

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

THE
REVISED STATUTES

OF THE
STATE OF MAINE,

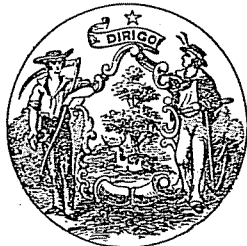
PASSED JANUARY 25, 1871;

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.

CHAPTER 82.

PROCEEDINGS IN CIVIL ACTIONS IN COURT.

- SEC. 1. Actions to be entered first day. Further service may be ordered.
2. When default may be recorded; when taken off.
3. Defendant out of state, proceedings.
4. Execution stayed one year, unless bond is given; review.
5. Bond left with clerk; may petition for a review, if review of right not prosecuted.
6. May allow appeals and complaints to be entered after first term.
7. On petition within one year; attachment or bail not revived.
8. On appeals, original papers to be sent up, except writ and pleadings.
9. Proceedings not abated, arrested, or reversed for want of form.
10. Writ or process lost, leave granted to file a new one.
11. Defendants may be struck out or new ones inserted, on payment of costs.
12. Distinction between trespass and trespass on the case, abolished.
13. Treasurers may sue in their own names on contracts given to them or their predecessors.
14. Penalties recoverable by action of debt.
15. Assignee of a grantee may sue on real covenants of first grantor.
16. Several breaches may be assigned in actions of covenant and general performance pleaded.
17. In actions of covenant, if encumbrance is a right of dower, it may be assigned and be the measure of damages.
18. General issue may be pleaded with brief statement and must be joined.
19. Demurrers, when filed, to be joined and not withdrawn; amendments after decision on them. Amendments allowed before exceptions filed. If demurrer is overruled, defendant may plead anew, on payment of costs, unless judged frivolous, when judgment shall be entered on the demurrer.
20. In involuntary trespasses or lands tender may be made, or money brought into court.
21. Offer to be defaulted and its effect.
22. Tender may be made before entry of action. Towns may tender or offer default in actions for injuries by defective ways.
23. Property of a deceased debtor on joint contract, liable same as if several.
24. Libel actions for, truth a justification; except for corrupt and malicious motives.
25. Counts, misjoinder, and wrong joinder not cause for reversal.
26. Motions in arrest of judgment not allowed in civil actions.
27. Damages to be assessed by a jury on certain bonds and contracts.
28. Interest on judgments allowed.
29. Judge not disqualified by residence in a town interested when there is a waiver.
30. Death of a party, administrator may appear or be summoned, heirs also in equity.
31. Husband may appear in action brought by an unmarried woman.
32. When parties insane, guardians may be appointed ad litem.
33. Motions to set aside verdicts, proceedings on them. Costs.
34. Willful trespasses, proceedings respecting them.
35. Damages on protest of bills.

CHAP. 82. SEC. 36. Ten hours of actual labor a legal day's work ; exceptions.

- 37. Action by a public officer not abated by his ceasing to be in office.
- 38. Action not maintainable on demands discharged by payment of part.

WHEN SUBSEQUENT ATTACHING CREDITORS MAY DEFEND SUITS.

SEC. 39. Subsequent attaching creditors may petition court to defend suits.

- 40. If leave is granted, he gives bond and is admitted to defend.
- 41. Judgment to be entered when defence fails.
- 42. How entered when defence prevails.
- 43. When judgment in such prior suit is rendered at first term, creditor may have review. Proceedings.
- 44. Prior attachment made to defraud creditors is void.

SUITS BY AND AGAINST BANKRUPTS.

SEC. 45. A bankrupt may sue in his own name, unless suit is abated.

- 46. An action in which an attachment is made four months before bankruptcy of defendant, to be disposed of in ordinary way.
- 47. Other actions against voluntary or involuntary bankrupts, to be continued till bankrupt proceedings closed, unless their names are struck out, which may be done without cost.

SET-OFF.

SEC. 48. Set-off; defendant files first day of term; clerk enters date and notice on docket.

- 49. Set-off, kind of demands.
- 50. Set-off must be between all of plaintiffs and all of defendants.
- 51. Set-off of demand assigned, when made.
- 52. Set-off of demand subsequently acquired, not to be made.
- 53. Set-off of demand in suits in name of one for benefit of another.
- 54. Set-off of sums equitably due only.
- 55. Set-off of demands due from one deceased.
- 56. Set-off in actions brought in a representative capacity.
- 57. What demands may be set-off in actions brought by creditors or administrators of insolvent estates; and proceedings therein.
- 58. Set-off, pleadings and issue how made.
- 59. Set-off actions not discontinued; statute of limitations.
- 60. Set-off no balance against a plaintiff suing on a demand assigned.
- 61. Set-off proceedings before inferior tribunals.

AUDITORS.

SEC. 62. Auditors appointed in certain cases, parties notified, witnesses attend.

- 63. Auditors all hear, majority report, may be discharged, report recommitted.
- 64. Auditors report evidence, may be disproved.
- 65. Auditors, neglect to appear before them in actions of account, effect.

JURIES.

SEC. 66. Juries, how impaneled and sworn, or drawn by lot.

- 67. Juries, supernumeraries, transfers, excuses.
- 68. Juries, form of their oath.
- 69. Juries, their foreman how chosen.
- 70. Juries, talesmen for, when and how returned.
- 71. Juries, new may be summoned during term time.
- 72. Juries, challenges how tried, and when jurors are to be excluded.

- SEC. 73. Each party may challenge, peremptorily, one juror; court may regulate this right by general rules. CHAP. 82.
74. Juries may find special or general verdicts in cases of law.
75. Juries, when they do not agree, proceedings.
76. Jurors not disqualified by residence when their town or county is a party.
77. Jurors, objections known and not stated before trial, waived.
78. Juries, their verdicts not affected by irregularities, not injurious or objected to before verdict.
79. Juries, verdict set aside for improper practices with them.

WITNESSES AND EVIDENCE.

- SEC. 80. Witnesses may be summoned by clerks and justices of the peace.
81. Witnesses, religious belief affects credibility only.
82. Witnesses, parties to suits and others interested may be. Husband and wife may be by consent of the other.
83. Witnesses, except where cause of action implies an offence.
84. Witnesses, attestations not affected.
85. Witnesses, testimony of a party out of the state, how taken.
86. Witnesses, testimony of a party may be contradicted.
87. Witnesses, provisions not applicable to suits in representative character, except in cases named.
88. Nor where party is insane.
89. Witnesses, same rules respecting them in all tribunals.
90. Witnesses, duly summoned and neglecting to appear; attachment.
91. Witnesses, refusing to answer, may be fined.
92. Witnesses, oaths how administered to them.
93. Witnesses, scrupulous of oath, affirm.
94. Witnesses, conviction of crime affects credibility only.
95. Witnesses, fees for travel and attendance first paid or tendered.
96. Records of other courts evidence.
97. Printed copy of statutes evidence.
98. Foreign and unwritten law, how proved.
99. When office copies of deeds admissible.
100. Copies of consular and of custom house documents and records. Evidence.
101. Adjutant general's certificate to be evidence.
102. Testimony of deceased subscribing witness or magistrate may be used in subsequent suit.
103. Deed or other writings, not void for being dated on the Lord's day unless made on that day.

