

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

United States and of the State of Maine,

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

APPENDIX.

PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

Augusta:

PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE.

.....
1841.

ERRATA.

PAGE 65, section 27, line 18, after "not," read "to."

92,	46,	1, for "She," read "The."
119,	5,	3, after "fife," for "a," read "or."
138,	62,	6, for "offier," read "officer."
405,	13,	1, for "28," read "13."
414,	3,	3, for "couuty," read "county."
440,	31,	4, in a few copies, for "on," read "or."
453,	28,	2, ————— for "necessay," read "necessary."
500,	23,	2, of the margin, for "dease," read "cease."
619,	24,	2, for "administrator of any contractors," read "administrators of any contractor."

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837, 2d column,	1, dele "MILITIA," so as to read OFFICERS of the state prison.
842, 2d	46, for "527," read "537."
851, 1st	62, for "610," read "616."
857, 2d	14, for "163," read "162."
867, 2d	49, for "568," read "508."
875, 1st	14, for "wring," read "rung."
880, 1st	54, for "775," read "475."

SECT. 99. Any person, who has become bail for another, may, before the action is entered in court, exonerate himself from all liability by surrendering his principal to the common jail in the county, where the arrest was made, or in the county where the writ is made returnable, leaving with the jailer of such county, within fifteen days after such commitment, an attested copy of the writ or process, whereby the arrest was made, and of the return indorsed thereon, and of the bail bond; and such jailer shall receive the person into his custody, in the same manner as if the officer, who made the arrest, had committed him; and provided, that such bail should have notified, in writing, the plaintiff or his attorney, of the time when, and place where the principal has been committed, within fifteen days after such commitment.

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

SECT. 101. No person shall be arrested, in any civil action, on mesne process or execution, or on any warrant of distress for taxes, on the fourth day of July, or on the day of the annual fast or thanksgiving.

SECT. 102. On the day of any military training, inspection, review or election, no officer, whose duty it may be to attend, and no soldier, who is enrolled as such, liable to do military duty, and shall have been duly notified to attend on said days, shall be arrested on mesne process or execution, or for taxes as aforesaid.

SECT. 103. No elector shall be arrested, except for treason, felony, or breach of the peace, on the days of election of United States, state and town officers.

ARTICLE V. LORD'S DAYS.

SECT. 104. No person shall serve or execute any civil process, from midnight preceding, to midnight following the Lord's day; but such service shall be void, and the person, executing such process, shall be liable in damages to the party aggrieved, in like manner, as if he had not had any such process.

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Surrender of principal before court. 1821, 67, § 1. 1831, 522. 16 Mass. 218.

Surrender of principal by bail, in a bastardy process. 1836, 210, § 2.

Freedom from arrest on fourth of July, and on fast and thanksgiving days. 1836, 232, § 1.

Freedom of officers and soldiers from arrest on training days. 1836, 232, § 2. 16 Maine, 132.

Freedom of electors from arrest on election days. Const. art. 2, § 2. 8 Greenl. 187.

Civil process not to be served on Lord's days. 1821, 9, § 9. 15 Pick. 465.

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SECTION 1. No action shall be entered in the supreme judicial court, or district court, after the first day of the session thereof, without the special permission of the court; and no suit, process or proceedings, pending in any court, shall be discontinued, by reason of such court not having been held at any stated term, or at any adjournment thereof; but they shall be respectively returned to, and have day in the term or session, which shall be held next after such failure.

SECT. 2. When the defendant shall have been duly served with process, and return thereof made, according to the mandate of the

Time of entry. Provision, if the court be not held. 1821, 59, § 14.

Default of defendant, if he fail to appear. Proviso.

CHAP. 115.

1821, 59, § 15.

writ, or order of a judge of the court indorsed thereon, and he shall not appear by himself or attorney, his default shall be recorded, except as hereinafter provided; but such default shall be erased or taken off, by leave of court, or without such leave, if the defendant shall appear in court in person or by attorney, at any time before the jury are dismissed, and pay to the plaintiff such costs as the court shall order: and if, by the return of the officer or otherwise, it appears to the court, that the defendant has not had sufficient notice, they may order such further notice, as they may think proper.

