

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.

SECT. 14. If the bail shall, at any time before final judgment in the original suit is rendered, or upon the return of the scire facias and before final judgment thereon, bring the principal before such justice, and procure the attendance of the sheriff, his deputy, or a constable of the town, in which the court is holden, to receive such principal; such justice shall make a record of such surrender, and shall order him into the custody of such officer; and he shall commit the principal to jail, to be proceeded with as mentioned in the eleventh and twelfth sections; and, on payment of costs arising on the scire facias, the bail shall be fully discharged.

CHAP. 118.

Surrender, and commitment of principal, in such case. 1821, 67, § 5. 15 Mass. 535.

SECT. 15. It shall be the duty of the officer to attend before such justice, for the purpose aforesaid, when so requested; and, for so doing, he shall be allowed the same fees as for arresting and committing defendant on mesne process; and, for neglect of official duty in the above case, he shall be answerable for all damages to the party injured thereby.

Officer's duty, and fees. 1821, 67, § 7.

SECT. 16. When the principal is surrendered to such justice, after final judgment in the original action, the bail shall deliver to the officer a copy of the entry of the surrender, which entry the justice is bound to make, attested by the justice; and the officer shall deliver the same to the jailer, on committing the prisoner to his custody; and this shall be a sufficient warrant to the officer, for receiving and conveying him to jail, and to the jailer, for holding him in custody.

Surrender, in such case, after judgment. 1821, 67, § 6.

SECT. 17. If the principal is surrendered, before final judgment in the original suit, the bail shall deliver to the officer a copy of the original writ, with the return indorsed thereon, attested by the justice; and the officer shall deliver the same copy to the jailer; and this shall be a sufficient warrant to the officer and jailer, as mentioned in the preceding section.

Surrender, before judgment.

SECT. 18. 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.

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CHAPTER 119.

OF TRUSTEE PROCESS OR FOREIGN ATTACHMENT.

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SECTION I. All personal actions, except those of detinue, replevin, actions on the case for malicious prosecution, slander by writing or speaking, and those for assault and battery, may be commenced by foreign attachment, or trustee process, in the supreme judicial court or district court, or, when the amount demanded in damages is not less than five dollars, nor more than twenty dollars, before a municipal or police court, or a justice of the peace.

In what actions trustee process may be used.
1821, 61, § 1.
1824, 275, § 1.

SECT. 2. The writ shall be in the form heretofore established, authorizing an attachment of goods and estate of the principal defendant, in his own hands, as well as in the hands of the trustees; and may be varied from time to time, as the supreme judicial court may order.

Form of the writ.

SECT. 3. The officer, serving such writ, shall attach the goods and estate of the principal, of the value required, if so much can be found by him, and read the writ to him, or leave a copy of it, at his last and usual place of abode; which shall be a sufficient service on the principal, whether any trustee is holden or not.

Mode of service.
1821, 61, § 1.

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

Effect of service on the trustee.
1821, 61, § 1.

SECT. 5. If all the trustees live in the same county, the action shall there be brought, and, if they reside in different counties, the action shall be commenced in any [county], in which any one of them resides; and, in a trustee process against a corporation aggregate, such corporation, for this purpose, shall be considered as having its residence in the county, in which such corporation has its established or usual place of business, or shall have held its last annual meeting, or shall usually hold its meetings.

In what county the action shall be commenced.
1821, 61, § 1.
14 Mass. 132.
6 Greenl. 405.
22 Pick. 250.

SECT. 6. The plaintiff may insert the names of as many persons, as trustees; as he may deem necessary, at any time before the process is served on the principal, but not after; and he may cause a further service to be made on any of the trustees, if found expedient, if the service be 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.

Insertion of additional names of trustees.
1821, 61, § 2.

SECT. 7. When the principal is out of the state at the time of the service, and has no agent within this state, the same notice shall be given, as is provided in the twenty eighth section, of chapter, one hundred and fourteen; or the same proceedings may be had, as is provided in sections, two and three, of chapter, one hundred

Notice to principal, if absent from the state. Trustee may appear for him.
1821, 61, § 3.
1 Greenl. 325.

CHAP. 119. and fifteen, as they may be severally applicable, unless, in the mean time, he shall come 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 having been adjudged trustees, may appear in his behalf, and in his name plead and defend the cause.

