

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

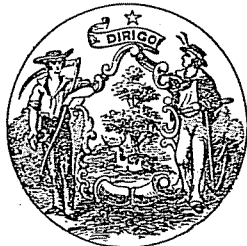
PASSED JANUARY 25, 1871;

TO WHICH ARE PREFIXED
THE CONSTITUTIONS

OF THE
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX.

BY AUTHORITY OF THE LEGISLATURE.



PORTLAND:
PUBLISHED BY BAILEY & NOYES.

TITLE NINE.

Civil Rights and Remedies.

- CHAP. 81. Commencement of civil actions; indorsement and service of writs; attachment of property; arrests; and limitation of civil actions.
82. Proceedings in civil actions in court.
 83. Trial Justices, their jurisdiction, and proceedings in civil actions.
 84. Levy of executions on personal property.
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 106. The selection and service of jurors.
 107. Depositions.
 108. Reference of disputes by consent of parties.
 109. Timber and cord wood, and how it may be disposed of in certain cases.
 110. Commissioners to take acknowledgment of deeds and other contracts, and depositions in other states.

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3. Justice writs to be signed and sealed.
4. Attachments and arrests on scire facias as on other writs.
5. Unknown defendant may be sued by an assumed name, and writ amended.

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- SEC. 6. What writs must be endorsed.
7. Liability of endorser. Suit within a year.
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- SEC. 9. Personal and transitory actions, where to be commenced. Transfer from one county to another.
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29. Living animals, or goods liable to perish or be kept at great expense, may be sold, without consent, after appraisal.
30. On request, officer to give notice of time and place of appraisal, and how; and cause appraisers to be chosen, and how.
31. Appraisers to be sworn, and appraise the property at its cash value.
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33. Bond may be sued by any creditor. Nature of judgment thereon. Money recovered, how applied.
34. How attaching creditor, not a party to suit on bond, may avail himself thereof, or of the judgment therein.
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37. Right by priority in case of sale, preserved.
38. Property attached and claimed by one not a party to suit, may be replevied in ten days after notice; and if not, to be sold by officer with consent of creditors, unless debtor forbids.

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- SEC. 39. Property of part owner attached, to be appraised and delivered to other owner on giving bond. Bond to be returned with writ and sued if forfeited.
40. Part owner so paying has a lien on the property, and may sell it; but if the attachment is dissolved, he shall restore it.

ATTACHMENT OF PROPERTY MORTGAGED OR PLEDGED.

- SEC. 41. Personal property mortgaged or pledged, may be attached by creditor redeeming it.
42. When mortgaged property is attached, no action against the officer till forty-eight hours' notice; and officer or creditor may redeem within that time.
 43. Mortgagee not rendering account of sum due in ten days after notice, waives his mortgage. If account false, action for double the excess.
 44. If creditor redeems, that amount first repaid on sale of the property, and balance applied to the debt.

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

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46. Such property replevied, liable to further attachments; replevin bond liable for whole value.

- CHAP. 81. SEC. 47. If officer dies or is removed, property attached liable to further attachments by other officers, and how they are made.
48. Limitation of right to attach goods replevied.

ATTACHMENTS AND ACTIONS WHEN A PARTY DIES.

- SEC. 49. Decree of insolvency, before sale on execution, dissolves the attachment, and officer to restore the property on demand and payment of his fees.
50. If property is sold before demand, officer liable for proceeds. If paid over to creditor, he is liable, and cannot set off his demands against the estate.
51. After decease of debtor and before decree of insolvency, officer to give copy of his return to administrator, and allow view by the appraisers. Penalty.
52. Actions by officers for goods attached and taken from them, not to abate by death of parties, but go on as if alive.
53. If officer dies pending suit, and no administrator is appointed in three months, party in interest may carry it on by giving security for costs.

ATTACHMENTS OF REAL ESTATE.

- SEC. 54. What real estate and interests therein are liable to attachment. Officer need not enter or view the same.
55. When right of redemption is attached and incumbrance is removed before sale, attachment holds premises free.
56. No attachment valid unless recorded in registry of deeds in five days, and claim specified in writ.
57. When right of redemption, or to a deed by contract, is attached, creditor may redeem or pay; and then title of mortgagee or contractor shall vest in him.
58. Mortgagee or contractor shall furnish the sum due him on demand; and on payment thereof, shall release or be compelled to do so by bill in equity.

PROPERTY EXEMPT FROM ATTACHMENT.

- SEC. 59. What personal property is exempt from attachment.

HOMESTEADS EXEMPT.

- SEC. 60. Homesteads exempt from attachment except for liens.
61. Householder to have his claim for exemption recorded in registry, with description of homestead, and then \$500 worth exempt from debts subsequently contracted.
62. When creditors claim that homestead is worth more than \$500, appraisers first to set off that value, and apply residue to the execution.
63. After death of householder, widow and children to occupy during widowhood and minority.

HOW AND WHEN ATTACHMENTS ARE DISSOLVED.

- SEC. 64. Attachments of real and personal estate continue thirty days after judgment and no more, except in certain cases.
65. Attachments dissolved by judgment for defendant; insolvency before levy or sale on execution; reference of all demands, and by increasing ad damnum.
66. Clerk of court to give owner certificate of dissolution of attachment, to be recorded in registry of deeds. Creditor may release attachment on record, or by certificate recorded.
67. Debtor whose real estate is attached, may petition judge of court for a valuation and release. Judge to issue notice, to be served ten days before hearing.

SEC. 68. Judge to fix value of such real estate, and release same on bond of debtor. CHAP. 81.
Conditions of bond.

69. Proceedings and bond to be filed in the clerk's office.
70. Certificate of proceedings from clerk, recorded in registry of deeds, vacates the attachment.
71. Same proceedings to vacate attachment of personal property; and also of stocks, only certificate to be recorded where attachment is.
72. Foreign attachments vacated in same way, only bonds to be given to trustees also, and certificate filed with them.
73. Fees of clerk and register of deeds; and all costs of proceedings to be recovered by prevailing party.

CROSS ACTIONS AGAINST NON-RESIDENTS.

- SEC. 74. In cross actions and set-off against parties out the state, service made on their attorneys, sufficient.
75. Court may order continuances to enable absent party to defend, or either to set off his judgment or execution.

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- SEC. 76. Days on which arrests cannot be made or process served.
77. Voters not to be arrested on election days.
 78. Civil process served on Lord's day void; and officer liable.

LIMITATION OF PERSONAL ACTIONS.

- SEC. 79. What actions must be commenced within six years.
80. Actions against an officer for escape of prisoner, in one year; for any other misfeasance, in four years.
 81. Actions for assault and battery, false imprisonment, slander and libel, in two years.
 82. Scire facias against bail, sureties in criminal recognizances, and trustees, to be brought in one year.
 83. These limitations not to apply to witnessed notes, bank bills or cases limited by other statutes.
 84. When the cause of action accrues in mutual and open accounts current.
 85. Minors and others under disability, may bring suits after the disability is removed within the times herein limited.
 86. General limitation of twenty years.
 87. When writ fails of service, or is defeated for any cause, or judgment reversed, new suit commenced in six months; and cause of action survives.
 88. Provision in case of death of either party before suit is commenced.
 89. Saving of the rights of alien enemies during a war.
 90. Limitation of suits by individuals for penalties, and of suits and indictments by the state on penal statutes.
 91. The making of a writ with intention of service, is the commencement of an action.
 92. Limitation extended in cases of fraud.
 93. Renewal of promise must be in writing; such renewal by a joint contractor cannot affect the liability of the other contractors.
 94. If the action is barred as to one defendant and not as to the others, what judgment is to be rendered.
 95. Non-joinder of defendants shall not abate the suit, if the action is barred against the one not sued.