Proceedings, if defendant were out of the state, at the time of service.

1821, 59, § 7.

1 Mass. 341.

12 Pick. 569.

18 Pick. 417.

Same subject.

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

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

Bond to be given, if absent defendant be defaulted, not having received notice.

1821, 59, § 7.

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

Bond to be left with the clerk.

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

Right of review in one year, in such case.

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

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1821, 57, § 3.

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No process to abate for circumstantial errors.

SECT. 9. No summons, writ, declaration, plea, process, judgment or other proceedings in courts of justice, shall be abated,

arrested or reversed; for any kind of circumstantial errors or mistakes, when the person and case may be rightly understood by the court, nor for want of form only, and which by law might have been amended.

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

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

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

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

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

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

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

CHAP. 115.

1821, 59, § 16.
13 Pick. 90.
20 Pick. 38.

Amendment of such defects.
1821, 59, § 16.
3 Mass. 208.
6 Greenl. 307.
16 Maine, 263,
266, 282.

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1835, 178, § 4.

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1835, 178, § 5.

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1835, 178, § 1.

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1821, 59, § 26.

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1830, 463, § 1.

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1835, 183.

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

Defendant may plead specially, or general issue with a brief statement. Counter brief statement. 1831, 514. 1 Fairf. 256. 2 Fairf. 157, 213. 13 Maine, 36. 16 Maine, 34, 422. 21 Pick. 404.

SECT. 18. The defendant may, in all cases, plead the general issue, which shall be joined by the plaintiff, and he may give in evidence any special matter in defence, when the issue is to be joined to the country; provided, that he shall, at the same time, file in the cause a brief statement of such special matter; to which the plaintiff may, within such time as the court shall direct, file any counter brief statement of any matter, on which he may rely, and give in evidence by way of avoidance of the matter contained in the brief statement of the defendant; or the defendant may, at his election, plead such matter specially, after the general issue is pleaded, in bar of the action, and by leave of court plead double.

Justification, in a suit for a libel. 1833, 73.

SECT. 19. In every suit for writing and publishing a libel, it shall be lawful for the defendant to give in evidence on the trial thereof, the truth of the matter charged as libelous; and the truth of such fact, being established, shall be a justification, unless it shall appear, that the matter charged as libelous, originated from corrupt or malicious motives.

Demurrer, and joinder.

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

Actions for penalties. 1821, 59, § 31.

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

Defendant may consent to be defaulted for a specified sum. Effect thereof. 1835, 165, § 6.

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

In case of demise of a joint promissor, the contract may be sued as several. 1821, 52, § 25.

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

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

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

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

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

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

SECT. 29. No demand shall be set off, unless it was originally payable to the defendant, in his own right, except as hereinafter is provided.

SECT. 30. Any demand, which has been assigned to the defendant, with notice to the plaintiff of the assignment, before the action was commenced, may be set off in like manner, as if it had been originally payable to the defendant; if the plaintiff shall, at any time, have previously agreed to receive it in payment, or part payment of his demand, or to pay the same to the defendant, and not otherwise.

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

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

SECT. 33. If there are several plaintiffs, the demand, set off, shall be due from them all jointly; if there are several defendants, the demand, set off, shall be due to them all jointly, except as is provided in the following section.

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

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

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

CHAP. 115.

Mutual demands may be set off.
1821, 59, § 19.
15 Maine, 268.
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14 Pick. 151.

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6 Greenl. 240.

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1 Metc. 80.

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6 Pick. 352.

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8 Pick. 342.

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2 Mass. 498.
3 Pick. 452.

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1821, 59, § 19.

Set offs, before municipal and police courts, and justices.
1821, 59, § 19.

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

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

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

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

SECT. 41. In actions, brought by or against executors, administrators or trustees, or others in their representative character, no demand shall be set off, that is due to or from such executors, administrators or trustees or others, in their own right.

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

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

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

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

SECT. 46. When 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, for which the action was brought, had been assigned before the commencement of the action; nor for any balance due from any other person, than the plaintiff.