What corporations may be summoned, as trustees.
1829, 442.

SECT. 8. All corporations, except counties, towns, school districts and parishes, may be summoned as trustees, and the writ served on them, as other writs on such corporations; and they may answer by attorney or agent, and make disclosures, which shall be signed or sworn to by such attorney or agent; and the same proceedings shall thereupon be had throughout, except necessary changes in form, as in other cases of foreign attachment.

Trustee, about to leave the state, may disclose before a justice.
1830, 469, § 1.

SECT. 9. When any person, summoned as trustee, is about to depart from the state, or go on a voyage and not return before the term of the court, where he is summoned to appear, he may apply to a justice of the peace and quorum of the county, where the trustee resides, for a notice to the plaintiff in the suit, to appear before him at a place and day appointed for taking the disclosure of such trustee.

Course of proceeding in such case.
1830, 469, § 1.

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

Any trustee may so disclose, by consent.
1830, 469, § 2.

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

An inhabitant of another state may be adjudged trustee.
1834, 139.
21 Pick. 263.

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

Effect, if defendant in a suit be summoned as trustee of the plaintiff.
1834, 95, § 1.

SECT. 13. Whenever an action is brought for the recovery of a debt, and the defendant has been, or shall be, summoned as a trustee of the plaintiff, the action shall be continued to await the disclosure of the trustee, unless the court shall otherwise order; and, if the defendant shall be 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.

Costs, in such case.
1834, 95, § 1.

SECT. 14. If the amount disclosed shall be equal to the sum recovered in the action, the trustee shall be liable to no costs, subsequent to the service of the trustee process upon him.

Same subject.
1834, 95, § 2.

SECT. 15. In such action, as is mentioned in the two preceding sections, the intervention of the trustee process shall not prevent the plaintiff from recovering his costs against the principal debtor, except as is provided in the preceding section.

Costs, if trustee be discharged the first term.
1821, 61, § 4.
1828, 382.

SECT. 16. If any supposed trustee shall come into court at the first term, and submit himself to examination on oath, after having in writing declared, that at the time of the service of the trustee process upon him, he had not any goods, effects or credits of the

principal in his hands or possession, he shall be entitled to his costs, in the same manner as in civil actions, where issue is joined for trial.

SECT. 17. If such person is adjudged trustee, he may deduct from the amount in his hands, the amount of such costs.

SECT. 18. Where such person shall be adjudged trustee for specific articles in his hands, he shall have a lien upon the same for his costs; and the officer, who shall dispose of the same on execution, shall pay such trustee the amount due him for costs, and deduct the same 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 the same shall be evidence of the lien.

SECT. 19. 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.

SECT. 20. If all the persons, summoned as trustees, shall be discharged, or the suit against them has been discontinued, the plaintiff shall not proceed against the principal defendant, unless there has been such a service of the original writ upon the principal, as would authorize the court to proceed against him to judgment in an action commenced in the ordinary form; but the principal, if he will, may assume the defence of the suit.

SECT. 21. When the trustee, at the time the writ was served on him, dwelt in any county, other than the one where the writ was 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 himself.

SECT. 22. If any person, belonging to the county; in which the writ is returnable, being summoned, shall neglect to appear and submit to examination at the return-term, and having no reasonable cause to the contrary, he shall be liable for all costs afterwards arising in the suit, to be recovered and paid out of his own goods or estate, if judgment be rendered for the plaintiff; unless recovered out of the goods or effects in the hands of the trustee, and belonging to the principal.

SECT. 23. When several trustees, resident in the county, where the action is pending, being summoned, shall neglect to appear, the judgment for costs shall be rendered against them jointly.

SECT. 24. Persons summoned as trustees, resident out of the county, where the suit is pending, shall not be liable for any costs, arising on the original process herein provided, and, if the person, summoned as trustee, is out of the state at the time the writ is served on him, and, if he shall appear at the first term of the court, after his return, he shall be allowed for his costs and charges in the same manner, as if he had appeared at the term when the action was entered.

SECT. 25. When the plaintiff does not support his action against the principal, the court shall award costs against him, as well in favor of the principal, as in favor of such persons summoned as trustees, severally, who have appeared and submitted to examination on oath; and several executions shall issue accordingly.

CHAP. 119.