CHAP. 81. SEC. 96. Effect of indorsement of partial payments. No promisor affected, except those making the payments.

97. Presumption of payment after twenty years.

98. Application of the statute of limitations to set-offs.

99. Provision if defendant is out the state.

FORMS AND REQUISITES OF WRITS.

Forms of writs to remain as they are, till changed by court.

R. S. c. 81, § 1.

Actions commenced by original writs. When to be issued by clerk, and to be capias and attachment, or original summons. Issued in one county and returnable in any other.

R. S. c. 81, §§ 12, 13, 14. 1864, c. 224. 12 Me. 196.

34 Me. 9. 39 Me. 140, 501. Sec c. 77, § 4.

Justice writs to be signed and sealed.

R. S. c. 81, § 12.

Attachment and arrest on scire facias, as on other writs. R. S. c. 81, § 45.

Unknown defendant may be sued by assumed name and writ amended.

R. S. c. 81, § 26.

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

SEC. 2. All civil actions, except scire facias and other special writs, shall be commenced by original writs; which, in the supreme judicial court, may be issued by the clerk in term time or vacation, and be framed to attach the goods and estate of the defendant, and for want thereof to take the body, or as an original summons with or without an order to attach goods and estate; and in actions against corporations and in other cases where goods or estate are attached, and the defendant is not liable to arrest, the writ and summons may be combined in one. A writ issued by the clerk of any county, may be made returnable in any other county, in which the action might be legally brought.

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

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

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

ENDORSEMENT OF WRITS.

What writs must be endorsed.

R. S. c. 81, § 9.

1 Me. 399.

3 Me. 27, 216.

10 Me. 43.

38 Me. 459.

39 Me. 131.

43 Me. 177.

51 Me. 478.

56 Me. 146.

SEC. 6. Every writ original, of scire facias, of error, of audita querela, petition for writ of certiorari, for review, or for partition, and bill in equity, shall, before entry in court, be endorsed by some sufficient inhabitant of the state, when the plaintiff or petitioner is not an inhabitant thereof; and if pending such suit the plaintiff or petitioner removes from the state, such indorser shall be procured on motion of the defendant or other party to the suit; but if one of such plaintiffs or petitioners is an inhabitant of the state, no indorser shall be required except by special order of the court.

Liability of endorser. Suit within a

SEC. 7. In case of avoidance or inability of the plaintiff or petitioner, the indorser is liable, in an action on the case, brought within

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

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

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

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

SEC. 11. All actions of debt, founded on judgment rendered by any court of record in this state, may be brought in the county where it was rendered, or in the county in which either party thereto, or his executor or administrator, resides at the time of bringing the action.

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

SEC. 13. Local and transitory actions shall be commenced and tried as follows: When both parties are counties, in any county adjoining either; when a county is plaintiff, if the defendant lives

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year.
R. S. c. 81,
§§ 10, 96.
11 Me. 443,
467, 491.
15 Me. 64.
16 Me. 18.
20 Me. 385.
24 Me. 225,
237, 353.
26 Me. 40.
39 Me. 131.

When new
indorser may
be required.
R. S. c. 81, § 11.
47 Me. 340.

Personal and
transitory
actions, where
to be com-
menced.
Transfer from
one county to
another.
R. S. c. 81, § 2.
12 Me. 17.
46 Me. 505.
54 Me. 314.

Actions on
sheriff's
bonds, where
to be brought.
R. S. c. 81, § 3.

Actions on
judgment
brought where
judgment rendered, or either
party lives.
R. S. c. 81, § 4.

Jurisdiction
sustained, if
defendant's
property is
attached in the
state.
R. S. c. 81, § 5.

Local and
transitory
actions, in
which coun-
ties, towns and

CHAP. 81. therein, in an adjoining county; if he does not live therein, in the county in which he does live; when a county is defendant, if the plaintiff lives therein, in that county or in any adjoining county; if he does not live therein, in that county or in that in which he does live; when a corporation is one party and a county the other, in any adjoining county; when both parties are towns, parishes or school districts, in the county in which either is situated; when one party is a town, parish, or school district, and the other some corporation or natural person, in the county in which either of the parties is situated or lives; but all actions against towns, for damages by reason of defects in highways, shall be brought and tried in the county in which the town is situated. All other corporations may sue and be sued in the county in which they have any established place of business, or in that in which the plaintiff or defendant, being a natural person, lives.

other corporations are parties, where to be brought.
R. S. c. 81, § 6.
53 Me. 419.

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

Actions for forfeitures, where to be brought.
R. S. c. 81, § 7.

SEC. 15. Any action against two or more defendants residing in different counties, to be tried before a trial justice or municipal or police court, may be brought in the county where either resides; and the writ and execution shall be directed to and executed by the proper officers in each of such counties; but if there is but one defendant, such action shall be commenced in the county where he resides.

Justice actions against one or several defendants, where to be brought and how served.
R. S. c. 81, § 8.
12 Me. 17.
15 Me. 188.

WRITS, HOW SERVED ON RESIDENTS.

Summons to be left when property is attached, except in trustee writs.

R. S. c. 81, § 15.
See R. S. c. 86, § 3.

31 Me. 494.
37 Me. 49.
43 Me. 401.

Original summons served by reading or copy.

R. S. c. 81, § 16.
45 Me. 400.
47 Me. 298.

SEC. 16. When goods or estate are attached on either of said writs, except in trustee writs, a separate summons, in form by law prescribed, shall be delivered to the defendant, or left at his dwelling house or place of last and usual abode, fourteen days before the sitting of the court, to which it is returnable, which shall be a sufficient service.

SEC. 17. Where the process is by original summons, wherein the law does not require a separate summons to be left with the defendant, the service shall be sufficient by reading the writ or original summons to the defendant, or by giving him in hand, or leaving at his dwelling house or place of last and usual abode, a certified copy thereof, fourteen days before it is returnable.

Service on county, town or other corporation made by giving copy to clerk, treasurer, agent or member thereof, thirty days

SEC. 18. In suits against a county, the summons shall be served by leaving an attested copy thereof with one of the county commissioners or their clerk; against a town, parish, religious society, or school district, with the clerk, or one of the selectmen or assessors, if there is any such officer, if not, with a member of such corporation; and against any other corporation, however created, with its presi-

dent, clerk, cashier, treasurer, general agent or director; if there is no such officer or agent found within the county where such corporation is established, or where its records or papers are by law required to be kept, with any member thereof; and in each case, it shall be so served thirty days before the return day thereof.

HOW SERVED ON NON-RESIDENTS.

SEC. 19. If any one defendant is not an inhabitant of the state, the writ may be served on him by leaving a summons or copy, as the case may be, with his tenant, agent or attorney in the state, fourteen days before the sitting of the court; and if his goods or estate are attached, and he has no such tenant, agent or attorney, after entry, the court in the county where the process is returnable, or before entry, the court in any county, may order notice to the defendant, or a justice thereof in vacation may make such order signed by him on the back of the process; and if it is complied with and proved, he shall be held to answer to the suit. A trial justice or judge of a municipal or police court, may in like cases, order like notice on any process returnable or pending before him.

SEC. 20. In actions by inhabitants of this state against insurance companies established by any other state or country, on policies of insurance, signed or countersigned by agents in this state, on property or lives or against accidents in this state; and in such actions against express companies so established, service shall be sufficient if made on the person who signed or countersigned such policies, or on any agent or attorney of either such company, or left at his last and usual place of abode thirty days before the return day of the suit; but the court may, in any case, order further notice.

