; with the same effect as a discharge or disclosure.

35 Me. 274; 87 Me. 120.

**Sec. 61. After discharge judgment still in force. R. S. c. 115, § 61.** 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.

<sup>20</sup> Me. 75; <sup>36</sup> Me. 485; <sup>87</sup> Me. 120.

**Sec. 62. Preservation of creditor's lien on real estate disclosed. R. S. c. 115, § 62.** If an execution debtor discloses 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.

<sup>31</sup> Me. 57; <sup>87</sup> Me. 120.

**Sec. 63. Lien on personal estate disclosed; effect, if debtor or other person conceals it. R. S. c. 115, § 63.** If he discloses personal estate liable to be seized on execution, the creditor shall have a lien on it for thirty days, or so much of it as the justices, in their record, judge necessary; 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 fifty-eight; 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 bodies of the debtor and other persons so aiding; but the payment thereof is a satisfaction of the original debt.

<sup>20</sup> Me. 468.

**Sec. 64. Bond taken on execution to be returned with it, and creditor to have copy. R. S. c. 115, § 64.** 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.

**Sec. 65. Amount recoverable thereon, if forfeited. R. S. c. 115, § 65.** 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 year, after breach of the bond.

<sup>15</sup> Me. 340; <sup>16</sup> Me. 356; <sup>18</sup> Me. 122; <sup>20</sup> Me. 376; <sup>22</sup> Me. 162; <sup>23</sup> Me. 27, 103, 246;  
<sup>24</sup> Me. 124; <sup>27</sup> Me. 104; <sup>39</sup> Me. 435; <sup>44</sup> Me. 78; <sup>63</sup> Me. 166; <sup>68</sup> Me. 484; <sup>72</sup> Me. 262;  
<sup>74</sup> Me. 330; <sup>78</sup> Me. 583; <sup>91</sup> Me. 481; <sup>92</sup> Me. 248; <sup>105</sup> Me. 293, 300; <sup>109</sup> Me. 102;  
<sup>127</sup> Me. 287.

#### Arrests for Taxes.

**Sec. 66. Persons arrested for taxes, and officers for not collecting taxes, to be treated as poor debtors. R. S. c. 115, § 66.** Any person arrested or imprisoned on a warrant for the collection of a public tax, and every constable, collector or deputy sheriff, arrested or imprisoned for default in collecting taxes committed to him, has the privileges, and is 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 ex-

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empts any property from distress for taxes, except those implements, tools, and articles of furniture which are exempt from attachment for debt.

19 Me. 326; 39 Me. 346; 73 Me. 283.

### General Provisions.

**Sec. 67. Manner of selecting the justices to take the disclosure.** R. S. c. 115, § 67. 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 the debtor is not in charge, the officer who might serve the precept on which he was arrested; and in such 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.

21 Me. 209; 23 Me. 27, 493; 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. 383; 39 Me. 506; 47 Me. 30, 149; 49 Me. 436; 50 Me. 335; \*54 Me. 205, 388; \*56 Me. 183; 60 Me. 268; 61 Me. 37; \*65 Me. 220; 71 Me. 578; 74 Me. 329; \*91 Me. 149; 115 Me. 357.

**Sec. 68. Municipal and Police court judges.** R. S. c. 115, § 68. The judge of a municipal or police court has the same powers, duties, and obligations under this chapter, as a justice of the peace in his county.

**Sec. 69. Criminal not precluded from oath.** R. S. c. 115, § 69. No conviction, or other disqualification to be a witness, precludes a debtor from relief under this chapter.

**Sec. 70. Costs for creditor, if debtor is not discharged.** R. S. c. 115, § 70. If a debtor fails in an 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 sixty-three and seventy-six.

73 Me. 498.

**Sec. 71. Proceedings when debtor twice refused discharge.** R. S. c. 115, § 71. A debtor who has been twice refused a discharge, shall not again disclose before such justices; but may apply to a justice 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 proceedings relating to such disclosure, oath, discharge, and disposal of the property disclosed shall be the same as in disclosures before such justices, and shall have like effect.

48 Me. 74.

**Sec. 72. Other evidence or depositions may be used.** R. S. c. 115, § 72. In 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. 73. Bond, when valid.** R. S. c. 115, § 73. 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.

See § 50; 23 Me. 103; 24 Me. 547; 31 Me. 351; 49 Me. 99, 439, 453; 68 Me. 376.

**Sec. 74. Limitation of suits on bonds. R. S. c. 115, § 74.** No suit on any bond herein authorized shall be sustained unless commenced within one year after the forfeiture; except that the provisions of sections ninety-nine and one hundred of chapter ninety-four are applicable to such suits.

<sup>10</sup> Me. 402.

**Sec. 75. Creditors not to be cited to hear disclosures on islands, except in certain cases. R. S. c. 115, § 75.** In no case under this chapter, shall a creditor be cited or notified to attend a disclosure upon any island not connected with the mainland by a bridge, unless at the time of said disclosure, the debtor resides upon such island, and was arrested in the county where the same is situated; and disclosures made in violation of this section are void.