Costs.

- SEC. 104. Party prevailing recovers costs.
105. Costs when plaintiff appeals from judgment in his favor.
106. Costs in actions of replevin regulated.
107. Costs in actions that should have been brought before a justice. Full costs on report of referee.
108. Costs when damages reduced by set-off.
109. Costs of evidence not doubled or trebled.
110. Costs, discretionary on petitions for review and the like.
111. Costs for first suit paid before second suit for same is tried.
112. Costs, a person liable for, who sues in the name of the state.
113. Costs, state liable for in a civil suit.

CHAP. 82. SEC. 114. Costs, not taxable for travel of attorney for the state.

- 115. Assignee to indorse writ in name of assignor, or defendant may sue him for costs on stay of proceedings.
- 116. If assignee is not known defendant may recover costs in an action on the case and off-set the judgment.
- 117. Costs in one action only when several are brought that should be joined.
- 118. Costs not allowed in actions on judgments where execution might have issued.
- 119. Costs for travel in actions by corporations, how computed.
- 120. Costs, power of the court over, on amendments and continuances, not affected.
- 121. Bankrupt recovers no cost until certificate is produced in court.
- 122. Costs, U. S. tax paid recoverable as costs.
- 123. Costs to be passed upon by the court during term and exceptions filed. Otherwise clerk's decision final.

ACTION FOR DAMAGES AGAINST PERJURED PARTIES AND WITNESSES.

- SEC. 124. When judgment has been obtained by perjury, action for damages against party or perjured witnesses.

EXECUTIONS.

- SEC. 125. Execution, when issued and returnable.
- 126. Execution not to be issued after one year; exception.
 - 127. Execution may be renewed within three years.
 - 128. Execution, if cannot be renewed, scire facias may issue.
 - 129. Executions framed to collect interest on judgment.
 - 130. Execution lost or destroyed, new may issue.
 - 131. When amount allowed to a creditor by commissioners on solvent estate is not paid in thirty days, S. J. C. may order execution issued for debt, interest and costs. Clerk's fees.

STENOGRAPHERS.

- SEC. 132. Stenographers, their appointment, duties and compensation.

MISCELLANEOUS PROVISIONS.

Actions entered first day, &c. Further service may be ordered.
R. S. c. 82, § 1.
56 Me. 426.

When default may be recorded; when taken off.
R. S. c. 82, § 2.

SEC. 1. No action can be entered after the first day of the session of the supreme judicial court without special permission. When it appears that the defendant has not had sufficient notice, the court may order such further notice as it deems proper.

SEC. 2. When a legal service of the writ has been made, and the defendant does not appear by himself or attorney within the three first days of the term, his default may be recorded, and the charge in the declaration taken to be true. If the defendant, before the jury are dismissed for the term, enters his appearance and pays to the plaintiff such costs as the court orders, the default shall be taken off. The court may permit it to be taken off for sufficient cause. (a)

(a)-14 Me. 20; 16 Me. 224; 17 Me. 423; 21 Me. 33; 23 Me. 453; 26 Me. 335; 30 Me. 557; 33 Me. 100, 250; 41 Me. 436; 45 Me. 104.

SEC. 3. When the defendant was an inhabitant of the state and absent from it at the time of service, and it does not appear that he has returned, or has actual notice of the suit, the court may continue the action, not exceeding twice unless for special cause, or enter judgment on default. If the defendant was not an inhabitant of the state or within it, and had actual notice of the suit, the court may order a continuance if he does not appear at the first term.

CHAP. 82.

Defendant out of state, proceedings.
R. S. c. 82, § 3.

SEC. 4. When judgment is rendered on default of an absent defendant in a personal action as provided in the preceding section, execution cannot be issued thereon within one year thereafter, unless the plaintiff first gives bond to the defendant, with one or more sureties, in double the amount of damages and costs, conditioned to repay the amount to the defendant, if the judgment is reversed on review, to which he is entitled of right, brought within one year, or so much of the amount recovered as is recovered back on such review.

Execution stayed one year, unless bond is given. Review.
R. S. c. 82, § 4.
5 Me. 331.

SEC. 5. The bond shall be deposited with the clerk, who shall decide upon the sufficiency of the sureties subject to an appeal to a justice of the court, and if the review of right is not so prosecuted, the defendant may, within one year after he first has notice of the judgment, petition the court for a review, and the court may grant it on such terms as it deems reasonable.

Bond left with clerk if review of right not prosecuted; may petition for review.
R. S. c. 82, § 5.

SEC. 6. When an appeal is taken from a judgment of a trial justice or municipal or police court, and the action by mistake or accident is not duly entered, and the judgment has not been affirmed, the court may, on petition of either party, allow the action or complaint to be entered at another term of the court, upon such terms as are deemed reasonable, and if entered the court shall proceed thereon as if entered at the proper term.

May allow entry of appeal of actions, or complaints at another term.
R. S. c. 82, § 7.
44 Me. 29.
45 Me. 306.
46 Me. 499.

SEC. 7. Such petition must be presented to the court, or filed in the clerk's office within one year after the term at which the action ought to have been entered; and no attachment or bail shall be revived or continued by such proceedings.

Petition for it within one year, attachment or bail not revived.
R. S. c. 82, § 8.

SEC. 8. In cases carried from a trial justice, municipal or police court, to a higher court, depositions and original papers, except the process by which the suit was commenced, the return of service thereon, and the pleadings, shall be certified by the proper officer, and carried up without leaving copies, unless otherwise ordered by the court having original cognizance.

On appeals, original papers to be sent up, except writ and pleadings.
R. S. c. 82, § 9.
39 Me. 125.

SEC. 9. No process or proceeding in courts of justice shall be abated, arrested, or reversed, for want of form only, or for circumstantial errors or mistakes which by law are amendable, when the person and case can be rightly understood. Such errors and defects may be

Proceedings not abated, arrested or revoked for want of form.
R. S. c. 82, § 10.
6 Me. 307.
16 Me. 263, 266, 282.
22 Me. 311.

CHAP. 82. amended, on motion of either party, on such terms as the court orders. (a)

Writ or process lost, new one may be filed, &c.
R. S. c. 82, § 11.
15 Me. 425.

SEC. 10. When in an action pending, the loss or destruction of a writ or process after service is proved by affidavit or otherwise, the court may allow a new one to be filed, corresponding thereto as nearly as may be, to have the same effect as the one lost or destroyed.

Defendants may be struck out on payment of costs, or new ones inserted and service made.
R. S. c. 82, § 12.
37 Me. 563.

SEC. 11. When there are two or more defendants, the writ may be amended by striking out one or more of them, on payment of costs to him to that time. A writ founded on contract, express or implied, may be amended by inserting additional defendants; and the court may order service to be made on them, and their property to be attached as in case of original writs; and on return of service duly made, they shall be deemed parties to the suit, but not liable to costs before such service. (b)

Distinction between trespass and trespass on the case abolished.
R. S. c. 82, § 13.