HOW WANT OR DEFECT OF SERVICE MAY BE CURED.

SEC. 21. When the property of a defendant is attached on a writ, and no service is made on him before entry, or if service in any case is defective for any cause, without the fault of the plaintiff or his attorney, the court may order a new service, which, when made, shall be as effectual as if proper service had been made in the first instance.

ATTACHMENT OF PERSONAL PROPERTY.

SEC. 22. All goods and chattels may be attached and held as security to satisfy the judgment for damages and costs which the plaintiff may recover, except such as, from their nature and situation, have been considered as exempted from attachment according to the principles of the common law as adopted and practiced in this state, and such as are hereafter mentioned. Such personal property may be attached on writs issued by a trial justice, or judge of a police or municipal court in any county in the state, when directed to the proper officer.

CHAP. 81.
before court.
R. S. c. 81,
§§ 19, 20, 21, 23.
16 Me. 370.
47 Me. 293.

Service made |
on defendant |
out the state |
by leaving |
with agent or |
attorney, or as |
ordered by the |
judge or trial |
justice.
R. S. c. 81,
§§ 17, 18, 24.
6 Me. 218.
19 Me. 107.
36 Me. 298.
51 Me. 585.
54 Me. 380.
55 Me. 549.
56 Me. 339.

In actions
against for-
eign insurance
and express
companies,
service to be
made on agent
in the state,
thirty days be-
fore court.
R. S. c. 81,
§§ 22, 23.
1868, c. 138;
c. 161.
See c. 49, §§ 63,
64.

How want or
defect of ser-
vice may be
cured.
R. S. c. 81, § 25.
1860, c. 133, § 1.

What person-
al property
may be attach-
ed.
R. S. c. 81, § 27.

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When attachment of hay and animals, left in hands of debtor, good against other attachments. R. S. c. 81, § 84. 7 Me. 178. 18 Me. 125, 272. 19 Me. 92. 37 Me. 326.

Attachment of bulky personal property may be recorded in town clerk's office, and how and where. Clerk's fees. R. S. c. 81, § 85. 1861, c. 39. 18 Me. 125. 19 Me. 92, 435. 45 Me. 61.

SEC. 23. When hay in a barn, horses or neat cattle are attached, and are suffered to remain, by the permission of the officer, in the defendant's possession on security given for their safe keeping and delivery to the officer, they shall not be subject to a second attachment to the prejudice of the first.

SEC. 24. When any personal property is attached, which by reason of its bulk or other special cause cannot be immediately removed, the officer may, within five days thereafter, file in the office of the clerk of the town, in which the attachment is made, an attested copy of so much of his return on the writ, as relates to the attachment, with the value of the defendant's property which he is thereby commanded to attach, the names of the parties, the date of the writ, and the court to which it is returnable; and such attachment shall be as effectual and valid, as if the property had remained in his possession and custody. The clerk shall receive the copy, and note thereon the time of his receiving it, and enter it in a book kept for that purpose, and keep it on file for the inspection of those interested therein, for which he shall be entitled to ten cents. When such an attachment is made in an unincorporated place, such copy shall be filed and recorded in the office of the clerk of the oldest adjoining town in the county.

How shares in a corporation may be attached. Office of corporation to furnish defendant's number of shares; if he refuses, action for damages. R. S. c. 81, § 42.

SEC. 25. When the share or interest of any person in any incorporated company is attached on mesne process, an attested copy of the writ with a notice thereon of the attachment, signed by the officer, shall be left with the clerk, cashier or treasurer of the company; and such attachment shall be a lien on such share or interest, and on all accruing dividends; and if the officer having the writ of attachment exhibits it to the officer of the company having custody of the account of shares or interest of the stockholders, and requests a certificate of the number held by the defendant, and such officer unreasonably refuses to give it, or willfully gives him a false certificate thereof, he shall pay double the damages occasioned by such refusal or neglect; to be recovered against him in an action on the case by the creditor.

The franchise and right to take toll and other property of corporation may be attached, and how. R. S. c. 81, § 43. 42 Me. 414.

SEC. 26. The franchise and all right to demand and take toll, and all other property of a corporation, may be attached on mesne process, and the attaching officer shall leave an attested copy of the writ with a notice of the attachment thereon, signed by him, with the clerk, treasurer, or some officer or member of the corporation, as provided in section eighteen.

Attachments on same writ may be made in different counties and by different officers. R. S. c. 81, § 44.

SEC. 27. Different attachments in one or more counties may be made successively upon the same writ, and by different officers, before the service of the summons upon the person whose property is attached; but none after such service. And personal property attached by a coroner may be again attached by a sheriff, deputy sheriff, or constable, subject to the former attachment by giving notice

thereof to the coroner and furnishing him with a copy of the precept within a reasonable time thereafter, and so property attached by the last named officers may be again attached by a coroner in like manner; and personal property attached by a constable may be again attached by a coroner or by a deputy in the same manner.

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WHEN PERSONAL PROPERTY ATTACHED MAY BE SOLD ON WRIT.

SEC. 28. When personal property is attached, by consent of the debtor and creditor, the officer may sell it on the writ before or after entry, observing the directions for selling on execution; and if it is attached by different officers, it may be so sold by the first attaching officer; or in case of his death, if he was a deputy sheriff, by the sheriff or another deputy by the written consent of the debtor and all attaching creditors; and the proceeds of sale, after deducting necessary expenses, shall be held by the first attaching officer or the sheriff, subject to the successive attachments as if sold on execution.

Personal property attached may be sold on writ by consent.
R. S. c. 81, § 46.
1863, c. 198.
18 Me. 296.
39 Me. 29, 386.
48 Me. 533.
54 Me. 167.

SEC. 29. When living animals, or goods liable to perish, be wasted, greatly reduced in value by keeping, or kept at great expense, are attached, and the parties do not consent to a sale thereof, the same may be examined and appraised before or after the entry of the action, as follows.

Living animals or goods liable to perish or be kept at great expense, attached, may be sold on writ, without consent, after appraisal.

SEC. 30. At the request of either party interested, the officer shall give notice of the time and place of the appraisal, with the names of the parties to the action, and of the supposed owner of the property, by posting notices thereof in two or more public places in the town where it was attached, or by giving personal notice thereof to all parties to the suit in which it is attached, four days at least before the appraisal. He shall prepare a schedule of the property, and cause three disinterested appraisers, acquainted with the nature and value of such goods, to be appointed, one by the creditor, one by the debtor, and one by himself; and if the creditor or debtor neglects to appoint one, he shall appoint one in his behalf.

R. S. c. 81, § 47.
1863, c. 198.
31 Me. 152.
39 Me. 29.
49 Me. 59.

SEC. 31. The appraisers shall be sworn by the officer without fee, or by a justice of the peace or trial justice, and examine such property; and if in their opinion, any part of it is liable to perish, be wasted, be greatly reduced in value by keeping, or kept at great expense, they shall appraise it at its value in money.

On request, officer to give notice of time and place of appraisal, and how; and cause appraisers to be chosen, and how.
R. S. c. 81, §§ 43, 49.
36 Me. 161.

SEC. 32. Thereupon, at the request of the debtor, the property shall be delivered to him, on his depositing with the officer the appraised value thereof in money, or giving bond to him with two sufficient sureties, conditioned to pay him said value, or satisfy all judgments recovered in the suits in which the property is attached, if demanded before the attachments expire, or within thirty days after the time when the creditors might demand payment out of the proceeds of the property if sold as hereinafter provided; and he shall

Appraisers to be sworn, and appraise the property at its cash value.
R. S. c. 81, §§ 49, 50.
1863, c. 153.
36 Me. 161.