SECT. 47. In actions in a municipal or police court, and before a justice of the peace, similar proceedings shall be had in respect to set offs, as those before prescribed; the demand in set off to be filed on the return day of the writ: provided, that in no case shall judg-

ment be rendered for the defendant for more than twenty dollars, CHAP. 115.
exclusive of costs of suit.

SECT. 48. After a demand has been filed in set off, the plaintiff shall not be allowed to discontinue his action; unless by consent of the defendant.

Plaintiff not to discontinue, after set off is filed.

SECT. 49. Whenever a cause is at issue, and it shall appear, that the trial will require an investigation of accounts, or an examination of vouchers, the court may appoint, by consent of parties, one or more auditors to hear the parties, and examine the vouchers and proof, and to state the accounts and make a report thereof to the court.

11 Mass. 206.
Court may appoint auditors, in certain cases. 1821, 59, § 25. 1826, 347, § 1. 11 Pick. 359. 1 Metc. 216.

SECT. 50. The auditors shall give notice to the parties, of the time and place of hearing them, and may adjourn, as may be found necessary.

Auditors to notify parties.

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

Majority may decide, after hearing by all.

SECT. 52. Witnesses may be summoned and compelled to attend before the auditors, as before referees, and may be sworn by any such auditor.

Witnesses may be compelled to appear. 1826, 347, § 1.

SECT. 53. The court may discharge the auditors, and appoint others, or may recommit their report for revision.

Discharge of auditors. 4 Pick. 283.

SECT. 54. If there is no legal objection to the report of the auditors, it may be used by either party as evidence, on the trial of the cause before the jury; but shall be open to be impeached or disproved by other evidence.

Report may be read in evidence. 1821, 59, § 19. 1826, 347, § 1. 11 Pick. 359.

SECT. 55. The court shall allow reasonable compensation to the auditors, to be paid by the plaintiff, and taxed in his bill of costs, if he prevail in the suit.

Compensation. 1821, 59, § 19. 1826, 347, § 1.

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

Costs to prevailing party. 1821, 59, § 17. 13 Maine, 255. 1 Pick. 275, 452.

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

Proceedings, in actions of account. 1821, 59, § 24.

SECT. 58. When venires for jurors are returned to court, the clerk shall prepare, at the commencement of each term of the court, separate alphabetical lists of the names of the several persons, returned as traverse jurors; and the court at which such jurors attend, in empanneling the traverse jurors, shall cause the names of the first two persons, who shall attend, to be called, who shall be first sworn, and then the others in succession, as they shall be named on the list, and in such divisions as the court may direct, or all at the same time; and the first twelve shall compose the first jury, and the next twelve, on the same list, shall be empaneled and sworn in like manner, and shall compose the second jury.

Arrangement and empanneling of jurors. 1821, 84, § 10, 11.

CHAP. 115.

Supernumeraries. Transferring, or excusing jurors.
1821, 84, § 11.

SECT. 59. If there are supernumerary jurors, they may be excused from time to time, till wanted; and they may be placed on either jury, as occasion may require; and jurors may be transferred from one jury to the other, when the convenience of business may require it; and, for good reason, any juror may be excused.

Oath of traverse jurors.
1821, 84, § 12.

SECT. 60. The following shall be the form of the oath, administered to traverse jurors, in civil causes: "You and each of you swear, that in all causes betwixt party and party, that shall be committed to you, you will give a true verdict therein, according to the law and the evidence given you. So help you God;" and, 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."

Choice of foreman.
1821, 84, § 13.

SECT. 61. Each jury shall retire, after having been thus empaneled and sworn, and choose their foreman, by ballot, or make the choice upon retiring with the first cause, with which they shall be charged; and, whenever a foreman is absent, or excused from service, a new foreman shall be chosen, as aforesaid.

Talesmen.
1821, 84, § 8.

SECT. 62. When, by reason of challenge or other cause, a sufficient number of jurors, duly drawn and summoned, cannot be obtained for the trial of any cause, the court shall cause jurors to be returned from the by standers, or from the county at large, to complete the panel; provided, that there shall be on the jury not less than seven jurors, drawn and returned as before provided.

How returned.
1821, 84, § 8.