8 Pick. 25, 298, 555.

21 Pick. 21.

If adjudged trustee, he may retain his costs. 1828, 382.

Lien for costs, on specific articles in his hands.

1826, 382.

14 Mass. 271.

Disclosure to be sworn to.

Proceedings against the principal, if trustees be all discharged. 1821, 61, § 5. 12 Mass. 36.

Additional compensation, if trustee dwell in another county. 1821, 61, § 4. 12 Pick. 529.

Liability of trustee for not appearing at the first term. 1821, 61, § 4.

Joint liability for costs, if several fail to appear. 1821, 61, § 4.

Exception, in favor of trustees residing out of the county, or absent from the state, at the time of service. 1821, 61, § 4. 10 Mass. 25.

If the action fail, costs for defendant and trustee. 1821, 61, § 5.

CHAP. 119.

No costs to trustee on discontinuance, unless he appear. 1821, 61, § 5.
Trustee, living out of the county, may appear by attorney. 1821, 61, § 6.

Proceedings in such case. 1821, 61, § 6.
Same subject. 1821, 61, § 6.

Disclosure, how sworn to. 1821, 61, § 6.

Trustee, not appearing, to be defaulted.

Trustee may submit a statement of facts to the court.

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

Such proof may be submitted to the court or a jury. 8 Pick. 67, 470.

Proceedings, if trustee disclose an assignment of the principal's claim. 1821, 61, § 7. 22 Pick. 83.

Assignee may be summoned. 1821, 61, § 7.

If he appear,

SECT. 26. When a person, summoned as trustee, does not come into court, and declare he had no property or credits of the principal in his hands, when the writ was served, and submit himself to examination on oath, the court shall not award costs in his favor, though the suit shall be discontinued.

SECT. 27. A person, summoned as trustee, and then living in a county other than that where the writ is returnable, shall not be required to appear in person in the original suit, or in a suit on scire facias; but he may appear by attorney, and declare whether he had any goods or effects of the principal in his hands, when the writ was served; and thereupon offer to submit himself to examination on oath.

SECT. 28. If the plaintiff shall proceed no further, such declaration shall be considered as true.

SECT. 29. If the plaintiff shall think proper to examine such supposed trustee on oath, the answers may be taken before a judge of the district court for the county, in which the trustee may dwell, or any justice of the peace of such county.

SECT. 30. In all cases, when a trustee has submitted himself to examination on oath, in court, the answers to such examination may be sworn to before a judge of such court, or a justice of the peace; and the same, being filed in court, shall have the same effect, as if sworn to in open court.

SECT. 31. When any person has been duly summoned as trustee, and neglects to appear and answer to the suit, he shall be defaulted, and be thereupon adjudged trustee, as alleged.

SECT. 32. If any person, summoned, shall admit, that he has, in his hands, goods, effects or credits of the principal, or shall wish to refer that question to the court upon the facts, he may, instead of the declaration before mentioned, make a declaration of such facts as he may deem 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.

SECT. 33. The answers and statements, sworn to by any person, summoned as a trustee, shall be considered as true; in deciding how far he is chargeable; but the plaintiff or trustee may allege and prove any other facts, not stated nor denied by the supposed trustee, which may be material in deciding that question.

SECT. 34. Any question of fact, arising upon such additional allegations, may, by consent, be tried and determined by the court, or may be submitted to a jury, in such manner as the court shall direct.

SECT. 35. When it appears, by the answers of any person summoned as a trustee, that any effects, goods or credits in his hands are claimed by a third person, in virtue of an assignment from the principal debtor, or in some other way, the court may permit such claimant, if he see cause, to appear and become a party to the suit, and maintain his right.

SECT. 36. Should such claimant not appear voluntarily, notice may be issued and served on him, in such manner as the court may direct.

SECT. 37. If such claimant shall appear, he may be admitted

as a party to the suit, so far as respects his title to the goods, effects or credits in question; and may allege and prove any facts, not stated or denied in the disclosure by the supposed trustee, and such allegations shall be tried and determined, in the manner before provided.

SECT. 38. If such assignee, having been duly notified, shall not appear in person or by attorney, the assignment shall have no effect to defeat the plaintiff's attachment.

SECT. 39. Upon the trial between the attaching creditor and the person claiming the same, as before mentioned, the principal defendant may be examined as a witness for either party, if there be no other objection to his competency, except his being a party to the original suit.