SEC. 12. The distinction between actions of trespass and trespass on the case is abolished. A declaration in either form is good.

Treasurers may sue in their own names on contracts given to them or their predecessors.
R. S. c. 82, § 14.

SEC. 13. The treasurers of state, counties, towns, and corporations, may maintain suits in their own names as treasurers on contracts given to them or their predecessors, and prosecute suits pending in the name of their predecessors.

Penalties recoverable by action of debt.
R. S. c. 82, § 15.
56 Me. 77.

SEC. 14. Penalties may be recovered by an action of debt, when no other form or mode of recovery is provided by the statute imposing them.

When assignee of a grantee may sue on real covenants of first grantor.
R. S. c. 82, § 16.
50 Me. 453.
51 Me. 567.

SEC. 15. The assignee of a grantee, or his executor or administrator, after eviction by an older and better title, may maintain an action on a covenant of seizin or freedom from incumbrance contained in absolute deeds of the premises between the parties, and recover such damages as the first grantee might upon eviction, upon filing, at the first term, in court for the use of his grantor, a release of the covenants of his deed and of all causes of action thereon. The prior grantee shall not, in such case, have power to release the covenants of the first grantor to the prejudice of his grantee.

Several breaches may be assigned in actions of covenant and general performance pleaded.

SEC. 16. In actions on contract in a penal sum for performance of covenants or agreements, and in actions of covenant, several

(a) 3 Me. 29; 10 Me. 278; 13 Me. 307; 15 Me. 400, 425, 464; 18 Me. 249; 23 Me. 234, 498; 25 Me. 330; 26 Me. 209, 277; 29 Me. 164; 30 Me. 30, 168; 39 Me. 231; 44 Me. 92; 46 Me. 327; 45 Me. 284; 47 Me. 152, 184; 48 Me. 20, 34, 252; 53 Me. 174; 54 Me. 196, 493, 496.

Amendment of declaration; 2 Me. 46; 3 Me. 243; 4 Me. 479; 13 Me. 87, 245, 417; 11 Me. 495; 14 Me. 48; 15 Me. 136; 16 Me. 233, 439, 171, 282; 17 Me. 222, 409; 18 Me. 166, 409; 19 Me. 355; 20 Me. 145; 23 Me. 74; 24 Me. 14, 242; 25 Me. 249, 308; 26 Me. 18, 209.

Ad damnum; 6 Me. 307; 15 Me. 431.

Seal of writ; 3 Me. 29; 19 Me. 204.

Date of writ; 14 Me. 395.

Of changing a writ of original summons, to a writ of attachment; 15 Me. 400, 464; 26 Me. 263.

Teste of writ; 15 Me. 431.

Return day of writ; 16 Me. 266, 17 Me. 416; 35 Me. 121.

(b) 2 Me. 120; 5 Me. 379; 11 Me. 127; 13 Me. 386; 20 Me. 43; 23 Me. 244; 25 Me. 380; Me. 23 524; 34 Me. 34; 35 Me. 534; 37 Me. 563; 45 Me. 17, 438, 444; 56 Me. 172

breaches may be assigned, and in defence, performance generally, both in affirmative and negative covenants, may be alleged. CHAP. 82.

SEC. 17. In an action for a breach of covenant against incumbrances contained in a deed of real estate, when the incumbrance is a right of dower, if such dower has been assigned and not released, the value thereof shall be the measure of damages; but if it has been demanded and not assigned, on application of the plaintiff, the court shall cite the claimant of dower to appear and become a party by personal service made fourteen days before the term of court to which it is returnable; if she does not appear, or if she appears and refuses to release such right of dower, the court shall appoint three commissioners to assign the same, who shall proceed in the manner provided for commissioners appointed by the probate court; and when their report is made and accepted by the court, it shall be a legal assignment of dower, and the value thereof shall be the measure of damages in said action.

In actions of covenant, if incumbrance as a right of dower, it may be assigned and be the measure of damages. 1870, c. 166.

SEC. 18. The general issue may be pleaded in all cases, and a brief statement of special matter of defence filed, or a special plea, or double pleas in bar, may be filed. The plaintiff must join a general issue, and may file a counter brief statement. (a)

General issue may be pleaded with a brief statement filed. It must be joined. R. S. c. 82, § 18. 1869, c. 61.

SEC. 19. A general demurrer to the declaration may be filed; and in any stage of the pleadings either party may demur, and the demurrer must be joined, and it shall not be withdrawn without leave of the court, and of the opposite party; but the judge shall rule on it, and his ruling shall be final unless the party aggrieved excepts to it; and before exceptions filed and allowed, he shall have the same power as the full court to allow the plaintiff to amend, or the defendant to plead anew. If the law court deems such exceptions frivolous, it shall award treble costs against the party excepting from the time the exceptions were filed. If the declaration is adjudged defective, and is amendable, the plaintiff may amend upon payment of costs from the time when the demurrer was filed. If the demurrer is filed at the first term and overruled, the defendant may plead anew on payment of costs from the time when it was filed, unless it is adjudged frivolous and intended for delay, in which case judgment shall be entered. At the next term of the court in the county where the action is pending, after a decision on the demurrer has been certified by the clerk of the district to the clerk of such county, and not before, judgment shall be entered on the demurrer, unless the costs are paid, and the amendment or new pleadings filed on the second day of the term.

Demurrers, when filed, to be joined, and not to be withdrawn; and amendments may be made, if overruled defendant may plead again, on payment of costs, unless judged frivolous; when judgment is to be entered on demurrer. R. S. c. 82, § 19. 1859, c. 73. 29 Me. 103. 51 Me. 389, 414. 52 Me. 22. 54 Me. 574.

SEC. 20. In actions of trespass on lands, the defendant may file a brief statement disclaiming all title to the land described, and alleging

Tender may be made or money brought into court, in ac-

(a) 10 Me. 256; 11 Me. 157, 213; 13 Me. 36; 16 Me. 84, 423; 29 Me. 471; 47 Me. 350, 489; 49 Me. 333; 53 Me. 134, 427; 55 Me. 159.

CHAP. 82.
tions involving
trespass on
land.
R. S. c. 82, § 20.
36 Me. 407.

Offer to be de-
faulted and its
effect.
R. S. c. 82, § 21.
1864, c. 274, § 1.
1870, c. 101.

Tender may
be made before
entry of ac-
tion. Towns
may tender,
or offer to be
defaulted, in
actions on de-
fective ways.
R. S. c. 82, § 22.
9 Me. 111.
39 Me. 434.

Property of a
deceased debt-
or on joint
contract liable
for payment,
same as sev-
eral.
R. S. c. 82, § 23.
In actions for
a libel the
truth a justifi-
cation; except
for corrupt or
malicious mo-
tives.
R. S. c. 82, § 24.
30 Me. 466.