SECT. 63. Such jurors shall be returned by the sheriff, or his deputy, or a coroner, or such other disinterested person, as the court may appoint.

New jurors may be summoned in term time, in certain cases.
1821, 84, § 8, 14.

SECT. 64. The court may, when circumstances render the measure expedient, in term time, issue venires for as many jurors, as may be wanted; to be drawn, notified and returned, forthwith, or on a day appointed: and the court may, also, when in any county the business requires a protracted session, during the term, excuse all or any of the jurors originally returned, and issue venires for as many new jurors, as may be necessary to supply their places; who shall be drawn and notified to attend at such time, as the court may direct.

Challenge of jurors.
1821, 84, § 9.
6 Greenl. 307.

SECT. 65. 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, or has given or formed any opinion, or is sensible of any bias, prejudice, or particular interest in the cause; and, if it shall appear from his answers, or from any competent evidence, introduced by the party objecting to the juror, that he does not stand indifferent in the cause, another juror shall be called, and placed in his stead for the trial of the cause.

Manner of finding verdicts.
1821, 84, § 15.

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

Proceedings, if jury do not agree.
1821, 84, § 15.

SECT. 67. When a jury, not having agreed, return into court, stating the fact, the judge may, in his discretion, explain any questions of law, if proposed to him, or re-state any particular testimony,

and send them out again for further consideration ; but they shall not be sent out, a third time, in consequence of their disagreement, unless on account of some difficulties, not stated when they first came into court.

SECT. 68. In prosecutions for the recovery of any sum of money or other thing forfeited, it shall not be a cause of challenge to any juror, that he is liable to pay taxes in any county, town or plantation, which may be benefited by the recovery.

What interest will not disqualify a juror.
5 Mass. 90.

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

Objection to a juror, when to be made.
10 Pick. 477.

SECT. 70. No irregularity in the venires, or drawing, summoning, returning or empanneling jurors, shall be sufficient to set aside a verdict : unless the party, making the objection, was injured by the irregularity ; or unless the objection was made before the return of the verdict.

Irregularities in constituting juries, not to affect a verdict.
8 Greenl. 42.

SECT. 71. The clerks of the several courts, and any justice of the peace, may issue summonses for witnesses to attend before such courts, to give evidence concerning any matters there depending.

Who may issue summonses for witnesses.
1821, 59, § 38.

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

Competency, how far affected, by religious belief.
1833, 58.

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

Manner of administering oaths.
1821, 59, § 29.

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

Persons, conscientiously scrupulous, may affirm.
1821, 85, § 9.

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

Members of certain corporations, competent witnesses, where such corporations are interested.
1821, 87.
1832, 3.

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

14 Maine, 201.
3 Pick. 356, 462.
8 Pick. 518.
No improper influence to be exerted on jurors.
1821, 84, § 15.
6 Greenl. 141.

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

Value of property replevied to be found by the jury in certain cases.
1822, 136, § 2.

CHAP. 115.

Proceedings,
and judgment
in trials on
debtors' and
other bonds.
1830, 463, § 1.
1831, 497.
1839, 366, § 1.

bond, find and certify in their verdict, the value of the part belonging to the plaintiff, as it was at the time it was replevied; and, if such value shall not exceed twenty dollars, the plaintiff shall recover for costs, only one quarter part of such value.