SECT. 40. All testimony, relating to the additional allegations of any party in such trial, shall be given by depositions, taken and filed in the usual manner.

SECT. 41. When the plaintiff shall recover judgment against the principal, and there shall be any person summoned as trustee, who shall not have appeared and discharged himself, and against whom the suit shall not have been discontinued, 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.

SECT. 42. If there be any agreement between the plaintiff and supposed trustee, that he may appear at a subsequent term of the court, instead of the first term, saving to such trustee all such advantages as he would have had, on appearing and answering at the first term, the court shall allow him all such advantages.

SECT. 43. 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 process of foreign attachment.

SECT. 44. If any person, who is summoned as a trustee in his own right, shall die before the judgment, if any, recovered by the plaintiff, shall be fully satisfied, the goods, effects and credits, in his hands at the time of attachment, shall remain bound thereby; and his executors or administrators shall be liable therefor, in like manner, as if the writ had been originally served on them.

SECT. 45. If the person, so summoned, shall die before judgment in the original suit, his executor or administrator may appear voluntarily, or may be cited to appear, in the same manner as is provided, in the case of the death of a defendant in a common action; and the further proceedings shall then be conducted in the same manner as if the executor or administrator had been originally summoned, as a 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.

SECT. 46. If, in such case, the executor or administrator shall not appear, the plaintiff, instead of suggesting the death of the testator or intestate, 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.

CHAP. 119.

his title to be tried.
1821, 61, § 7.
1 Greenl. 328.
5 Greenl. 410.

If he do not appear, his claim to be void.

1821, 61, § 7.

Principal defendant may be a witness.
1821, 61, § 7.

Testimony to be in writing.

Form of judgment against principal and trustee.

1821, 61, § 8.

Trustee may appear, by consent, at a subsequent term, as of the first.

Executor or administrator liable as trustee, for a debt or legacy.

7 Mass. 271.

If a person die, after being adjudged trustee, the goods and effects are held in the hands of the administrator.

2 Fairf. 34.

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

1821, 61, § 14.

If administrator do not appear, judgment may be rendered.

CHAP. 119. in the suit, for the amount so paid; in like manner as if the executor or administrator had been himself adjudged trustee.

If he do not pay, scire facias to issue.

SECT. 47. If the executor or administrator, in the case last mentioned, shall not voluntarily pay the amount in his hands, the plaintiff may proceed by writ of scire facias, in like manner as if the judgment in the first suit had been against the executor or administrator himself; as trustee: but, if such executor or administrator be discharged, he may recover costs or not, at the discretion of the court.

Proceedings, if trustee die, within thirty days after judgment is rendered.
15 Mass. 473.

SECT. 48. If any person, against whom execution shall issue as trustee, shall not be living at the expiration of thirty days after final judgment in the trustee suit, as provided in the eightieth section, the demand to be made, by force of the execution, for continuing the attachment, may be made of the executor or administrator of the deceased person at any time, within thirty days after the appointment of such executor or administrator; and it shall have the same effect, as if made within thirty days after the judgment.

Manner of issuing execution, if administrator be adjudged trustee.

SECT. 49. When an executor or administrator is adjudged trustee, for or on account of any goods, effects or credits in his hands or possession, merely as such executor or administrator, whether in a suit originally commenced against him as a trustee, or against the deceased testator or intestate, and whether the judgment be in the original suit, or on a writ of scire facias, the execution shall not be served on his own goods or estate, nor on his person; but he shall be liable for the amount in his hands, in like manner, and to the same extent only, as he would have been to the principal defendant, if there had been no foreign attachment.

Remedy on his bond, if he neglect to pay.

SECT. 50. If, after final judgment against an executor or administrator, for any certain sum due from him as trustee, he shall neglect to pay the same, the original plaintiff, in the foreign attachment, shall have the same remedy for recovering the amount, either upon a suggestion of waste, or by a suit on the administration bond, as the principal defendant in the foreign attachment would have had, upon a judgment recovered by himself, for the same demand against the executor or administrator.

Specific articles in trustee's hands, to be delivered to the officer.
1821, 61, § 13.
13 Maine, 420.

SECT. 51. When any person, summoned as a trustee, is bound to deliver to the principal defendant any specific articles, he shall deliver the same, or so much thereof as may be necessary, to the officer holding the execution; and the same shall be sold by the officer, and the proceeds applied and accounted for, in the same manner, as if they had been taken on execution in common form.