To be delivered to debtor on depositing money or giving money to satisfy judgments. Bond to be returned with officer's doings.
R. S. c. 81, §§ 51, 52.
31 Me. 152.
36 Me. 161.

CHAP. 81. return such bond with the writ on which the first attachment is made, with a return of his doings in relation thereto.

Bond may be sued by any creditor. Nature of judgment thereon. Money recovered, how applied. R. S. c. 81, §§ 52, 53, 54, 55.

SEC. 33. If the bond is forfeited any one or more of the creditors may bring an action of debt thereon in the name of the officer, and shall endorse their names on the writ. If judgment is for the defendants, execution for cost shall be issued against them jointly, or one against each for his proportion, as the court thinks just. If judgment is for the plaintiffs, the money recovered shall be applied to pay their necessary expenses in prosecuting the suit, not reimbursed by costs recovered of the defendants; and the residue belongs to the attaching creditors according to their priorities; but no execution shall be awarded for the use of any creditor, without reserving what may be due on any prior attachment, whether the creditor therein is a party to the suit on the bond or not.

How an attaching creditor, not a party to the suit on bond, may avail himself thereof, or of the judgment therein. R. S. c. 81, § 56.

SEC. 34. An attaching creditor not a party to such suit, on his motion before final judgment therein, may become a party on such terms as the court orders, the same as if he had been a party originally; and his name shall then be endorsed on the writ; or he may bring scire facias on the judgment and recover the sum due him on the bond. But no creditor whose cause of action on the bond accrued more than a year prior to the suit thereon, shall have judgment or execution therein; nor bring such scire facias unless within a year after the cause of action accrued.

Property not so delivered to debtor, to be sold on writ, and proceeds applied to attachments. R. S. c. 81, § 50. 39 Me. 337. 48 Me. 533.

SEC. 35. If such property, after its appraisal, is not delivered to the debtor as aforesaid, the officer shall sell it, make return of all his doings relating thereto, and hold and dispose of the proceeds as in a sale by consent.

Proceeds of property sold, may be further attached in hands of officer; but after retaining enough to pay attachments, he is to pay balance to debtor. R. S. c. 81, § 53. 48 Me. 537.

SEC. 36. The proceeds of such property sold by consent or after an appraisal, may be further attached by the officer as the property of the defendant while remaining in his hands, and held and disposed of as if the property itself had been attached; but after retaining enough to satisfy all attachments existing thereon at any time, nothing herein shall prevent his paying the surplus to the debtor.

Right by priority in case of sale, preserved. R. S. c. 81, § 57.

SEC. 37. When goods, which are sold, or appraised and delivered to the debtor in the manner before provided, have been attached by several creditors, any one of them may demand and receive satisfaction of his judgment, notwithstanding any prior attachments, if he is otherwise entitled to demand the money, and a sufficient sum is left, of the proceeds of the goods, or of their appraised value, to satisfy all prior attachments.

Property attached and claimed by one not a party to suit, may be replevied in ten days after notice; and if not, to be sold

SEC. 38. When personal property, attached on mesne process, is claimed by a person not a party to the suit, he may replevy it in ten days after notice given him therefor by the attaching creditor, and not afterwards; and after that the attaching officer, without impairing the rights of such person, at the request and on the responsibility of

the plaintiff, and with the consent of other attaching creditors, if any, may sell it at auction as on execution, unless the debtor claims it as his, and forbids the sale. CHAP. 81.

HOW PROPERTY OF PART OWNERS ATTACHED MAY BE DISPOSED OF.

SEC. 39. When personal property is attached in a suit against one or more part owners thereof, at the request of another part owner, it shall be appraised as hereinbefore provided, one appraiser chosen by the creditor, one by the officer and the other by the requesting part owner; and thereupon it shall be delivered to such part owner on his giving bond to the officer with two sufficient sureties, conditioned to restore it in like good order, or pay the appraised value of the defendant's share therein, or satisfy all judgments recovered in the attaching suits, if demanded within the time it would be held by the attachments. Such bond shall be returned with the writ with the doings of the officer thereon, and if forfeited, the like proceedings may be had as are provided in section thirty-three.

SEC. 40. If any part of such appraised value is so paid, the defendant's share of the property shall thereby be pledged to the party paying; and if not redeemed, he may sell it, and account to the defendant for the balance, if any; but if the attachment is dissolved, he shall restore such share to the defendant or to the attaching officer for him.

ATTACHMENT OF PROPERTY MORTGAGED OR PLEDGED.

SEC. 41. Personal property not exempt from attachment, mortgaged, pledged, or subject to any lien created by law, and of which the debtor has the right of redemption, may be attached, held, and sold as if it was unencumbered, if the attaching creditor first tenders or pays the mortgagee, pledgee, or holder, the full amount unpaid on the demand so secured thereon.

SEC. 42. When personal property, attached on a writ or seized on execution, is claimed by virtue of such mortgage, pledge or lien, the claimant shall not bring an action against the attaching officer therefor, until he has given him at least forty-eight hours, written notice of his claim and the true amount thereof; and the officer or creditor may, within that time, discharge the claim by paying or tendering the amount due thereon, or restore the property.

SEC. 43. The officer may give the claimant written notice of his attachment; and if he does not, within ten days thereafter, deliver to the officer a true account of the amount due on his claim, he thereby waives the right to hold the property thereon; and if his account is false, he forfeits to the creditor double the amount of the excess, to be recovered in an action on the case.

SEC. 44. If the creditor redeems such property, and it is subsequently sold by the officer, he shall, from the proceeds, first pay to

by officer by consent of creditors, unless debtor forbids.

R. S. c. 81, § 66.

Property of part owner attached, to be appraised and delivered to other owner, on giving a bond. Bond returned with writ, and sued, if forfeited. R. S. c. 81, §§ 59, 60, 63. 50 Me. 395.

Part owner so paying, has a lien on the property and may sell it; but if attachment is dissolved, he shall restore it. R. S. c. 81, §§ 61, 62.

Personal property mortgaged or pledged, may be attached by creditor redeeming it. R. S. c. 81, § 64.

45 Me. 293.

50 Me. 127, 395.

When mortgaged property is attached, no action against officer till after 48 hours notice; and officer or creditor may redeem in that time.

1859, c. 114, §§ 1, 5.

If mortgagee does not render amount of account due in ten days after notice, he waives his mortgage. If account false, action for double the excess.

R. S. c. 81, § 65.

1859, c. 114, §§ 2, 3, 5.

1860, c. 163.

If creditor redeems; that

CHAP. 81. the creditor the amount with interest paid by him to redeem, and apply the balance, if any, to the debt on which it was attached or seized on execution.

amount first repaid on sale of property, and balance applied to debt. 1859, c. 114, §§ 4, 5.

Goods attached by an officer and his claim for damages when they are taken from him, on his death, not assets of his estate, but subject to the attachment.

R. S. c. 81, § 71.

Such property replevied, liable to further attachments; replevin bond liable for whole value. R. S. c. 81, §§ 72, 73.

If officer dies or is removed, property attached by him liable to further attachments by other officers, and how to be made. R. S. c. 81, §§ 74, 75.

Limitation of right to attach goods replevied.

R. S. c. 81, § 76.

Decree of insolvency, before sale on execution, dissolves attachment, and officer to restore property on demand and payment of fees.

R. S. c. 81, §§ 77, 79. 1869, c. 37 § 2, Sec. §§ 64, 65. 1 Me. 333. 46 Me. 343.

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

SEC. 45. Personal property attached by an officer and in his possession, and his claim for damages when taken from him, shall remain subject to such attachment in case of his death as if he was alive, and shall not be assets belonging to his estate.