SECT. 78. In any action, pending on the eighth day of February eighteen hundred and thirty nine, or, that is now, or shall hereafter be pending in any judicial court, or before any justice of the peace, on a bond given by any execution debtor, or by any person, arrested on a warrant of distress, to obtain a discharge from arrest or imprisonment, if it shall appear, that prior to a breach of any of the conditions of the same bond, the principal in such bond had been allowed, by two justices of the peace, quorum unus, or two justices of the peace and quorum, or a justice of the peace, and a judge of any municipal court, to take, and had taken, before such justices, the poor debtor's oath, after notice of the intentions of such debtor, to disclose the state of his affairs, and take such oath, issued by a justice of the peace upon the application of such debtor, or by written notice, signed by the debtor himself and served upon the creditor named in the bond, or upon the attorney of such creditor, the defendant shall have a right to have such action tried by a jury, who shall find and assess the damages, if any, the plaintiff has sustained; or if, in their opinion, he has not sustained any damages, they may return a verdict for the defendant, notwithstanding there may have been, in law, a breach of the conditions of the bond; and, in such action, the plaintiff may introduce any proper evidence, tending to shew, that the surety or sureties of such debtor had, in his or their hands and possession, at the time of the administration of said oath to the debtor, personal property, money, debts, credits or real estate, belonging to such debtor, sufficient in whole or in part to pay the execution referred to in the bond; and if the verdict be for the plaintiff, judgment shall be rendered thereon, without regard to the penalty of the bond. And, in any such action, on trial, before a municipal court, or a justice of the peace, similar proceedings shall be had, as to the question of damages, and the mode of entering up judgment; provided, that in no such case shall the jury, or the municipal court, or justice of the peace, give the plaintiff a larger sum in damages, than the amount of the debt and cost, mentioned in the execution, with interest thereon, and officer's fees. And in all actions upon any bond or penal sum, where the conditions of the same are different from those above mentioned, and in all actions in the supreme judicial court, on a recognizance, entered into in the district court, to prosecute an appeal with effect, if the jury shall find that any of the conditions of such bond or penal sum have been broken, they shall estimate the damages the plaintiff has sustained; and judgment thereupon shall be entered for the penal sum aforesaid; and execution shall issue for the damages assessed and costs.

Interest allowable, in actions of debt on judgment.
1821, 59, § 36.
No arrest of judgment.
1835, 178, § 6.

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

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

SECT. 81. In case of the death of either party in an action, pending in the supreme judicial court or district court, or before a municipal court, or any justice of the peace, the executor or administrator of the deceased, if the cause of action survive, may become a party to such action, such death being suggested on the record; and may prosecute or defend the same to final judgment: and the surviving party may cause the executor or administrator of the deceased party, to be served with a notice from the court, fourteen days before the sitting of the same, where the notice is made returnable, to appear and prosecute, or defend such action, as the case may be; and, upon the refusal or neglect of such executor or administrator, so to appear and become a party to the suit, the court may enter up judgment upon the nonsuit or default, as the case may be, in the form prescribed in chapter, one hundred and twenty.

SECT. 82. If any action or suit be brought by an unmarried woman, either alone or jointly with others; and she be married before final judgment, her husband may, on his own motion, be admitted as a party, to prosecute the suit with her, and with the other plaintiffs, if there be any, in like manner as if he had originally joined in the suit.

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

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

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

SECT. 86. If, during the pendency of any action, either party shall become insane, the action may be prosecuted or defended by his guardian, in like manner as if it had been commenced after the appointment of the guardian; or the court may appoint a guardian for the suit, as the case may require.

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

SECT. 88. On application for a writ of certiorari, mandamus, or

CHAP. 115.

Proceedings, in case of the death of a party to an action pending.
1821, 52, § 22.
3 Mass: 296, 321.

Proceedings, upon marriage of a feme sole plaintiff.

Proceedings, if a party die, before entry of an appeal.

Judgment on a general verdict, if any count be good.
1830, 463, § 3.

Costs, if plaintiff appeal from a justice's judgment, and do not increase the damages.
4 Greenl. 66.

Guardian may appear for a party, who has become insane.

Meaning of "double," or "treble costs."

Costs for respondents, on unsuccessful

CHAP. 115.

application for
certain writs
and processes.

Costs to be
paid, before
bringing a new
suit, after non-
suit or discon-
tinuance.

Liability for
costs, of an in-
dividual who
sues in the
name of the
state.

State liable for
costs, if such
action be for
its benefit.

State's attorney
to tax no travel.

Costs, if a
plaintiff bring
divers actions
at the same
court, which
might be joined.
1821, 59, § 19.
1822, 184.
10 Mass. 175.
9 Pick. 533.
17 Pick. 263.
Taxation of fees
for travel.
1821, 105, § 1.
1835, 165, § 4.

Taxation of fees
for attendance
in defaulted
cases.
1835, 165, § 5.