Remedy, if trustee refuse.

SECT. 52. If the trustee neglect or refuse to deliver the same, or sufficient to satisfy the execution, the judgment creditor may have his remedy on a scire facias, as provided in sections, from seventy four to seventy nine inclusive, of this chapter; and the debtor, his remedy for any overplus belonging to him, as at common law.

Mode of settling the value, as between the principal and trustee.
1821, 61, § 13.

SECT. 53. Whenever, 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, shall have been pointed out, it shall be the duty of the officer, on the application of the trustee, to notify the principal debtor; previously to the delivery, that the value may be thus ascertained, as far as it may affect

the performance of the contract: and, in other cases, the value of the property, as between the principal and the trustee, shall be estimated and ascertained by the appraisal of three disinterested men, one to be chosen by the trustee, one, by the officer, and one, by the principal, if he see cause; and, if he neglect or refuse, then the officer shall appoint two of said appraisers; and they shall all be duly sworn, to appraise the same; and the officer, justice and appraisers, shall certify their respective doings on the execution.

SECT. 54. When a part of such goods and articles shall be taken in execution, as aforesaid, the trustee may deliver the residue to the principal, or tender the same to him, within thirty days after satisfaction of the execution, in the same manner, as he might have delivered the whole.

SECT. 55. Any surplus money, remaining in the hands of the officer, after satisfying the execution and fees, shall be paid over to the principal, if within his precinct; and, if not, then to the trustee.

SECT. 56. Whenever a judgment creditor has caused the debtor to be committed in execution, and may afterwards discover goods, effects, or credits of the debtor, not attachable by the ordinary process of law, he may have the benefit of the trustee process, provided in this chapter, in the like manner as any other creditor; provided, that within seven days after the service of such process, he shall discharge the body of the debtor from prison, by a written direction to the jailer, stating the occasion and reason of the discharge.

SECT. 57. Such discharge shall not annul, or affect the judgment.

SECT. 58. When any person, summoned as a trustee, shall, in his disclosure, state, that he had, at the time the process was served on him, in his possession, property not exempted by law from attachment; but that the same was mortgaged, pledged or delivered to him by the principal defendant, to secure the payment of a sum of money due to such supposed trustee, and that the principal defendant has a subsisting right to redeem the same by payment of such money, the court or justice, before which the action is pending, shall order and decree, that, on payment or tender of such money, by the plaintiff to said alleged trustee, within such time as the court shall order, and while the right of redemption exists, the person, so summoned, shall deliver over the property to the officer serving the process, to be held and disposed of in like manner, 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; which order and decree shall be entered on the records of such court or justice.

SECT. 59. On the return of the scire facias against such alleged trustee, if it shall appear, that the plaintiff has, on his part, complied with the order and decree of the court or justice, and that such alleged trustee has refused or neglected to comply therewith, then the court or justice shall enter up judgment against him, for the amount of the sum due, and returned unsatisfied on the execution, if there should appear to be in his hands such an amount of the property mortgaged, over and above the sum received by such mortgagee or pledgee; but if not, then for the amount of said property, so exceeding the above sum, if any; which amount of excess

If part only be taken, the balance to be delivered to the principal.
1821, 61, § 13.

Officer to restore surplus proceeds of sale.
1821, 61, § 13.

Trustee process, after commitment of the debtor.
1821, 61, § 16.
14 Mass. 157.
1 Greenl. 158.
13 Maine, 420.

Effect thereof.
1821, 61, § 16.

Proceedings, if trustee disclose property mortgaged to him.
1835, 188, § 1.
16 Mass. 318.
13 Maine, 428.

Same subject.
1835, 188, § 1.

CHAP. 119. shall, on the trial of the scire facias, be determined by the court or jury.

Same subject.
1835, 188, § 1.

SECT. 60. If, by the disclosure, it appear, 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 secure the performance of any contract or condition, and, that the principal defendant has a subsisting right of redeeming the same, the court may order and decree, that, upon the discharge of such liability, or performance of such contract or condition, by the plaintiff, within such time, as the court or justice may order, and while the right of redeeming exists, such alleged trustee shall deliver over the property to the officer, to be by him held and disposed of; as if it had been attached.