SEC. 46. Such property replevied from the officer, shall be liable to further attachments as if in his possession; and if there is judgment for a return in the replevin suit, the plaintiff and his sureties shall be liable for the whole property or its value, though some attachments were made after the replevin.

SEC. 47. If an attaching officer dies or is removed from office while the attachment is in force, whether the property was in his possession or not, it and its proceeds may be further attached by any other officer, the same as it might have been by the first officer. Such further attachments shall be made by a return setting forth an attachment in common form and by whom the property was previously attached; and if the goods have not been replevied, by leaving a certified copy of the writ, omitting the declaration, and of the return of that attachment, with the former officer, if living, or if dead, with his executor or administrator, or if none are appointed, with the person having possession of the goods; or if the goods have been replevied, and the officer who made the original attachment is dead, such copy shall be left with the plaintiff in replevin, or his executors or administrators; and the attachment shall be considered as made, when such copy is delivered in either of the modes before described.

SEC. 48. Goods, that have been taken by replevin from an attaching officer, shall not be further attached as the property of the original defendant in any other manner, than that provided in the four preceding sections, so long as they are held by the person who replevied them, or by any one holding under him, unless the original defendant has acquired a new title to the goods.

ATTACHMENTS AND ACTIONS WHERE A PARTY DIES.

SEC. 49. The attachment of personal property continues in force after the death of the debtor as if living, unless before a sale thereof on execution, his estate is decreed insolvent; but it is dissolved by such decree, and the officer, on demand thereafter, shall restore such property to the executor or administrator on payment of his legal fees and charges of keeping.

SEC. 50. If, after such decree and before such demand, the officer has sold the property on execution, he shall be liable to the executor or administrator in an action, not of trespass, but for money had and received, for the proceeds if in his hands; but if paid over to the judgment creditor, such creditor shall be so liable; and shall not set off any demand he has against the executor or the administrator on the estate of the deceased.

SEC. 51. After the death of a defendant and before a decree of insolvency on his estate, the executor or administrator may demand of the attaching officer a certified copy of his return on the writ with a description of the property attached, so that it may be described in the inventory of the estate subject to the attachment, and the appraisers may demand a view thereof so as to appraise it; and if the officer fails to comply with either demand, he forfeits to the executor or administrator not less than ten nor more than thirty dollars.

SEC. 52. An action, brought by an officer for taking from him personal property attached by him, shall not abate by the death of either party; but may be prosecuted by or against his executor or administrator. If the officer is dead and his representative recovers the property or money, it shall be held and applied as if he was alive; but if he fails to recover, he shall return the property or pay the damages awarded in full, though the estate of the deceased is insolvent.

SEC. 53. If any officer authorized to serve precepts, dies pending a suit for or against him for official neglect or misconduct, and no administration is granted on his estate within three months thereafter, the party for whose benefit the suit is so prosecuted or defended, may carry it on in his own name by entering his appearance and giving security for costs, as the court directs.

ATTACHMENT OF REAL ESTATE.

SEC. 54. All real estate liable to be taken in execution as provided in chapter seventy-six; the right to cut and carry away grass and timber from land sold by this state or Massachusetts, the soil of which is not sold, and all other rights and interests in real estate, may be attached on mesne process, and held to satisfy the judgment recovered by the plaintiff; but the officers need not enter on or view the estate to make such attachment. (a)

SEC. 55. When a right of redeeming real estate mortgaged or taken on execution, is attached; and such estate is redeemed or the incumbrance removed before the levy of the execution, the attach-

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If property is sold before such demand, officer liable for proceeds. If paid over to creditor, he is liable, and cannot set off his demands against the estate.

R. S. c. 81, §§ 80, 81, 82.

After decease of debtor and before decree of insolvency, officer to give copy of his return to administrator, and allow view by appraisers.

Penalty. R. S. c. 81, § 78.

Actions by officers for goods attached and taken from them, not to abate by death of parties, but go on, as if alive.

R. S. c. 81, §§ 83, 84.

If officer dies pending suit, and no administrator is appointed in three months, party in interest may carry it on by giving security for costs.

R. S. c. 81, § 85.

What real estate and interests therein liable to attachment. Officer need not view the same.

R. S. c. 81, §§ 28, 67.

1870, c. 110. See c. 54, § 6.

When right of redemption is attached, and incumbrance is removed be-

(a) 10 Me. 113; 14 Me. 34; 15 Me. 157; 19 Me. 49; 23 Me. 165, 170; 27 Me. 449; 28 Me. 392; 35 Me. 520; 39 Me. 341; 42 Me. 282, 322; 46 Me. 436, 480; 52 Me. 355; 55 Me. 570.

CHAP. 81. ment shall hold the premises discharged of the mortgage or levy, as if they had not existed.

fore sale, attachment holds premises free.

R. S. c. 81, § 29.
39 Me. 21.
43 Me. 242.

No attachment of real estate valid, unless recorded in registry of deeds in five days, and claim specified in writ.

R. S. c. 81,
§§ 30, 31.
18 Me. 296.
39 Me. 341.
48 Me. 410, 566.
51 Me. 165, 321.
52 Me. 409.
54 Me. 417.
55 Me. 450, 570.
29 Me. 268.
42 Me. 339.

When right of redemption or to a deed by contract, is attached, the creditor may redeem or pay, then the title of mortgagee or contractor shall vest in him.
1862, c. 149, § 1.
1863, c. 161.

The mortgagee or contractor shall furnish, on demand, the sum due him; and on payment, shall release or be compelled to do so by bill in equity.
1862, c. 149, § 2.
1863, c. 161.

Personal property exempt from attachment.

R. S. c. 81, § 36.
See c. 47, § 97.
See c. 64, § 46.
See c. 75, § 10.

Wearing apparel, furniture and beds.
16 Me. 263.

SEC. 56. No attachment of real estate on mesne process shall create any lien thereon, unless the nature and amount of plaintiff's demand is set forth in proper counts, or a specification thereof is annexed to the writ, nor unless the officer making it, within five days thereafter, files in the office of register of deeds in the county or district in which all or any part of said estate is situated, an attested copy of so much of his return on the writ, as relates to the attachment, with the value of the defendant's property which he is thereby commanded to attach, the names of the parties, the date of the writ, and the court to which it is returnable. If the copy is not so filed within five days, the attachment shall take effect from the time it is filed, if before the entry of the action, although it is after service on the defendant. And such proceedings shall be had in such office, by the register of deeds, as are prescribed in the chapter respecting the registry of deeds.

SEC. 57. When a right to redeem real estate under a mortgage, levy, sale on execution or for taxes, or a right to a conveyance by contract, is attached, the plaintiff in the suit, before or after a sale on execution, may pay or tender to the person entitled thereto, the amount required to discharge such incumbrance or fulfil such contract; and thereby the title and interest of such person shall vest in the plaintiff, subject to the defendant's right to redeem as he might from such person; but such redemption by the defendant or any person claiming under him by a title subsequent to the attachment, shall not affect such attachment, but it shall continue in force, and the prior incumbrance as against it, shall be deemed discharged.

SEC. 58. Such person, on written demand, shall give the plaintiff a true written statement of the amount due him; and on payment or tender thereof, shall release all his interest in the premises; and if he refuses, he may be compelled to do so by a bill in equity. But such release shall recite that under the authority of this and the preceding section, the plaintiff had attached the premises and paid or tendered the amount due the grantor; the plaintiff shall thereupon hold such title in trust for the defendant, and subject to his right of redemption, without power of alienation till after one year from the termination of said suit, or from the sale of the equity on any execution recovered therein.