#### False Disclosures and Aiding in Fraudulent Conveyances.

**Sec. 76. Liability of a debtor, if he discloses falsely. R. S. c. 115, § 76.** When a debtor, herein authorized or required to disclose on oath, wilfully discloses falsely, or 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, be 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.

<sup>41</sup> Me. 91; <sup>57</sup> Me. 414; <sup>71</sup> Me. 77; <sup>113</sup> Me. 244.

**Sec. 77. Persons aiding in fraudulent concealment or transfer, are liable to double damages. R. S. c. 115, § 77.** 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, is 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.

<sup>25</sup> Me. 254; <sup>57</sup> Me. \*412, 414, 418; <sup>59</sup> Me. 240; <sup>60</sup> Me. 228; <sup>67</sup> Me. 369; <sup>68</sup> Me. 78; <sup>71</sup> Me. 179, 216; \*<sup>73</sup> Me. 238; <sup>74</sup> Me. 349; <sup>98</sup> Me. 469; \*<sup>115</sup> Me. 264; <sup>118</sup> Me. 30.

#### Damages on Bonds.

**Sec. 78. In action on bond, if debtor has taken oath, only actual damages can be recovered. R. S. c. 115, § 78.** In 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 the assessors who issued such warrant, and had been allowed by two justices of the peace 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 fifty-five, the damages shall be assessed by the jury, at the request of either party;

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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, although it may contradict the record and certificate of the magistrates who administered the oath.

See § 65; 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; 68 Me. 201; 74 Me. 330; 78 Me. 310.

**Sec. 79. Effect of new judgment on such bond; costs. R. S. c. 115, § 79.**

If the whole amount due on the execution or warrant of distress is recovered in 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 is more than twenty dollars, the plaintiff shall recover full costs although the amount of damages recovered is less than twenty dollars. If the verdict or judgment is that the creditor has sustained no damage, neither party recovers costs.

25 Me. 113; 34 Me. 24.

**Wilful Trespass.**

**Sec. 80. Disability of persons committed for wilful trespass. R. S. c. 115, § 80.** When, in the trial of an action of trespass on property, the court, jury or magistrate, determines that such trespass was committed wilfully, 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 fifty-five, no notice shall be issued to the creditor until at least thirty days after his commitment.

See c. 95, § 59.

**Support of Debtors in Jail.**

**Sec. 81. Prison keeper may require creditor to support debtor; board for one week to be paid in advance. R. S. c. 115, § 81.** When a person is committed to jail on mesne process or execution or 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 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 is entitled to pay for board only on the first execution, to be paid 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.

29 Me. 557; 36 Me. 403; 63 Me. 258; \*66 Me. 125; 71 Me. 407; 87 Me. 257; \*107 Me. 41.

**Sec. 82. Adjustment of price of support. R. S. c. 115, § 82. 1917, c. 136.**

1919, c. 20. In case of dispute about the price of such support, the county commissioners may determine it, not exceeding seventy-five cents a day.

### Provisions Relating to Debtors to the State.

**Sec. 83. State debtor may apply to a justice of the supreme judicial court. R. S. c. 115, § 83.** Any person committed to jail 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 in the county or not; who shall appoint a convenient time and place to inquire into the circumstances of the petitioner; and shall 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. 84. Proceedings, and power to release debtor. R. S. c. 115, § 84.** Such 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 fifty-five.

**Sec. 85. Justice may release him or discharge the debt on payment or security of part. R. S. c. 115, § 85.** If, on examination, it appears to such 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, and to be deposited with such public officer, as such justice shall direct.

**Sec. 86. Jailer to comply with the decision. R. S. c. 115, § 86.** 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. 87. Adjudication to be recorded. R. S. c. 115, § 87.** If such proceedings are had when the supreme judicial court is not in session for the county, such justice shall cause his adjudication and discharge to be entered of record as of the last preceding term of the court therein.

**Sec. 88. Powers of county commissioners. R. S. c. 115, § 88.** The county commissioners, at a regular session, or a majority of them in vacation, may on application, exercise the powers, and their proceedings shall have the effect, provided in the five preceding sections.

**Sec. 89. Application by such debtor to take oath; notice. R. S. c. 115, § 89.** A person committed on execution as mentioned in section eighty-three, desiring to take the oath provided in section fifty-five, 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 hereinbefore 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 for 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 hear-

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ing it, may, if they see cause, administer an oath and grant a certificate to the debtor as hereinbefore provided, with verbal alterations to conform to the case.

Note. Attorney at law arrested on execution issued on judgment for money collected, shall not have citation to disclose for ninety days, c. 92, § 36; proceeding upon judgments against sheriffs, c. 93, § 21; against warden of state prison, c. 152, § 30.

Release of insane person arrested or imprisoned on mesne process or execution, c. 112, § 38.

Persons committed to jail on warrant for abatement of a nuisance may have benefit of this chapter, c. 26, § 21; also respondents in bastardy process, after remaining in jail ninety days, c. 110, § 10.

Debtors on executions issued on judgments for money lost by gambling, to be committed for three months, and may then have benefit of this chapter, c. 136, § 8.

Debtors for penalties under law against lotteries shall not have benefit of this chapter, c. 140, § 18.