Same subject.
1835, 188, § 1.

SECT. 61. It shall be the duty of the officer, selling on execution any personal property delivered to him in virtue of this chapter, after deducting the fees and charges of sale, to pay the plaintiff the sum, by him paid or tendered to the trustee, or applied in the performance of the contract or condition, or discharge or extinguishment of the liability before mentioned, and the interest from the time of such payment, tender or application to the time of sale; and so much of the residue as may be required therefor, he shall apply in satisfaction of the plaintiff's judgment, according to law; and he shall pay over the balance, if any, to the debtor; the trustee to receive of the officer his costs, accruing before the service of the scire facias, as before provided in the sixteenth and seventeenth sections of this chapter.

Trustee not prevented from selling the property mortgaged.

SECT. 62. 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 was paid or tendered, as before mentioned; provided, such sale would be authorized by the terms of the contract between him and the principal defendant.

Cases, in which a person shall not be adjudged trustee.

4 Mass. 102.

1821, 61, § 15.

4 Mass. 206.

3 Mass. 289.

5 Mass. 319.

SECT. 63. No person shall be adjudged a trustee in either of the following cases, namely:

First. By reason of having drawn, accepted, made or indorsed any negotiable bill, draft, note or other security, except in the cases provided in the sixty ninth section of this chapter;

Second. By reason of any money or other thing, received or collected by him, as a sheriff or other officer, by force of an execution or other legal process in favor of the principal defendant in the foreign attachment, although the same should have been demanded of him, previously, by the defendant;

7 Mass. 259.

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

1 Mass. 471.

3 Mass. 33, 68.

4 Mass. 235.

3 Pick. 1, 65.

6 Pick. 120.

Fourth. By reason of any money or other thing, due from him to the principal defendant, unless it is, at the time of the service of the writ upon him, due absolutely, and without depending on any contingency;

2 Mass. 94.

3 Mass. 121.

4 Mass. 170.

Fifth. By reason of any debt due from him on a judgment, so long as he is liable to an execution on the judgment;

Sixth. By reason of any amount due from him to the principal

defendant, as wages for his personal labor, for a time, not exceeding one month;

Seventh. Where service was made on him by leaving a copy, and, before actual notice of such service, or reasonable ground of belief, that the same has been made, he shall have paid the debt due to the principal defendant, or given his negotiable security therefor.

SECT. 64. If, during the pendency of an action, the defendant is summoned as the trustee of the plaintiff, the first suit may nevertheless proceed so far as to ascertain, by a verdict or otherwise, what sum, if any, is due from the defendant; but the court may, on motion of the plaintiff in the trustee suit, continue the same for judgment, until the termination of the trustee suit, or until the attachment therein shall be dissolved by the discharge of the trustee, or satisfaction of the judgment otherwise.

Proceedings, if defendant in an action pending, be summoned as trustee of the plaintiff.
3 Mass. 121.

SECT. 65. If the first suit be not continued, and judgment be rendered therein, the defendant shall not be adjudged afterwards a trustee, on account of the demand thus recovered against him, so long as he is liable to an execution on the judgment.

Same subject.

SECT. 66. If, before final judgment is rendered in the first suit, the defendant in that suit shall be adjudged trustee in the other, and shall pay 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 shall remain due and unpaid.

Same subject.
15 Mass. 185.

SECT. 67. Any money or other thing, due to the principal defendant, may be attached before it has become payable, provided, it be due absolutely and without any contingency, as before mentioned; but the trustee shall not be compelled to pay or deliver it, before the time appointed therefor by the contract.

Money or goods may be attached by trustee process, before they are payable.

SECT. 68. If the person, summoned as trustee, and liable for costs, as provided in the twenty second section of this chapter, shall not voluntarily pay them, when demanded by the officer, serving the execution, such officer shall state the fact in his return on the execution; and, if it appears by the return, that they have not been paid by any one, the court shall award execution against the person, so summoned as a trustee, for the amount of such costs.

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

SECT. 69. If any person, summoned as trustee, shall have in his possession any goods, effects, or credits of the principal defendant, which he holds under a conveyance, that is fraudulent and void, as to the creditors of the defendant, he may be adjudged a trustee on account of such goods, effects and credits, although the principal defendant could not have maintained an action therefor against him.