PROPERTY EXEMPT FROM ATTACHMENT.

SEC. 59. The following personal property is exempt from attachment and execution:

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

value, and one bed, bedstead and necessary bedding for every two such persons. CHAP. 81.

Second.—All family portraits, all bibles and school books in actual use in the family; one copy of the statutes of the state, and a library not exceeding a hundred and fifty dollars in value. Portraits, bibles, school books, statutes and library. 1858, c. 51. One pew.

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

Fourth.—One cooking stove; all iron stoves used exclusively for warming buildings; charcoal, and not exceeding twelve cords of wood conveyed to his house for the use of himself and family; all anthracite coal not exceeding five tons; all bituminous coal not exceeding fifty bushels; and ten dollars' worth of lumber, wood or bark. Cooking and warming stoves, wood, coal, bark and lumber. 1867, c. 102, § 4.

Fifth.—All produce of farms until harvested; one barrel of flour; corn and grain necessary for himself and family, not exceeding thirty bushels; all potatoes raised or purchased for himself and family; and all flax raised on a half acre of land, and all articles manufactured therefrom for the use of himself and family. Produce growing, flour, corn, grain, potatoes, and flax. 1864, c. 223. 41 Me. 78.

Sixth.—The tools necessary for his trade or occupation, and one sewing machine not exceeding one hundred dollars in value for actual use by himself or family. Tools of trade and sewing machine. 1861, c. 9. 28 Me. 160. 10 Me. 135. 1865, c. 301.

Seventh.—One pair of working cattle, or instead thereof one pair of mules or one or two horses not exceeding in value three hundred dollars, and a sufficient quantity of hay to keep them through the winter season. If he has more than one pair of working cattle, or more than one pair of mules, or if the two horses exceed in value three hundred dollars, he may elect which pair of cattle or mules or which horse shall be exempted. If he has a pair of mules or one or two horses so exempt, he may also have exempt for each of said horses or mules, one harness not exceeding twenty dollars in value; and one horse-sled not exceeding the same value; but if he has at the same time an ox-sled, he may elect which sled shall be exempt. Oxen, mules, horses, harnesses, horse-sled and hay. 1839, c. 74. 1860, c. 129. 1867, c. 102, §§ 1, 2. 45 Me. 72. 46 Me. 357. 48 Me. 410. 55 Me. 107.

Eighth.—Two swine, one cow, and one heifer under three years old, or if he has no oxen, horse or mule, two cows, and he may elect the cow or cows and heifer, if he has more than is exempt, ten sheep and the wool from them, and the lambs raised from them until they are one year old, and a sufficient quantity of hay to keep said cattle, sheep and lambs through the winter season. Swine, cows, sheep, lambs, wool and hay. 1867, c. 102, § 3. 14 Me. 312. 17 Me. 70. 38 Me. 135.

Ninth.—One plow, one cart or truck-wagon, one harrow, one yoke with bows, ring and staple, two chains, one ox-sled and one mowing machine. Plow, cart or truck-wagon, harrow, yoke, chains, ox-sled and mowing machine. 1867, c. 102, § 4. Boat.

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

HOMESTEADS EXEMPT.

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Homestead exempt from attachment.
R. S. c. 81,
§§ 37, 41.
See c. 5, §§ 35, 36, 37.
See c. 15, §§ 6, 7.

Householder to have his claim for exemption recorded in the registry, with description of homestead; and then \$500. worth exempt from debts subsequently contracted.
R. S. c. 81, § 38.

When creditor claims that homestead is worth more than \$500, appraisers first to set off that value, and apply residue to the execution.
R. S. c. 81, § 39.

After death of householder, widow and children to occupy during widowhood and minority. Homestead not exempt from mechanic's liens.
R. S. c. 81,
§§ 40, 41.

Attachment of real or personal estate continues thirty days after judgment and no more, except in certain cases.
R. S. c. 81,
§§ 32, 33.
12 Me. 241.
22 Me. 380.

Attachments dissolved by judgment for

SEC. 60. A lot of land and dwelling house and outbuildings thereon, the property of a householder in actual possession thereof and not the owner of an exempted lot purchased of the state, is exempt from attachment and levy on execution as provided in the following sections.

SEC. 61. Such person may file in the registry of deeds in the county or district where the land lies, a certificate signed by him, declaring his wish to have such exemption and describing the land and buildings; and the register, for the fees for recording deeds, shall record it in a book by him kept for that purpose; and so much of such property as does not exceed five hundred dollars in value, shall be forever exempt from attachment or levy on execution issued on a judgment recovered for any debt, contracted jointly or severally by such person after the date of the recording thereof; and the record in the register's office shall be prima facie evidence that the certificate purporting to be there recorded, was made, signed, and filed as there appears.

SEC. 62. When such property is claimed by a creditor to be of greater value than five hundred dollars, it may be seized on execution, and the appraisers shall first set off such part of the property as the debtor may select, and if he neglects so to do, as the officer may select for him, to such value, by metes and bounds; and shall then appraise and set off to the creditor, so much of the remainder as may be necessary to satisfy the execution; and the appraisers shall be sworn accordingly and the officer shall make return of his doings thereon.

SEC. 63. After his death, the exempted premises shall not be sold for the payment of his debts during the widowhood of his widow, or the minority of any of his children; but may be occupied by his widow during her widowhood and by his children during minority, free from any claim by any creditor of his estate. But this and the three preceding sections shall not exempt such property from the lien of mechanics or material men.

HOW AND WHEN ATTACHMENTS ARE DISSOLVED.

SEC. 64. An attachment of real or personal estate continues thirty days and no more after final judgment in the original suit, and not in review or error, except attachments of equities of redeeming real estate mortgaged or taken in execution; or equities of redemption sold on execution; or an obligee's conditional right to a conveyance of real estate on execution; or property attached and replevied; or property attached belonging to a person dying thereafter, or specially provided for in any other case.

SEC. 65. All attachments of real or personal estate are dissolved by final judgment for the defendant; by a decree of insolvency on his

estate before a levy or sale on execution; by a reference of the suit and all demands between the parties thereto, by a rule of court, and judgment on the report of the referees; and by an amendment of the declaration, by consent of parties, so as to embrace a larger demand than it originally did, and judgment for the plaintiff thereon, unless the record shows that no claims were allowed the plaintiff not originally stated in the writ. (a)

SEC. 66. When an attachment is dissolved by judgment for the defendant, the clerk of the court, on payment of twenty-five cents, shall give any person applying therefor a certificate of that fact, which the register of deeds shall note on the margin of the record of the attachment; and before or after judgment, the plaintiff, in such suit may cause a discharge of such attachment, signed by him, to be entered on the margin of the record thereof; or he may give a certificate, signed, sealed and acknowledged by him, that such attachment is, in whole or in part, discharged; which the register of deeds shall record, with a reference thereto on the margin of the record of the attachment, for which he shall be entitled to twenty-five cents, and for entering such discharges, twelve cents each.

SEC. 67. Any defendant, whose interest in real estate is attached on mesne process, may petition in writing to a justice of the supreme judicial court, in term time or vacation, setting forth the names of the parties to the suit, the court and county in which it is returnable or pending, the fact of the attachment, the particular real estate, and his interest therein, its value, and his desire to have it released from the attachment. Such justice shall issue a written notice, which shall be served on all parties to the suit living in the state, including trustees mentioned in section seventy-one, and on the plaintiff's attorney, ten days at least before the time fixed therein for a hearing.