Joinder of
good and bad
counts or
wrong joinder
of counts not
cause of rever-
sal.
R. S. c. 82, § 25.
55 Me. 414, 417.
Motions in ar-
rest of judg-
ment not al-
lowed.
R. S. c. 82, § 26.
In actions on
certain bonds
and recogni-
zances jury to
assess dama-
ges.
R. S. c. 82, § 27.

that the trespass was involuntary, or by negligence or mistake, or in the prosecution of a legal right, and that before action brought he tendered sufficient amends therefor, or that he brings money into court to satisfy the damages with costs to that time; and if on trial he establishes the truth of his allegations, he shall recover costs.

SEC. 21. In any personal action, the defendant may, in writing entered of record with its date, offer to be defaulted for a specified sum. If accepted, interest may be added from that date to date of judgment. If not accepted within such time as the court orders, it shall not be offered in evidence or have any effect upon the rights of the parties, or the judgment to be rendered, except the costs. If the plaintiff fails to recover a sum as due at the time of the offer greater than the sum offered, he recovers such costs only as accrued before the offer, and the defendant recovers costs accrued after that time; and his judgment for costs may be set off against the plaintiff's judgment for debt and costs. (a)

SEC. 22. A tender, with the costs then accrued, may be made after action brought and before its entry, to the plaintiff or his attorney, with the same effect as if made before action brought. In actions against towns founded on injury to the person or damage to property from defect in ways, a town may make a tender before the commencement or entry of the action, or offer to be defaulted for a specified sum, with the same effect as in actions on contract.

SEC. 23. The goods and estate of a deceased debtor in a joint contract, express or implied, or in a judgment on contract, are as liable, and the creditor has his remedy, as in case of a joint and several contract.

SEC. 24. In a suit for writing and publishing a libel, evidence shall be received to establish the truth of the matter charged as libelous. If the truth of it is established, it shall be a justification, unless the publication is found to have originated in corrupt or malicious motives.

SEC. 25. When in a civil action, the declaration contains a good count and bad ones, or a wrong joinder of counts, and no written objection is made till after the cause is committed to the jury, and a general verdict has been recorded, the judgment cannot for such cause be reversed on writ of error.

SEC. 26. No motion in arrest of judgment in a civil action can be entertained. (b)

SEC. 27. In actions on bond or contract in a penal sum, for the performance of covenants or agreements, or on a recognizance to prosecute an appeal, when a jury finds the condition broken, they

(a) 4 Me. 274; 5 Me. 390; 9 Me. 111; 13 Me. 312; 19 Me. 204; 20 Me. 37, 312; 21 Me. 529; 30 Me. 458; 31 Me. 409; 33 Me. 216; 39 Me. 71, 474; 42 Me. 53, 239; 46 Me. 544; 47 Me. 352, 354; 48 Me. 300, 301; 51 Me. 382, 383; 55 Me. 532, 534.

(b) 44 Me. 29; 53 Me. 109; 54 Me. 357.

shall estimate the plaintiff's damages, and judgment shall be entered for the penal sum, and execution shall issue for such damages and costs. (a) CHAP. 82.

SEC. 28. Interest is to be allowed on amount found due for damages and costs, in actions on judgments of a court of record. (b) Interest on judgments allowed.
R. S. c. 82, § 28.

SEC. 29. A judge shall sit in the trial or disposition of an action, in which the county or town where he resides is a party or interested, if the party adverse to such county or town enters on the docket a waiver of all objections. Judge not disqualified by residence when his town or county is a party.
R. S. c. 82, § 29.

SEC. 30. When a party in a pending suit dies, and his death is suggested on the record, and the cause of action survives, his executor or administrator may become a party, or at the request of the other party, be summoned to appear and become a party. Service of the summons shall be made on him fourteen days before the term to which it is returnable. If he neglects to appear, judgment may be entered by non-suit or default according to the provisions of chapter eighty-seven. If the suit is in equity, his executor, administrator, or heirs at law, may in like manner appear or be summoned without a bill of revivor. Death of a party being suggested, his executor or administrator may appear, or be summoned. Heirs also, in equity suits.
R. S. c. 82, § 30.
6 Me. 427.
44 Me. 72.

SEC. 31. When an unmarried woman, a party to a pending suit, is married, her husband, on his request, may be admitted as a party as if originally joined in the suit. Husband may become party to a suit of an unmarried woman.
R. S. c. 82, § 31.

SEC. 32. When a party to a suit becomes insane, it may be prosecuted or defended by his guardian, who, on application of his friend, or of the other party, may be appointed for that purpose by a justice of the court in term time or in vacation. He shall be entitled to a reasonable compensation, and not be liable for costs. Guardians ad litem may be appointed to insane parties.
R. S. c. 82, § 32.

SEC. 33. When a motion is made in the supreme judicial court to have a verdict set aside as being against law or evidence, a report of the whole evidence shall be signed by the presiding judge. When the motion is founded on any alleged cause not shown by the evidence reported, the testimony respecting the allegations of the motion, shall be heard, and reported by the judge, and the case is then to be marked law. When the court of law is of opinion that the motion was for frivolous causes, or intended for delay, it may award double or treble costs. (c) Motions to set aside verdicts, proceedings, costs.
R. S. c. 82, § 33.

SEC. 34. In action of trespass on property, the court and jury, or magistrate, shall determine whether it was committed willfully; if so found, a record thereof shall be made, and a memorandum of it on the margin of the execution. Willful trespasses, proceedings, &c.
R. S. c. 82, § 34.

SEC. 35. Damages on protest of bills of exchange of a hundred dollars or more payable by the acceptor, drawer, or indorser of one in Damages on protests of bills.
R. S. c. 82, § 35.

(a) 17 Me. 448; 21 Me. 206; 22 Me. 493, 496; 24 Me. 166; 39 Me. 413; 49 Me. 325; 52 Me. 275; 56 Me. 498.

(b) 19 Me. 458; 22 Me. 116.

(c) 15 Me. 70; 16 Me. 200; 19 Me. 27, 402; 20 Me. 133, 349; 22 Me. 131; 40 Me. 237; 43 Me. 463, 530; 45 Me. 281; 48 Me. 243, 439; 53 Me. 171; 54 Me. 256; 56 Me. 231, 246.

CHAP. 82. this state, are, if payable at a place seventy-five miles distant, one per cent.; if payable in the state of New York or in any state northerly of it, and not in this state, three per cent.; if payable in any Atlantic state or territory southerly of New York and northerly of Florida, six per cent.; and in any other state or territory, nine per cent.

Ten hours labor a legal day's work; exceptions.
R. S. c. 82, § 36.

SEC. 36. In all contracts for labor ten hours of actual labor shall be a legal day's work, unless the contract stipulates for a longer time; but this rule does not apply to monthly labor or to agricultural employments.

Action by a public officer not abated by his ceasing to be an officer.
R. S. c. 82 § 43.

SEC. 37. No action, commenced in his official capacity by a public officer, is abated by his ceasing to hold the office; it may be prosecuted by his successors to the same uses; and the necessary amendments may be made and notices given.

No action on demands discharged by a partial payment.
R. S. c. 82, § 44.