Goods, fraudulently conveyed, may be held by trustee process.

SECT. 70. Every trustee shall be allowed to retain, or deduct out of the goods, effects and credits in his hands, all his demands against the principal defendant, of which he could have availed himself, if he had not been summoned as trustee, whether by way of set off on a trial; or by a set off of judgments or executions between himself and the principal defendant; and he shall be liable for the balance only, after their mutual demands are adjusted.

Trustee may retain in his hands pay for any demand justly due him.
16 Mass. 473.
7 Greenl. 356.

CHAP. 119.

But not for unliquidated damages.

Form of judgment against a trustee.

Discharge of trustee, no bar to claim of principal.

Scire facias against trustee. 1821, 61, § 9. 21 Pick. 109.

Judgment on scire facias. 1821, 61, § 10.

Same subject. 1821, 61, § 10.

Same subject.

Liability for costs, if discharged on scire facias, not having been before examined. 1821, 61, § 9. 7 Greenl. 129.

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

SECT. 71. Unliquidated damages, on either side, for any wrongs or injuries, shall not be considered as embraced in the preceding section, as a subject of set off.

SECT. 72. When any person has been adjudged trustee, it shall not be necessary to specify in the judgment the sum, for which he is chargeable; but if, on a writ of scire facias against him, it shall appear that he is chargeable as trustee, the sum for which he is chargeable shall be expressed in the judgment.

SECT. 73. If any person, summoned as a trustee, be discharged, the judgment shall be no bar to an action, brought by the principal defendant against him for the same demand.

SECT. 74. When any person, who has been adjudged a trustee in the original action, shall not, on demand of the officer holding the execution, pay over and deliver to him the goods, effects and credits in his hands, and such execution shall be returned unsatisfied, the plaintiff may sue out a writ of scire facias against such trustee from the same court, or before the justice that rendered the judgment, to show cause, why judgment and execution should not be awarded against him, and his own goods and estate, for the sum remaining due on the judgment against the principal defendant.

SECT. 75. When such trustee, after such writ has been duly served on him, shall neglect to appear and answer to the same, he shall be defaulted; and, if he shall not have been examined in the original suit, judgment shall be rendered against him for the whole sum, remaining due on such judgment against the principal defendant.

SECT. 76. When there shall be more than one defendant in such writ of scire facias, and they are all defaulted, not having been examined in the original suit, the court may enter up joint or several judgments, according to the circumstances of the case, and issue execution in common form.

SECT. 77. If any trustee, who has been defaulted on the scire facias, shall have been examined in the original suit, judgment shall be rendered on the facts stated in his disclosure, or proved at the trial, for such part, if any shall remain in his hands, of the goods, effects and credits; for which he was chargeable as trustee, or so much thereof as shall be then due and unsatisfied on the judgment against the principal defendant; but, if it shall appear, that such person paid and delivered the whole amount thereof on the execution, issued on the original judgment, he shall not be liable for any costs on the scire facias.

SECT. 78. If the trustee appears and answers to the scire facias, and if he had not been examined in the original suit, he shall be liable to be examined in the same manner as he might have been on the original suit; and, if on such examination he shall appear not to be 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, then he shall not be liable to costs, nor shall he recover any costs.

SECT. 79. If he had been examined in the original suit, the court may permit or require him to be examined anew in the suit of scire facias, and, in such case, he may prove any matter, proper for

his defence, on the scire facias; and the court may render such judgment, as law and justice require, upon the whole matter appearing on such examination and trial.

CHAP. 119.

1821, 61, § 9.
21 Pick. 109.

SECT. 80. When any person is adjudged a trustee, if the goods, effects and credits, in his hands, shall not be demanded of him by virtue of the execution, within thirty days next after final judgment, the attachment of them by the original process shall be dissolved: and they shall be liable to another attachment in like manner, as though the prior attachment had not been made; provided, that in those cases, where the debt due from the trustee to the principal defendant is payable at a future day, or specific property is in the hands of the trustee, which he is bound to deliver at a future day, the attachment shall continue until the expiration of thirty days after such debt shall be payable in money, or the property aforesaid be demanded of the trustee.

Goods and effects liable to another attachment, if not demanded in thirty days. Exception.

SECT. 81. If there shall be no second attachment, the principal defendant in the suit may recover the goods, effects and credits, if not demanded as aforesaid within thirty days, in like manner, as if they had not been attached.