Costs not taxa-
ble in a suit on
a judgment,
where execu-
tion might is-
sue. Proviso.
1835, 178, § 2.

Costs for travel
of a corpora-
tion.

quo warranto, on behalf of any private person, or for any like process, the court, in their discretion, may allow costs to any person notified, and appearing as a respondent, and issue execution against the applicant.

SECT. 89. After a judgment for costs has been rendered against a plaintiff, on nonsuit or discontinuance, and a second suit for the same cause shall be brought, before the costs of the former suit shall have been paid, the court shall, on the same being made to appear, stay all proceedings, until such costs shall be paid; and may dismiss the suit, unless they are paid at such time as the court shall appoint.

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

SECT. 91. In any civil suit, instituted by the state, and for the use and benefit of the state, the state shall be liable for the defendant's costs, and judgment shall be rendered for them against the state, and the treasurer of the county, in which the trial is had, shall pay the amount to the defendant, on his production of a certified copy of the judgment, and the same shall be allowed to such treasurer, in his account with the state.

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

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

SECT. 94. The costs for the plaintiff's travel shall be taxed according to his or his attorney's distance from the place of trial, whichever is nearer, whether the plaintiff is payee, or indorsee; but no more than for forty miles' distance from the court, shall ever be allowed; unless the plaintiff himself shall actually travel more than that distance.

SECT. 95. In all actions, if the defendant is defaulted before the jury shall be empaneled and called to try the cause, the plaintiff shall tax only six days' attendance, except as provided in section, one hundred; and, if defaulted after the jury are empaneled and called, the cost may be restricted, as the court shall direct.

SECT. 96. No costs shall be allowed the plaintiff, in an action upon a judgment of any court, or justice of the peace, on which an execution might, at the time of commencing such action, have been issued and duly served on the judgment debtor; provided, this section shall not apply to a trustee process, founded on such judgment.

SECT. 97. When an aggregate corporation is entitled to costs, the travel shall be computed from the place where it is situated, if it is local in its nature; otherwise, from the place where its

business is usually transacted, not exceeding forty miles travel ; CHAP. 115.
unless the agent of such corporation shall travel a greater distance
to attend the court.

SECT. 98. Nothing in this chapter shall take away or control
the power of the court, to require payment of costs, or withhold
and refuse them, as the condition of an amendment or continuance. Court may con-
trol costs, in
certain cases.

SECT. 99. In actions on contract, in which an account is filed
in set off, although the damages, found for the plaintiff, shall not
exceed twenty dollars, he shall be entitled to full costs ; provided,
the jury shall certify, in their verdict, that the damages were reduced
as low as that sum, by means of the amount allowed by them, on
account of said set off, and as due upon it. Costs, in cases
of set off.
5 Grehl. 74.

SECT. 100. All actions, entered at any previous term, in the
supreme judicial court or district court, shall be called over by the
clerk, on the first day of each term ; and those, which are not then
defaulted, but further answered to, shall be entered on a trial docket,
made by the clerk, and travel and attendance shall be taxed in
such action, until the defendant shall allow the same to be disposed
of, unless the court shall otherwise direct ; but no more than ten
days' attendance, at any one term, shall be taxed, in any action, in
any case. Trial docket,
and costs in ac-
tions for trial.
1838, 336, § 1.

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

SECT. 102. Execution may be issued on any judgment in the
supreme judicial court or district court, after the expiration of twenty
four hours, after the same was rendered ; and shall be made return-
able within three months. When execu-
tions may issue,
and when re-
turnable.
1821, 60, § 3.
6 Mass. 20.
10 Mass. 356.
3 Greenl. 207.

SECT. 103. Executions issued by a justice of the peace shall
be made returnable in three months, from the day they were issued.

SECT. 104. No first execution shall be issued after the expira-
tion of one year, from the time judgment was entered ; except in
the case provided for, in the fifth section of this chapter.

SECT. 105. An alias or pluries execution may be issued, within
three years next after the day, on which the last preceding execu-
tion was returnable, and not afterwards. Justice execu-
tions, when re-
turnable.
1821, 60, § 3.
To issue within
one year after
judgment.
1821, 60, § 3.
5 Mass. 373.