SEC. 38. No action shall be maintained on a demand settled by a creditor, or his attorney entrusted to collect it, in full discharge of it by the receipt of money or other valuable consideration, however small. (a)

WHEN SUBSEQUENT ATTACHING CREDITORS MAY DEFEND SUITS.

Subsequent attaching creditor may petition court to defend suits.
R. S. c. 82, § 37.

SEC. 39. When property has been attached, a plaintiff, who has caused it to be attached in a subsequent suit, may, by himself or attorney, petition the court for leave to defend the prior suit, and set forth therein the facts, as he believes them to be, under oath; and the court may grant or refuse such leave.

If leave is granted he gives bond and is admitted to defend.
R. S. c. 82, § 38.

SEC. 40. If leave is granted, he shall give bond, or enter into recognizance with sufficient surety, in such sum as the court orders, to pay the plaintiff in the prior suit all damages and costs occasioned by such defence; and an entry of record shall be made that he is admitted to defend such suit.

Judgment to be entered when defence fails.
R. S. c. 82, § 39.

SEC. 41. When the petitioner enters into recognizance, and fails in his defence, execution on his recognizance shall be issued against him for the damages found by the court, and costs; and judgment rendered between the original parties as if no such defence had been made.

How entered when defence prevails.
R. S. c. 82, § 40.
12 Me. 502.

SEC. 42. When the petitioner prevails, judgment shall be rendered against the plaintiff and in favor of the petitioner, and execution issued thereon for his costs; and costs may or may not be awarded to the original defendant.

When judgment in such prior suit is rendered the first term, creditor may have review. Proceedings.
R. S. c. 82, § 41.

SEC. 43. When judgment in such prior suit has been rendered, since April 9, 1856, at the first term of the court, the plaintiff in such subsequent suit, within one year thereafter, first giving bonds to each party as provided in section forty, may petition as provided in section thirty-nine for leave to sue out a writ of review of such action; and such leave may or may not be granted. If granted, and on final judg-

(a) 46 Me. 434; 47 Me. 546; 48 Me. 434; 56 Me. 582.

ment the sum originally recovered is reduced, judgment shall be entered and execution issued for the difference, not exceeding the amount due from the original defendant to the petitioner, with costs for his sole use; and it shall operate as a payment of his debt to the amount of damages recovered. CHAP. 82.

SEC. 44. When it appears by the verdict, or otherwise, that such prior attachment was made with intent to delay or defraud creditors, or that there was collusion between plaintiff and defendant for that purpose, such attachment shall be void. Prior attachment made with intent to delay or defraud creditors is void. R. S. c. 82, § 42.

SUITS BY AND AGAINST BANKRUPTS.

SEC. 45. A person who has been declared a bankrupt, may maintain an action respecting his former property in his own name, unless objection is made by plea in abatement, if before final judgment the assent of his assignee is filed in the office of the clerk of the court in which the action is pending. A bankrupt may sue in his own name, unless suit is abated. R. S. c. 82, § 45.

SEC. 46. Actions in which an actual attachment of property was made four months prior to the filing of a petition in bankruptcy by any defendant therein, shall be disposed of under the ordinary rules of proceedings in court. An action in which an attachment was made four months before bankruptcy of defendant, to be disposed of in ordinary way. 1868, c. 223. 56 Me. 559.

SEC. 47. All other actions brought in any court or before any trial justice, for the recovery of any debt provable in bankruptcy, when it appears that any defendant therein has filed his petition in bankruptcy or has been adjudged a bankrupt on petition of his creditors before or after the commencement of the suit, shall be continued, until the bankrupt proceedings are closed, unless the plaintiff strikes such defendant's name from the suit, which he may do without costs; but when such defendant does not use due diligence in the prosecution of his bankrupt proceedings, after one term's notice to him, in writing, from the plaintiff, the court may refuse further delay. Other actions against bankrupts, to be continued till bankrupt proceedings are closed, unless their names are struck out, which may be done without costs. 1868, c. 157. 1870, c. 79.

SET-OFF.

SEC. 48. Demands between plaintiffs and defendants may be set-off against each other as follows: Defendant must file set-off on first day of term and clerk enter same on docket. R. S. c. 82, § 46.

The defendant, on the first day of the term to which the writ is returnable, must file a brief statement of his demand in substance as certain as in a declaration, which, by leave of court, may be amended. The clerk shall enter on it and on the docket the date, and on the docket under the action, notice of its filing, before the new entries are called. (a)

SEC. 49. A demand originally payable to the defendant in his own right, founded on a judgment or contract, express or implied, for What demands may be set off. R. S. c. 82, § 47.

(a) 6 Me. 240; 10 Me. 137; 15 Me. 268; 19 Me. 23; 20 Me. 121; 25 Me. 128; 31 Me. 131; 32 Me. 283; 35 Me. 78; 38 Me. 114; 47 Me. 367. What claims may be set off; 28 Me. 463; 29 Me. 422; 31 Me. 158; 32 Me. 283; 33 Me. 228; 34 Me. 509; 35 Me. 78, 535; 37 Me. 72; 39 Me. 420, 445; 53 Me. 176; 57 Me. 163.

How presented and allowed. 35 Me. 179; 36 Me. 221; 41 Me. 258. Set-off of judgments and executions; 29 Me. 9; 34 Me. 122.

CHAP. 82. the price of real or personal estate sold, for money paid or had and received, for services done, for a liquidated sum, or for one ascertainable by calculation, may be set off. (*a*)

Must be due from all plaintiffs to all defendants.
R. S. c. 82 § 48.
15 Me. 268.

What demands assigned, may be set-off.
R. S. c. 82, § 49.
Demand acquired after notice of assignment not to be set-off.
R. S. c. 82, § 50.

Set-off in suits by one for another.
R. S. c. 82, § 51.

Sum equitably due set-off.
R. S. c. 82 § 52.

Demands due from a deceased person, how to be set-off.
R. S. c. 82, § 53.

What claims may be set off in actions against persons in a representative capacity.
R. S. c. 82, § 54.

What demands may be set-off in actions brought by executors or administrators of insolvent estates, and proceedings therein.
1862, c. 141.

SEC. 50. The demand must be due from all the plaintiffs to all the defendants jointly. When there is a dormant partner, claims due from the ostensible one may be set off as if there was no dormant partner.

SEC. 51. When a plaintiff has received notice that a demand against him has been assigned to the defendant, and has agreed to pay it to him, or to receive it as payment towards his demand, before his suit was commenced, it may be set-off. (*b*)

SEC. 52. When a defendant had notice of the assignment of a demand, he cannot have any demand set-off that accrued or was acquired after such notice. (*c*)

SEC. 53. When an action is brought by one person for the use of another, a demand against the latter may be set-off.

SEC. 54. When the demand to be set-off is a bond or contract with a penalty, the sum equitably due only can be set-off.