SEC. 68. If at the hearing, such justice finds that such interest is worth as much as the amount ordered in the writ to be attached, he shall order such defendant to give bonds to the plaintiff, with sufficient sureties, conditioned to pay the judgment recovered by the plaintiff, with his costs on the petition, within thirty days after judgment. If he finds it is worth less, the bond shall be conditioned to pay the value of such interest so found and costs on the petition, within said time.

SEC. 69. The petition and proceedings thereon shall be filed in the clerk's office in the county where the action is pending or returnable, and recorded as a part of the case; and the bond, when approved by such justice, shall also be filed therein for the use of the plaintiff.

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defendant; insolvency before sale or levy on execution; reference of all demands, and by increasing the ad damnum.
R. S. c. 81,
§§ 33, 78, 79,
86, 87.

Clerk of Court to give owner a certificate of dissolution of attachment, to be recorded in registry of deeds. Creditor may release attachment on record or by a certificate to be recorded.
1859, c. 62,
§§ 1, 2.

Debtor, whose real estate is attached, may petition judge of court for a valuation and release. Judge to issue notice to be served ten days before hearing.
1865, c. 333,
§§ 1, 2, 3.

Judge to fix value of such real estate, and release same, on bond of debtor. Conditions of bond.
1865, c. 333, § 4.

Proceedings and bond to be filed in clerk's office.
1865, c. 333, § 5.

(a) 1869, c. 37, § 2; see c. 76, § 44; 4 Me. 237; 7 Me. 348; 14 Me. 429; 19 Me. 420; 43 Me. 468; 49 Me. 235, 309; 53 Me. 414; 55 Me. 523.

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Certificate of these proceedings from the clerk recorded in registry of deeds, vacates the attachment.

1865, c. 333, § 6.

Same proceedings to vacate attachment of personal property; also, of stocks, only certificate to be recorded where attachment is.

1865, c. 333, §§ 7, 8.

Foreign attachments vacated by same proceedings; only bonds to be given to trustees also, and certificate filed with them.

1865, c. 333, § 9.

Fees of clerk and register of deeds; and all costs of proceedings to be recovered by prevailing party.

1865, c. 333, § 10.

In cross actions and set-off against parties out the state, service made on their attorneys, sufficient.

R. S. c. 81,

SEC. 70. The clerk shall give the petitioner an attested copy of the petition and proceedings, with a certificate, under seal of the court, attached thereto, that such bond has been duly filed in his office; and the recording of such copy and certificate in the registry of deeds in the county where such real estate or interest therein lies, shall vacate the attachment.

SEC. 71. When personal property is attached and actual possession is taken by the attaching officer, the same proceedings may be had, as provided in the four preceding sections, and the officer shall also be notified of the hearing and the delivery to him of the copy and certificate mentioned in the preceding section, shall vacate the attachment, and he shall return the property to the petitioner on demand. When the property attached is stock in a banking or other corporation, or is such that the attachment is required to be recorded in the town clerk's office, such copy and certificate shall be filed with the officer of such corporation or the town clerk with whom the attachment is filed; and thereby the attachment is vacated.

SEC. 72. In cases of foreign attachment the same proceedings originated by any principal defendant may be had, except that the bond to the plaintiff shall be conditioned to pay the amount, if any, which he may finally recover against the trustees, with costs on the petition, within thirty days after judgment, not exceeding the amount of the judgment, against the principal defendant. The justice shall also require the petitioner to give bond to each trustee named in the petition, with sureties, in a sum sufficient to protect him against any judgment recovered by the plaintiff and paid by him, and his legal costs in the suit, and the costs allowed him by such justice at the hearing on the petition if he appears. Such bonds, when approved by such justice, shall be filed in the clerk's office for the use of the trustees. The delivery of the copy and certificate, hereinbefore mentioned, to the trustees, shall vacate the attachment of any goods, effects or credits in their hands belonging to the petitioner.

SEC. 73. The clerk shall be entitled to two dollars for recording the petition and proceedings, and making the copy and certificate; the register of deeds, seventy-five cents for recording the same; and the officer or clerk, twenty cents for each filing and necessary certificate thereof; and the party finally prevailing in the suit shall recover the costs of these proceedings, taxed as costs of court in other cases, and certified by such justice, and execution shall issue therefor.

CROSS ACTIONS AGAINST NON-RESIDENTS.

SEC. 74. When an action is brought by a person not an inhabitant of this state, nor to be found therein to be served with process, he shall be held to answer to any action brought against him here by the defendant in the first action, if the demands in the two cases are

of such a nature that the judgment or execution in the one can be set off against the judgment or execution in the other; and if there are several defendants, each may bring such cross action, and set-off his judgment against the judgment recovered against him and his co-defendants as if against him alone; and the service of the writs in such cross actions, made on the attorney of the plaintiff in the original suit, shall be as valid as if made on the party himself in this state.

SEC. 75. The court in which either of such actions is pending, may grant continuance, to enable the absent party to defend, or either party to set off his judgment or execution against the other; but they shall not be delayed by the neglect or default of either party.

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

SEC. 76. No person shall be arrested in a civil action, on mesne process or execution, or on a warrant for taxes, on the fourth day of July, Christmas day, or on the day of annual fast or thanksgiving; and no officer or soldier who is required by law to attend a military training, inspection, review or election, shall be arrested on any such processes on such days.

SEC. 77. No elector shall be arrested, except for treason, felony, or breach of the peace, on the days of election of United States, state, or town officers.

SEC. 78. No person shall serve or execute any civil process on the Lord's day; but such service shall be void, and the person executing such process shall be liable in damages to the party aggrieved, as if he had no process.

LIMITATION OF PERSONAL ACTIONS.

SEC. 79. The following actions shall be commenced within six years next after the cause of action accrues and not afterwards.

First.—All actions of debt founded upon any contract or liability not under seal, except such as are brought upon the judgment or decree of some court of record of the United States or a state, or of some municipal or police court, trial justice, or justice of the peace in this state.

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

Third.—All actions for arrears of rent.

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

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

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

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§§ 68, 69, 70.
1868, c. 156,
§§ 1, 2, 3.
46 Me. 418.

Court may continue actions to enable absent party to defend, or either to set-off his judgment or execution.

R. S. c. 81, § 70.
1868, c. 156, § 4.
46 Me. 418.

Days when arrests cannot be made or process served.
R. S. c. 81.
§§ 88, 89.
16 Me. 132.

Voters not to be arrested on election days.
R. S. c. 81, § 90.

Civil process served on Lord's day, void; and officer liable.
R. S. c. 81, § 91.
1864, c. 281, § 2.

What actions must be commenced within six years.

R. S. c. 81, § 92.
9 Me. 74.
15 Me. 167.
17 Me. 69.
23 Me. 560.
36 Me. 362.
37 Me. 369.
38 Me. 149.
53 Me. 206.

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Actions for escape of prisoner, in one year; against sheriff for misconduct in four years.
R. S. c. 81, § 93.
Actions for assault and battery, libel and slander, in two years.
R. S. c. 81, § 94.

Scire facias against bail, sureties in criminal recognizances and trustees, to be brought in one year.
R. S. c. 81, § 95.
1859, c. 99.
1861, c. 15.
See § 7.

These limitations do not apply to witnessed notes, bank bills or cases limited by other statutes.
R. S. c. 81, § 97, 98.

When cause of action accrues in mutual and open accounts current.
R. S. c. 81, § 99.

1867, c. 117.
1868, c. 206.
4 Me. 337.
38 Me. 149.
51 Me. 104.
Minors and others under disability, may bring suits after disability is removed within times herein limited.
R. S. c. 81, § 100.

13 Me. 397.
29 Me. 217.
37 Me. 306.
54 Me. 81.

General limitation of twenty years.

