

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.

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1841.

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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| <p>SECT. 1, 2. Civil jurisdiction of justices of the peace.</p> <p>3. Proceedings, if title to real estate be in question.</p> <p>4. Recognizance to enter the action in the district court.</p> <p>5. Consequence of neglect.</p> <p>6. Form and service of justice writs.</p> | <p>SECT. 7. Default and judgment on non-appearance of defendant.</p> <p>8. Costs for defendant, if he recover.</p> <p>9. Right of appeal, and effect thereof.</p> <p>10. Appellant to recognize with sureties.</p> <p>11. To produce papers in the district court.</p> |
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- CHAP. 116.** **SECT. 12.** Justices may issue subpoenas for witnesses.
13. May adjourn their courts.
 14. Proceedings, if a justice be absent at the time appointed for holding a court.
 15. Justices not to be of counsel.
 16. May issue scire facias against administrators for waste, and against bail.
 17. May issue writs into other counties, in certain cases.
 18. Service of writs of scire facias.
 19. Justice's records. Proceedings, in case of his death.
 20. Records may be transcribed by another justice in certain cases.
 21. Copy of such transcription to be legal evidence.
- SECT. 22.** Justice may issue execution on such transcribed record.
23. Justice removing from the state, to deposit his records with the clerk of the courts.
 24. Administrator of deceased justice, so to deposit them.
 25. Penalty for neglect, in either case.
 26. Duty of the clerk in such cases.
 27. Proceedings, if justice die or remove, not having completed his records.
 28. Certain powers of justices, continued, after expiration of their commissions.
 29. Place where justice writs shall be returnable.
 30. All trials to be upon the general issue.

Civil jurisdiction of justices of the peace: 1821, 76, § 8. 1826, 324, § 2.

SECTION 1. Every justice of the peace, except those residing in any city or town, within which a municipal or police court now is, or may be established, and the judge of such court is not interested, shall have power to hold a court within his county, and shall have original and exclusive jurisdiction of all civil actions, wherein the debt or damages demanded do not exceed twenty dollars; excepting real actions, actions of trespass on real estate, actions for disturbance of a right of way, or of any other easement, and all other actions, where the title to real estate, according to the pleadings, or the brief statement, filed in the case by either party, may be in question: and in prosecutions for penalties, he may have jurisdiction, if otherwise entitled, notwithstanding his town may be interested in the penalty.

Same subject.

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

Proceedings, if title to real estate be in question. 1821, 76, § 11. 5 Mass. 125. 7 Mass. 385. 3 Greenl. 256. 4 Pick. 169. 10 Pick. 504. 17 Pick. 218.

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

Recognizance, to enter the action in the district court. 1821, 76, § 11.

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

Consequence of neglect. 1821, 76, § 10.

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

Form and ser-

SECT. 6. The writ, in civil actions, commenced before a justice

of the peace, shall be a summons, or a *capias* and attachment, and of the form prescribed in the one hundred and fourteenth chapter, and signed by the justice; and such writ shall be duly served not less than seven, nor more than sixty days, before the day therein appointed for trial.

CHAP. 116.
vice of justice writs.
1821, 76, § 8.

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

Default, and judgment, on non appearance of defendant.
1821, 76, § 8.

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

Costs for defendant, if he recover.
1821, 76, § 8.

SECT. 9. Any party, aggrieved by the judgment of the justice, may appeal to the next district court in the same county, and may enter such appeal at any time within twenty four hours, Sundays not included, after the judgment was rendered by the justice; in which case no execution shall issue, and the case shall be entered, tried and determined in the district court, in like manner as if it had been commenced there.

Right of appeal, and effect thereof.
1821, 76, § 10.

SECT. 10. Before such appeal is allowed, the appellant shall recognize with sufficient surety or sureties to the adverse party, if required by him, in a reasonable sum, with condition to prosecute his appeal with effect, and pay all costs arising after the appeal.

Appellant to recognize, with sureties.
1821, 76, § 10.

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

To produce papers in the district court.
1821, 76, § 10.
18 Pick. 464.

SECT. 12. Every justice may issue subpoenas for witnesses in civil actions, pending in the supreme judicial court, district court, or before county commissioners, himself, or any other justice, referees or auditors.

Justices may issue subpoenas for witnesses.
1821, 76, § 13.