SEC. 55. Demands against a person belonging to a defendant at the time of the death of such person, may be set-off against claims prosecuted by his executor or administrator; and if a balance is found due to defendant, judgment shall be in like form and of like effect as if he had commenced a suit therefor; but if the estate is insolvent, it must be presented to the commissioners or added to the list of claims, as other judgments are. (*d*)

SEC. 56. In actions against executors, administrators, trustees, or others in a representative capacity, they may set-off such demands as those whom they represent might have set-off in actions against them; but no demands, due to or from them in their own right, can be set-off in such actions. (*e*)

SEC. 57. In joint or several actions by the executor or administrator of an estate represented insolvent, against two or more persons having joint or several demands against such estate, the demands may be filed in set-off by either of the defendants, at the first term of the court, or at the first term after such representation of insolvency, if made after the commencement of such actions; and if, on the trial, a balance is found due to the defendants jointly, or to either of them, judgment shall be entered for such balance as the jury find or the court orders, and it shall be treated and disposed of as other judgments against insolvent estates.

(*a*) 5 Me. 415; 7 Me. 82; 11 Me. 350; 13 Me. 288; 15 Me. 268; 16 Me. 60; 18 Me. 179; 20 Me. 421; 22 Me. 460; 24 Me. 36, 351; 39 Me. 420, 445.

(*b*) 19 Me. 70; 26 Me. 114; 56 Me. 167.

(*c*) 3 Me. 463; 17 Me. 267.

(*d*) 6 Me. 240; 34 Me. 146; 38 Me. 114; 41 Me. 253; 49 Me. 570.

(*e*) 1 Me. 182; 3 Me. 369; 24 Me. 36; 33 Me. 228.

SEC. 58. The trial may proceed in cases of set-off on issue joined without a plea of set-off; and if an issue is not otherwise formed, the defendant may, except in actions of assumpsit, plead that he does not owe the sum demanded; and the plaintiff will be entitled to every defence against such set-off, that he might have, by any form of pleading, to an action against him on the same demand. (a)

CHAP. 82.

Pleadings and issue in cases of set-off.
R. S. c. 82, § 55.

When set-off filed, actions not to be discontinued without consent. Statute of limitations applies to set-off.
R. S. c. 82, § 56.

SEC. 59. When a demand is filed in set-off, the action cannot be discontinued without consent of the defendant. The statute of limitations is applicable to demands filed in set-off, as if actions were commenced on them at the date of the plaintiff's action.

No balance, no costs; costs follow balance. No judgment for a balance against a plaintiff when demand was assigned to him before suit.
R. S. c. 82, § 57.
30 Me. 27.

SEC. 60. When no balance is found due to either party, no costs are recoverable. The party recovering a balance recovers costs. No judgment for debt can be entered against a plaintiff, when the demand sued was assigned to him before the suit was commenced, or for a balance due from another person.

Similar proceedings before inferior tribunals.
R. S. c. 82, § 58.

SEC. 61. Similar proceedings in set-off may take place before municipal and police courts and trial justices, the demand in set-off being filed on the return day of the writ; but judgment cannot be rendered for a defendant for more than twenty dollars, exclusive of costs. (b)

AUDITORS.

SEC. 62. When an investigation of accounts, or an examination of vouchers is required, the court may appoint one or more auditors to hear the parties and their testimony, state the accounts, and make a report to the court. They shall notify the parties of the time and place of hearing, and have power to adjourn. Witnesses may be summoned and compelled to attend, and may be sworn by the auditor.

Auditors may be appointed in certain cases. Parties notified; witnesses attend.
R. S. c. 82, § 59.
40 Me. 337.

SEC. 63. When there is more than one auditor, all must hear, but a majority may report, stating whether all did hear. Their report may be recommitted. They may be discharged and others appointed. They shall be allowed a reasonable compensation, fixed by the court, paid by the plaintiff, and taxed in the costs if he prevails.

All hear, a majority may report; they may be discharged; report recommitted.
R. S. c. 82, § 60.

SEC. 64. Their report may be used as evidence by either party, and it may be disproved by other evidence.

The report prima facie evidence.
R. S. c. 82, § 61.

SEC. 65. When in an action of account, judgment has been entered that the defendant do account, and he shall unreasonably neglect to appear, or appearing, to render an account before auditors appointed to take it, they shall certify the fact, and the court may enter a default and judgment thereon, or cause the damages to be assessed by a jury.

If defendant in an action of account neglects to appear and account, auditors to report that fact and a default to be entered.
R. S. c. 82, § 62.
45 Me. 111.

(a) 37 Me. 72; 54 Me. 498; 56 Me. 141.

(b) 30 Me. 27; 31 Me. 158.

CHAP. 82.

JURIES.

Jurors, how
impaneled
and sworn, or
drawn by lot.
R. S. c. 82, § 63.
1870. c. 161,
§§ 1, 2.

5 Me. 333.
49 Me. 573, 583.

Supernumera-
ries, transfers,
excuses.
R. S. c. 82, § 64.

Form of jurors'
oath.
R. S. c. 82, § 65.

Foreman, how
chosen.
R. S. c. 82, § 66.

SEC. 66. When venires for jurors are returned to court, the clerk shall prepare, at the commencement of each term of the court, separate alphabetical lists of the names of the several persons returned as traverse jurors; and the court, in impaneling the traverse jurors, shall cause the names of the first two persons who attend, to be called, who shall be first sworn, and then the others in succession, as they are named on the list, and in such divisions as the court directs, or all at the same time; and the first twelve shall compose the first jury; and the next twelve, on the same list, shall be impaneled and sworn in like manner, and shall compose the second jury; but before proceeding to the trial of any civil or criminal case, other than capital, the clerk may, under the direction of the court, at the request of either party place the names of all jurors legally summoned and in attendance, and not engaged in the trial of any other cause, separately upon tickets in a box, and the names shall be drawn from the box by the clerk, after having been thoroughly mixed, one at a time, for the purpose of constituting a jury; and each party shall have a right peremptorily to challenge two jurors; but in such case all peremptory or other challenges and objections to a juror drawn, if then known, shall be made and determined, and the juror sworn or set aside, before another name is drawn, and so on until the panel is completed. A new jury shall be thus drawn for the trial of each cause; and after the panel is thus completed, the presiding justice shall appoint a foreman for the trial of the case.

SEC. 67. Supernumerary jurors may be excused, from time to time, till wanted, and they may be placed on either jury, as occasion requires; and jurors may be transferred from one jury to the other when convenience of business requires it; and for good reason, any juror may be excused.

SEC. 68. The following shall be the form of the oath, administered to traverse jurors in civil causes: "You and each of you swear, that in all causes betwixt party and party, committed to you, you will give a true verdict therein according to the law and the evidence given you. So help you God." When a juror is conscientiously scrupulous of taking an oath, the word "affirm," shall be used instead of "swear," and the words "this you do under the pains and penalties of perjury," instead of the words "so help you God."

SEC. 69. Each jury shall retire, after being thus impaneled and sworn, and choose their foreman by ballot, or make the choice upon retiring with the first cause with which they are charged; and when a foreman is absent or excused from service, a new foreman shall be chosen as aforesaid; subject in each case to appointment by the court, as provided in section sixty-six.