R. S. c. 81, § 101.
23 Me. 81.
30 Me. 164.
38 Me. 217.

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

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

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

SEC. 81. All actions of assault and battery, false imprisonment, for slanderous words, and for libels, shall be commenced within two years next after the cause of action accrues.

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

SEC. 83. The foregoing limitations do not apply to actions on promissory notes signed in the presence of an attesting witness, or on the bills, notes or other evidences of debt issued by any bank; nor to any case or suit limited to be commenced within a different time by any statute. (a)

SEC. 84. In all actions of debt or assumpsit to recover the balance due, in cases where there have been mutual dealings between the parties, the items of which are unsettled, whether kept or proved by one party or both, the cause of action shall be deemed to accrue at the time of the last item proved in such account.

SEC. 85. If a person entitled to bring any of the aforesaid actions is a minor, married woman, insane, imprisoned, or without the limits of the United States when the cause of action accrues, he may bring his action within the times limited herein, after the disability is removed.

SEC. 86. All personal actions on any contract, not limited by any of the foregoing sections or other law of the state, shall be brought within twenty years after the cause of action accrues.

SEC. 87. When a writ fails of a sufficient service or return by unavoidable accident, or default, or negligence of the officer to whom it was delivered or directed, or is abated, or the action otherwise defeated for any matter of form, or by the death of either party; or if a judgment for the plaintiff is reversed on a writ of error, the plaintiff may commence a new action on the same demand within six months after the abatement or determination of the original suit, or

(a) 7 Me. 25; 16 Me. 470; 19 Me. 73; 21 Me. 176; 23 Me. 497; 26 Me. 330; 30 Me. 118; 31 Me. 158; 38 Me. 179, 350; 49 Me. 330; 51 Me. 301.

reversal of the judgment; and if he dies and the cause of action survives, his executor or administrator may commence such new action within said six months.

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R. S. c. 81,

§ 102.

8 Me. 447.

10 Me. 399.

38 Me. 217.

SEC. 88. If any person entitled to bring or liable to any action before mentioned, dies before, or within thirty days after the expiration of the time herein limited therefor, and the cause of action survives, the action may be commenced by or against the executor or administrator at any time within two years after his appointment, and not afterwards if barred by the other provision hereof.

Provision in case of death of either party before suit is commenced.
R. S. c. 81,
§ 103.

SEC. 89. If any person is disabled to prosecute an action in this state by reason of his being an alien subject or citizen of a country at war with the United States, the time such war continues shall not be a part of the period herein limited for the commencement of any of said actions.

Saving of rights of alien enemies in time of war.
R. S. c. 81,
§ 104.

SEC. 90. All actions and suits for any penalty or forfeiture on any penal statute, brought by a person to whom the penalty or forfeiture is given in whole or in part, shall be commenced within one year after the offence was committed; and if no individual so prosecutes, it may be recovered by suit, indictment, or information, in the name and for the use of the state, at any time within two years after the offence was committed, and not afterwards.

Limitation of suits for penalties.
R. S. c. 81,
§ 105.
5 Me. 490.
31 Me. 528.
39 Me. 212, 353.

SEC. 91. The time when a writ is actually made, with an intention of service, shall be deemed the commencement of the suit.

The making of writ deemed commencement of suit.

R. S. c. 81,

§ 106.

38 Me. 581.

SEC. 92. If a person liable to any action mentioned herein, fraudulently conceals the cause thereof from the person entitled thereto, or if a fraud is committed which entitles any person to an action, the action may be commenced at any time within six years after the person entitled thereto discovers that he has just cause of action. (a)

Limitation extended in cases of fraud.
R. S. c. 81,
§ 107.

SEC. 93. In actions of debt or on the case founded on any contract, no acknowledgment or promise shall be allowed to take the case out of the operation of the provisions hereof, unless the acknowledgment or promise is an express one, in writing, signed by the party chargeable thereby. No such acknowledgment or promise made by a joint contractor shall affect the liability of the other. (b)

Renewal of promise must be in writing.
R. S. c. 81,
§ 108.

SEC. 94. In actions against two or more joint contractors, if it appears, on trial or otherwise, that the plaintiff is barred by the provisions hereof as to one or more of the defendants, but entitled to recover against any other by virtue of a new acknowledgment, promise, or otherwise, judgment shall be rendered for the plaintiff as to such others, and for the other defendants against the plaintiff.

If action is barred against some and not others, plaintiff may recover against the others.
R. S. c. 81,
§ 109.
7 Me. 26.
15 Me. 390.

(a) 3 Me. 405; 7 Me. 370; 9 Me. 131; 31 Me. 448; 37 Me. 818; 39 Me. 404; 40 Me. 197.

(b) 15 Me. 360, 443; 17 Me. 145, 184; 21 Me. 443; 22 Me. 100; 23 Me. 453; 24 Me. 534; 29 Me. 47; 35 Me. 364; 38 Me. 350.

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Non-joinder of
defendants
shall not
abate writ, if
action was
barrd against
those not
joined.
R. S. c. 81,
§ 110.
Effect of par-
tial payment
and of indors-
ment thereof.
R. S. c. 81,
§ 111.

Presumption
of payment
after twenty
years.
R. S. c. 81,
§ 112.
28 Me. 81.
38 Me. 350.
55 Me. 132.
Application of
the statutes of
limitation to
set-offs.
R. S. c. 81,
§ 113.

Provisions if
defendant is
out of the state.
R. S. c. 81,
§ 114.
20 Me. 269.
23 Me. 156, 413.
37 Me. 306, 339.
38 Me. 171.
48 Me. 319.
54 Me. 339.
55 Me. 230.

SEC. 95. In an action on contract, if the defendant pleads in abatement, that any other person ought to have been jointly sued, and issue is joined thereon, and it appears on the trial, that the action was barred by the provisions hereof against such person, the issue shall be found for the plaintiff.

SEC. 96. Nothing herein contained shall alter, take away, or lessen the effect of payment of any principal or interest made by any person; but no indorsement or memorandum of such payment made on a promissory note, bill of exchange, or other writing, by or on behalf of the party to whom such payment is made or purports to be made, shall be deemed sufficient proof of payment to take the case out of the statute of limitations; and no such payment made by one joint contractor, or his executor or administrator, shall affect the liability of another. (a)

SEC. 97. Every judgment and decree of any court of record of the United States, or any state, or of a trial justice or justice of the peace in this state, shall be presumed to be paid and satisfied at the expiration of twenty years after any duty or obligations accrued by virtue of such judgment or decree.

SEC. 98. All the provisions hereof respecting limitations, shall apply to any debt or contract filed by way of set-off on the part of the defendant; and the time of such limitation of such debt or contract shall be computed, as if an action had been commenced therefor at the time when the plaintiff's action was commenced, unless the defendant is deprived of the benefit of the set-off by the non-suit or other act of the plaintiff; and when he is thus defeated of a judgment on the merits of such debt or contract, he may commence an action thereon within six months after the final determination of the suit aforesaid.

SEC. 99. If any person is out of the state when a cause of action accrues against him, the action may be commenced within the time limited therefor after he comes into the state; and if any person is absent from and resides out of the state after a cause of action has accrued against him, the time of his absence shall not be taken as a part of the time limited for the commencement of the action.

(a) 20 Me. 345; 21 Me. 176, 433; 22 Me. 497; 23 Me. 156; 28 Me. 419; 30 Me. 253, 425; 32 Me. 169, 260; 33 Me. 182; 35 Me. 183, 364; 38 Me. 179; 51 Me. 34, 201; 53 Me. 392; 54 Me. 18.