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

May adjourn their courts.
1821, 76, § 13.

SECT. 14. Whenever a justice of the peace is unable, by reason of sickness, or other unforeseen cause, to attend at the time and place by him appointed for holding a court, any other justice in the county, who can legally try a cause between the parties in the pending suit, may continue such cause, once, not exceeding thirty days, and note such continuance on the writ in such suit; and, in case the disability of the justice, to whom the writ was returnable, is not removed at the expiration of the time of adjournment, such action may be entered before, and tried by, any justice of the peace of said county, at the time and place to which it was so adjourned, who may render judgment and issue execution accordingly.

Proceedings, if a justice be absent, at the time appointed for holding a court.
1834, 101.

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

Justices not to be of counsel.
1821, 76, § 13.

CHAP. 116.

May issue scire facias against administrators for waste, and against bail.

May issue writs into other counties, in certain cases. 1836, 210, § 3.

Service of writs of scire facias.

Justice's records. Proceedings, in case of his death. 1821, 76, § 15.

Records may be transcribed by another justice, in certain cases. 1821, 76, § 15. Copy of such transcription to be legal evidence.

Justice may issue execution on such transcribed record.

Justice removing from the state, to deposit his records with the clerk of the courts. 1826, 329, § 1. Administrator of deceased justice so to deposit them. 1826, 329, § 1.

Penalty for neglect, in either case. 1826, 329, § 1.

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

SECT. 17. In all cases of scire facias against bail, or the indorser of a writ, or executors or administrators, and in all trustee processes, or original writs against two or more defendants, in proceedings before a justice of the peace, or a judge of the municipal or police court, where the defendant or trustee resides out of the county, where the proceedings are had, such justice or judge may direct the writ or execution to any proper officer of the county, where the defendant or trustee resides; and such officer shall charge fees for travel, from the place of his residence to the place of service only, and postage for receiving and returning the execution.

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

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

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

SECT. 21. A copy of such transcription, attested by the transcribing justice, or otherwise proved to be a true copy of the same, shall be legal evidence in all cases, where an authenticated copy of the original might be received.

SECT. 22. On such transcribed record, the justice may issue execution, in the same manner, as if the judgment had been rendered by himself; changing the form, as the circumstances shall require; but no such execution shall issue, after the expiration of one year from the time the judgment was rendered, unless after scire facias.

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

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

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

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

CHAP. 116.

Duty of the clerk, in such cases.

1826, 329, § 2.
Proceedings, if justice die or remove, not having completed his records.
1831, 498, § 1.

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

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

Certain powers of justices continued, after expiration of their commissions.
1821, 76, § 16.
1829, 441.

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

Place, where justice writes shall be returnable.

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

All trials to be upon the general issue.
14 Mass. 273.

CHAPTER 117.

OF THE LEVY OF EXECUTIONS ON PERSONAL PROPERTY.

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| <p>SECT. 1. Officer to set off executions against each other.</p> <p>2. What goods may be taken and sold on execution.</p> <p>3. Money may be so taken.</p> <p>4. Time of sale of goods on execution.</p> <p>5. Manner of advertising.</p> <p>6, 7. Adjournment of sale.</p> <p>8. Officer may require indemnity.</p> <p>9. Re-sale, if purchaser refuse to take the goods.</p> <p>10. Officer's return to specify the goods sold. Penalty for violation of his duty.</p> <p>11. Disposal of proceeds of sale.</p> <p>12. Sale of a building, or rents and profits thereof, on execution, for the ground rent.</p> <p>13. Shares in incorporated companies may be sold.</p> <p>14. Notice of seizure on execution.</p> | <p>SECT. 15. If attached, sale as of other chattels.</p> <p>16. Officer of the corporation to certify the shares owned by the debtor.</p> <p>17. Purchaser entitled to a certificate of the shares.</p> <p>18. Purchaser entitled to dividends after the attachment.</p> <p>19. Manner of giving notice of sale.</p> <p>20. Sale of franchise of a corporation, and notice therefor.</p> <p>21. Mode of selling.</p> <p>22. Delivery of possession.</p> <p>23. Rights and liabilities of the purchaser.</p> <p>24. Right of redemption.</p> <p>25. Mode of applying proceeds of sale on several executions.</p> <p>26. Notice of second attachment to be given to the first attaching officer, in certain cases.</p> |
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