SEC. 70. When, by reason of challenge or other cause, a sufficient number of jurors duly drawn and summoned cannot be obtained for the trial of any cause, the court shall cause jurors to be returned from the by-standers, or from the county at large, to complete the panel; if there are on the jury not less than seven jurors drawn and returned as before provided. Such jurors shall be returned by the sheriff or his deputy, a coroner, or such other disinterested person as the court appoints.

CHAP. 82.

Talesmen,
when and how
returned.
R. S. c. 82, § 67.
3 Me. 215.
51 Me. 395.

SEC. 71. The court may, in term time, issue venirens for as many jurors as are wanted; to be drawn, notified, and returned forthwith, or on a day appointed; and when in any county, the business requires a protracted session, the court may, during the term, excuse all or any of the jurors originally returned, and issue venirens for new jurors to supply their places; who shall be drawn and notified to attend at such time as the court directs.

New jurors
may be sum-
moned during
term.
R. S. c. 82, § 68.
48 Me. 436, 439.

SEC. 72. The court, on motion of either party in a suit, may examine, on oath, any person called as a juror therein, whether he is related to either party, has given or formed any opinion, or is sensible of any bias, prejudice, or particular interest in the cause; and if it appears from his answers, or from any competent evidence introduced by the party objecting to the juror, that he does not stand indifferent in the cause, another juror shall be called and placed in his stead.

Challenge of
jurors, how
tried, and
when they are
to be excluded.
R. S. c. 82, § 69.
6 Me. 307.
30 Me. 484.
32 Me. 310.
33 Me. 44.
43 Me. 11.

SEC. 73. In addition to challenges otherwise provided, either party may, before the trial commences, peremptorily challenge one juror from the panel unless the right of challenge provided in section sixty-six has been exercised; and the court may, by general rules, prescribe the manner in which such right shall be exercised.

Either party
may challenge
peremptorily
one juror;
court may
regulate right
by general
rules.
1867, § 108.

SEC. 74. The traverse jury may, in all cases, find a special or general verdict, subject to the opinion of the court on a case agreed by the parties and reserved, or on the facts as reported by the judge presiding at the trial.

Juries may
find special
verdicts for
cases of law.
R. S. c. 82, § 70.

SEC. 75. When a jury, not having agreed, return into court stating the fact, the judge may in his discretion, explain any questions of law, if proposed to him, or re-state any particular testimony, and send them out again for further consideration; but they shall not be sent out a third time in consequence of their disagreement, unless on account of some difficulties not stated when they first came into court. (a)

When juries do
not agree,
proceedings.
R. S. c. 82, § 71.

SEC. 76. In prosecutions for the recovery of a sum of money, or other thing forfeited, it shall not be a cause of challenge to a juror that he is liable to pay taxes in a county, town, or plantation, which may be benefited by the recovery.

Juries not dis-
qualified by
residence,
when their
town or
county is a
party.
R. S. c. 82, § 72.
48 Me. 436.

(a) 22 Me. 453; 24 Me. 509; 31 Me. 155; 33 Me. 438; 36 Me. 466.

CHAP. 82.

Objections known and not stated before trial, waived.
R. S. c. 82, § 73.
Verdict not affected by irregularities, if not injurious or objected to before verdict.
R. S. c. 82, § 74.
8 Me. 42.
Verdict set aside for improper practices with jurors.
R. S. c. 82, § 75.

SEC. 77. If a party knows any objection to a juror in season to propose it before trial, and omits so to do, he shall not afterwards be allowed to make it; unless by leave of court for special reasons. (a)

SEC. 78. No irregularity in the venires, or drawing, summoning, returning, or impanneling jurors, shall be sufficient to set aside a verdict, unless the party making the objection was injured by the irregularity; or unless the objection was made before the return of the verdict. (b)

SEC. 79. If either party, in a cause in which a verdict is returned, shall, during the same term of the court, before or after the trial, give to any of the jurors who try the cause, anything by way of treat or gratuity, or purposely introduce among the papers in the case which are delivered to the jury when they retire with the cause, any papers which have any connection with it, but were not offered in evidence, the court, on motion of the adverse party, may set aside the verdict and order a new trial. (c)

WITNESSES AND EVIDENCE.

By whom witnesses may be summoned.
R. S. c. 82, § 76.

SEC. 80. The clerks of the several courts, and any justice of the peace, may issue summonses for witnesses to attend before courts to give evidence concerning any matters there depending.

Religious belief affects credibility only.
18 Me. 157.

SEC. 81. No person shall be deemed an incompetent witness on account of his religious belief, but shall be subject to the test of credibility; and any person who does not believe in the existence of a Supreme Being, shall be permitted to testify under solemn affirmation, and shall be subject to all the pains and penalties of perjury.

Parties and others interested may be witnesses.
Husband or wife may be by consent of the other.
R. S. c. 82, § 78.
1859, c. 102.

SEC. 82. No person shall be excused or excluded from being a witness in any civil suit or proceeding at law, or in equity, by reason of his interest in the event thereof as party or otherwise, except as is hereinafter provided, but such interest may be shown for the purpose of affecting his credibility; and the husband or wife of either party may be a witness when either is called to testify with the consent of the other. (d)

Exception when cause of action implies an offence.
1864, c. 272.
48 Me. 424.
55 Me. 490.
46 Me. 325.

SEC. 83. No defendant shall be compelled to testify in any suit when the cause of action implies an offence against the criminal law, on his part. If he offers himself as a witness, he waives his privilege of not criminating himself, but his testimony shall not be used in evi

(a) 6 Me. 307; 47 Me. 594; 52 Me. 412, 500; 53 Me. 531.

(b) 3 Me. 215; 48 Me. 436.

(c) Setting aside verdict for misconduct, or errors of any juror. 2 Me. 37; 3 Me. 204; 6 Me. 140, 379; 11 Me. 495; 17 Me. 19, 303; 20 Me. 93; 22 Me. 198; 25 Me. 474; 38 Me. 137; 41 Me. 549; 52 Me. 412; 53 Me. 468; 55 Me. 563.

For excessive damages. 3 Me. 305, 276; 12 Me. 308; 16 Me. 187; 28 Me. 219; 42 Me. 247; 50 Me. 222.

(d) 44 Me. 11, 342; 46 Me. 230, 239, 325, 377, 470; 47 Me. 252, 478; 50 Me. 592; 55 Me. 490.

dence against him in any criminal prosecution involving the same CHAP. 82.
subject matter.

SEC. 84. Nothing in section eighty-two shall in any manner affect the law relating to the attestation of the execution of last wills and testaments, or of any other instrument, which by law is required to be attested.

Attestation of wills or other instruments not affected. R. S. c. 82, § 80. 32 Me. 579. 48 Me. 194.