SECT. 106. If the creditor, in the cases mentioned in the two
preceding sections, shall neglect to sue out execution, within the
times therein prescribed, he may sue out a writ of scire facias
against the debtor, to show cause why execution of the judgment
should not be done ; and if, after due notice, no sufficient cause be
shown, the court shall award execution for the amount due on the
judgment. May be renew-
ed within three
years.
1821, 60, § 3.
When scire fa-
cias is necessa-
ry.
1821, 60, § 3.

SECT. 107. On all executions, issued on judgments in civil
actions, or acknowledgments of debts, lawful interest shall be col-
lected. Interest to be
collected on ex-
ecutions.
1836, 250.

CHAP. 115.

Courts not to
be held on cer-
tain days.
1836, 232, § 1.

In actions of
trespass, court
or jury to de-
cide, whether
the trespass was
wilful.
1833, 51.

Damages on
dishonored
bills, payable
out of the state.
1821, 88, § 1.

Damages on
bills payable in
the state.
1821, 88, § 2.

Appointment of
surveyor in
certain cases.

Subsequent at-
taching credi-
tor, may peti-
tion for leave
to defend a pre-
vious suit.
1831, 508, § 2.
5 Pick. 410.
7 Pick. 542.
8 Pick. 165.
12 Pick. 199.
Manner of pe-
titioning.

lected by the officer, serving the execution, from the time judgment was rendered, or the debt became payable; and the clerk, or justice shall vary the form of executions, so as to embrace such interest.

SECT. 108. No court shall be held for trial of civil causes, on the fourth day of July, second Monday in September, nor any day designated, in this state, for the choice of electors of president and vice president of the United States, or for the annual fast or thanksgiving.

SECT. 109. In all actions of trespass on property, it shall be the duty of the court or magistrate, or court and jury, to inquire and determine, whether the trespass was committed wilfully; and, if such is found to be the fact, a record shall be made of that fact: and, when execution is issued on the judgment in the case, a memorandum shall be made on the margin of the execution, that the judgment was rendered for a trespass committed wilfully.

SECT. 110. When an action is brought on a bill of exchange, drawn or indorsed in this state, and payable in any place out of the state, but within the United States, and, being protested for non acceptance or non payment, the holder, in an action against the acceptor, drawer or indorser, shall recover not only the contents of the bill and interest, but in addition thereto shall recover damages, at the rate of three per cent. on the amount of the bill, if it be payable in either of the states of New Hampshire, Massachusetts, Vermont, Connecticut, Rhode Island or New York; and if in New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia or the district of Columbia, at the rate of six per cent; and, if in any other state, at the rate of nine per cent.

SECT. 111. If a bill of exchange be drawn, accepted or indorsed, in this state, for one hundred dollars or more, and payable in this state, at a place seventy five miles distant from the place where drawn, the damages against the acceptor, drawer or indorser, over and above the contents of the bill and interest, shall be one per cent. on its amount.

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

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

SECT. 114. The party, so petitioning, shall set forth, in his

petition, the facts on which he relies, and make oath to the truth of the same, or that he verily believes them to be true; and the court, in their discretion, may grant the prayer of the petition, or not, as they may judge proper.

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

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

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

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

SECT. 119. If it shall appear, by the verdict or otherwise, that the plaintiff made his attachment with intent to defraud or delay other creditors of the defendant, or that there was collusion between the plaintiff and defendant, for the purpose of defrauding or delaying such other creditors, such attachment shall be void.

SECT. 120. No action brought by any public officer, in his official capacity, shall abate, by reason of the death, resignation, removal, or expiration of the term of office of such plaintiff; but such action may be prosecuted by the successors in office of such plaintiff, to the uses for which such action was originally commenced; and the court, before which any such action may be pending, may order such amendments of the process, and such notices to said successors, as may be necessary, to carry into effect the provisions of this section.

CHAP. 115.

1831, 508, § 3.

Bond to be given, if he be allowed to defend.
1831, 508, § 4.
1 Metc. 39.

Entry on the record.
1831, 508, § 4.
Proceedings, if petitioner fail in his defence.
1831, 508, § 4.