If there be no second attachment, principal may recover them.

SECT. 82. 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; and this shall be deemed a sufficient demand for all the purposes mentioned in the two preceding sections.

Demand, how made, if trustee be out of the state.

SECT. 83. The judgment against any person as trustee shall discharge him from all demands by the principal defendant, or his executors or administrators, for all goods, effects and credits, paid, delivered, or accounted for by the trustee, by force of such judgment.

Effect of judgment against trustee.
1821, 61, § 11.
1 Mass. 117.

SECT. 84. If he is afterward sued for the same by the defendant, or his executors or administrators, such judgment and disposition 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.

Same subject.
1821, 61, § 11.

SECT. 85. If any person, summoned as a trustee, [as] aforesaid, upon his examination, shall wilfully and knowingly answer falsely, he shall, on due conviction, be adjudged guilty of perjury; and shall be bound to pay, to the plaintiff in the suit, the amount of the judgment he may recover against the principal defendant, if the same be unsatisfied, or for such part as is unsatisfied, with interest and costs; to be recovered in a special action on the case.

Penalty, if trustee disclose falsely.
1821, 61, § 12.
16 Maine, 433.

SECT. 86. If any person, summoned as trustee, shall be prevented from appearing in the original suit, by absence from the state or any other reason, deemed sufficient by the court, and a default be entered against him, he shall not be liable for any costs on the scire facias; but, on his disclosure, the court may allow him his reasonable costs and charges, to be retained or recovered in like manner, as if he had appeared in the original suit.

Trustee exempt from costs on scire facias, in certain cases.

SECT. 87. When a trustee process is issued by a municipal or police court, or a justice of the peace, the writ shall be in the form

Form, and service, of trustee process for justice courts.

CHAP. 119.
1824, 275, § 1.

In what county
to be brought.
3 Fairf. 17.

Default, if trustee
do not appear.
1824, 275, § 2.

Costs, if discharged.
1824, 275, § 2.

May retain
costs, if adjudged
trustee.
1828, 382.

Costs, on discontinuance.
1824, 275, § 3.

Subsequent
proceedings.
1824, 275, § 5.

Discharge of
trustee, if judgment
be less than five dollars.
Exception.

How execution
shall issue, if
defendant or
trustee remove
from the county.
1836, 210, § 1.

Proceedings, if
trustee be discharged,
living in a county
different from
plaintiff or defendant.
10 Mass. 343.

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 shall be served in like manner, as a trustee process issued by a judicial court, seven days before the return day.

SECT. 88. The action may be brought in the county, where either of the supposed trustees resides; and, if brought in any other county, the action shall be dismissed, and the trustee shall recover his costs.

SECT. 89. When the person summoned does not appear and answer to the suit, he shall be defaulted and adjudged trustee; and be liable to costs on scire facias.

SECT. 90. If he appears at the return day and submits himself to examination on oath, and shall thereupon be discharged, he shall be allowed his legal costs.

SECT. 91. If, on such disclosure, he shall be adjudged trustee, he may retain the amount of his costs.

SECT. 92. When the plaintiff discontinues his suit against the principal or trustee, the trustee shall be allowed his costs.

SECT. 93. All subsequent proceeding in such causes shall and may be had, as are in this chapter prescribed, in trustee processes brought to, and pending in, the supreme judicial court or district court, varying forms as circumstances may require; except as is provided in the following section.

SECT. 94. When, in such trustee process before a municipal or police court, or a justice of the peace, the debt recovered against the principal, shall be a less sum than five dollars, the trustee shall be discharged; unless the judgment be so reduced, by means of a set off filed in the case.

SECT. 95. If, after a judgment has been rendered in a trustee process before a municipal or police court, or justice of the peace, the principal defendant or trustee shall remove out of the county in which it was rendered, such court or justice may issue execution against such debtor or trustee, directed to the proper officer of any other county, where he may be supposed to reside.

SECT. 96. When an action is brought against a trustee in a county, where the trustee resides, but where neither the plaintiff or defendant reside, and such trustee is discharged, or the action discontinued as to him, the action shall still proceed, unless it appear by plea in abatement, that such trustee was collusively included in the writ for the purpose of giving the court, in such county, jurisdiction; provided there was a legal service on the principal defendant.