Proceedings, and costs, if petitioner prevail.
1831, 508, § 5.
3 Fairf. 502.

If first attachment were fraudulent, it shall be void.
1831, 508, § 6.

Actions brought by public officers not to abate by their vacating their offices.

CHAPTER 116.

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

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| SECT. 1, 2. Civil jurisdiction of justices of the peace. | SECT. 7. Default and judgment on non appearance of defendant. |
| 3. Proceedings, if title to real estate be in question. | 8. Costs for defendant, if he recover. |
| 4. Recognizance to enter the action in the district court. | 9. Right of appeal, and effect thereof. |
| 5. Consequence of neglect. | 10. Appellant to recognize with sureties. |
| 6. Form and service of justice writs. | 11. To produce papers in the district court. |

**The following page(s) from
“An Act to Amend the Revised Statutes”
include amendments to this chapter.**

When a judge is interested, estate to be settled in the most ancient adjoining county. Transcript of proceedings to be recorded in the county where the estate belongs.

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

R. S. ch. 107.

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

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

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

R. S. ch. 108.

SECTION 17. The one hundred and eighth chapter shall be amended in the twenty fifth section, by adding at the close the following words: "or other appropriate action"; so that the section, as amended, shall be as follows:

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

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

R. S. ch. 114.

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

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

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

R. S. ch. 115.

SECTION 19. The one hundred and fifteenth chapter shall be amended, in section two, by striking out the words, "except as hereinafter provided," and inserting, instead thereof, the following words: "and the charge in the dec-

laration shall be taken and deemed to be true; and the court shall thereupon give such damages as they shall find, upon inquiry, that the plaintiff has sustained; unless the plaintiff shall move to have a jury to inquire into the damages, in which case the court shall enter up judgment for such damages as the jury shall assess," so that said second section, as amended, shall be as follows:

SECT. 2. When the defendant shall have been duly served with process and return thereof made, according to the mandate of the writ, or order of a judge of the court, indorsed thereon, and he shall not appear by himself or attorney, his default shall be recorded, and the charge in the declaration shall be taken and deemed to be true; and the court shall thereupon give such damages, as they shall find, upon inquiry, that the plaintiff has sustained, unless the plaintiff shall move to have a jury, to inquire into the damages, in which case the court shall enter up judgment for such damages as the jury shall assess. But such default shall be erased, or taken off by leave of court; or without such leave, if the defendant shall appear in court, in person or by attorney, at any time before the jury are dismissed, and pay to the plaintiff such costs as the court shall order. And if, by the return of the officer or otherwise, it appear to the court, that the defendant has not had sufficient notice, they may order such further notice as they may think proper.

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

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

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

SECT. 101. When a motion is made and filed in the supreme judicial court, that a verdict may be set aside, as being against law, or the direction of the court, or against evidence, the whole evi-

Default of defendant, if he fail to appear. Assessment of damages and judgment. Proviso. 1821, 59, § 15.

Tender in cases of involuntary trespass; also after a suit is commenced, and before entry; also in actions against towns for damages in consequence of defects in roads. 1821, 59, § 18. 1822, 182.

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

dence shall be drawn up in the form of a report, and signed by the presiding judge; and, if the motion shall be founded on any alleged cause, other than the rulings and instructions of the judge to the jury, the evidence, as to the facts stated in the motion, shall be heard, examined and reported by the judge, and, in either case, the action shall be continued, to be heard on the motion before the whole court.

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

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

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

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

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

Applications for review of actions, and actions of review.

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

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

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

SECT. 13. No petition for the entry of any such appeal or complaint shall be sustained, unless it be presented to the court, or filed in the clerk's office, within one year after the term at which the

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

R. S. ch. 117.

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

R. S. ch. 120.

Survivorship of applications for review and actions of review. 1821, 59, § 27, 28.

R. S. ch. 123.

Supreme judicial court, on petition, may allow entry of an appeal or complaint which was omitted through mistake or accident. 1821, 57, § 6.

District court may allow entry of an appeal or complaint, which was omitted through mistake or accident. 1821, 57, § 7.

Petitions therefor limited to one year. Attachments and