SEC. 85. When a party to a suit resides without the state, or is absent from the state during the pendency of the suit, and the opposite party desires his testimony, a commission, under the rules of court may issue to take his deposition; and such non-resident or absent party, upon such notice to him or his attorney of record in the suit of the time and place appointed for the taking his deposition, as the court orders, shall appear and give his deposition. If he refuses or unreasonably delays to do so, he may be non-suited or defaulted by order of court, unless his attorney will admit the affidavit of the party desiring his testimony, as to what the absent party would say if present, to be used as testimony in the case.

Testimony of a party out of the state, how taken. R. S. c. 82, § 81.

SEC. 86. When one of the plaintiffs or defendants is used as a witness by the opposite party, testimony may be introduced by his co-plaintiffs, or co-defendants to contradict or discredit him, as if he was not a party to the suit.

Testimony of a party may be contradicted. R. S. c. 82, § 82.

SEC. 87. The provisions of the five preceding sections shall not be applied to any cases, where, at the time of taking testimony, or the time of trial, the party prosecuting, or the party defending, or any one of them, is an executor or an administrator, or made a party as heir of a deceased party; except in the following cases:

Not applicable to executors, administrators or heirs, except in special cases. R. S. c. 82, § 83. 45 Me. 165. 46 Me. 173, 237. 248, 474. 47 Me. 468. 48 Me. 36. 52 Me. 576.

First.—The deposition of a party may be used at the trial, after his death, if the opposite party is then alive; and in that case the latter may also testify.

Second.—In all cases in which an executor, administrator, or other legal representative of a deceased person is a party, such party may testify to any facts, legally admissible upon the general rules of evidence, happening before or after the death of such person; and when such person so testifies, the adverse party shall neither be excluded nor excused from testifying in reference to such facts.

1862, c. 109. 1866, c. 6. 1867, c. 72.

Third.—If the representative party is nominal only, both parties may be examined as witnesses; if the adverse party is nominal only, and had parted with his interest, if any, during the lifetime of the representative party's testator or intestate, he shall not be excluded from testifying if called by either party; and in an action against an executor or administrator, if the plaintiff is nominal only, or having had an interest, disposed of it in the lifetime of the defendant's testator or intestate, neither party to the record shall be excused or excluded from testifying.

1859, c. 79. 1863, c. 197. 1869, c. 59.

CHAP. 82.

1864, c. 230.
1870, c. 132.

Rule applica-
ble to an
insane party.
1866, c. 23.

Same rules
before all
tribunals.
R. S. c. 82, § 84.

Witnesses
duly sum-
moned, neg-
lecting to
attend, may
be attached
and fined, and
also liable for
damages.
R. S. c. 82, § 85.

Refusing in
court to an-
swer may be
fined or com-
mitted.
R. S. c. 82, § 86.

Oaths, how
administered
to witnesses.
R. S. c. 82, § 87.

Witnesses
scrupulous of
swearing, may
affirm.
R. S. c. 82, § 88.

Conviction of
crime affects
credibility
only.
1861, c. 53.
See c. 134, § 19.

No person
obliged to
attend court
unless fees
paid or ten-
dered.
R. S. c. 82, § 90.

Records of
other courts
admitted as
evidence.
R. S. c. 82, § 91.

Fourth.—In an action by or against an executor, administrator or other legal representative of a deceased person, in which his account books or other memoranda are used as evidence on either side, the other party may testify in relation thereto.

SEC. 88. The rules of evidence which apply to actions by or against executors or administrators, shall be applied in actions where a person shown to the court to be insane, is solely interested as a party.

SEC. 89. The rules of evidence in special proceedings of a civil nature, such as before referees, auditors, county commissioners, courts of probate, shall be the same as herein provided for civil actions.

SEC. 90. When a person, duly summoned and obliged to attend before any judicial tribunal, fails to do so without a reasonable excuse, he shall be liable to the party aggrieved for all damages sustained thereby. The judge of such tribunal may issue a *capias* to apprehend and bring him before him; and he may be fined not exceeding twenty dollars and the cost of the attachment, and committed until the same and the costs of commitment are paid.

SEC. 91. When a witness in court refuses to answer such questions as the court allows to be put, he may be fined not exceeding twenty dollars, and committed until the fine and costs of commitment are paid.

SEC. 92. A person, to whom an oath is administered, shall hold up his hand, unless he believes that an oath administered in that form is not binding, and then it may be administered in a form believed by him to be binding. One not believing the christian religion may be sworn according to the ceremonies of his religion.

SEC. 93. Persons conscientiously scrupulous of taking an oath may make an affirmation as follows: "I do affirm under the pains and penalties of perjury," which shall be deemed of the same force and effect as an oath.

SEC. 94. No person shall be incompetent to testify in any court or legal proceeding, in consequence of having been convicted of a criminal offence; but such conviction may be shown to affect his credibility. (a)

SEC. 95. No person is obliged to attend in any court as a witness in civil suit, or at any place to have his deposition taken, unless his legal fees for travel to and from the place, and for one day's attendance, are first paid or tendered; and his fees for each subsequent day's attendance must be paid at the close of the preceding day, when he requests it.

SEC. 96. The records and proceedings of any court of the United States, or of any state, authenticated by the attestation of the clerk,

(a) 47 Me. 102; 48 Me. 327; 51 Me. 112, 125; 55 Me. 200.

or officer having charge thereof, and by the seal of such court, shall CHAP. 82.
be admitted in evidence.

SEC. 97. Printed copies, purporting to be published under the authority of government, of statutes, acts, and resolves of the United States, or of this, or any other state or territory of the United States, may be admitted as evidence; those of this state as sufficient, those of other states as prima facie.

Printed copy
of statutes of
U. S. or of the
states, admit-
ted as evi-
dence.
R. S. c. 82, § 92.

SEC. 98. Foreign laws may be proved by parol evidence, but when such law appears to be existing in a written statute or code, it may be rejected unless accompanied by a copy thereof. The unwritten law of any other state or territory of the United States may be proved by parol evidence, and by books of reports of cases adjudged in their courts.

Foreign laws
and unwritten
laws of the
states, how
proved.
R. S. c. 82, § 93.

SEC. 99. In all actions touching the realty, or in which the title to real estate is material to the issue, and where original deeds would be admissible, attested copies of such deeds from the registry may be used in evidence, without proof of their execution, when the party offering such copy is not a grantee in the deed, nor claims as heir, nor justifies as servant of the grantee or his heirs.

In what cases
office copies of
deeds admissi-
ble.
1865, c. 308.
54 Me. 186.
55 Me. 166.

SEC. 100. Copies of all papers and documents belonging to or filed, or remaining in the office, of any consul, vice-consul, or commercial agent of the United States, and of all official entries in the books or records of any such office, when certified under the hand and official seal of the proper consul, vice-consul or commercial agent, are admissible as evidence. Copies of registers or enrollment of vessels, or of any other custom house records or documents deposited in the office of the collector of customs, attested by him or his deputy, under seal of office, may be used in evidence, and have the same effect as the production of the records in court, verified by the recording officer in person.

Copies of con-
sular and cus-
tom house
documents and
records are
evidence.
1864, c. 229.
1870, c. 77.

SEC. 101. The certificate of the adjutant general relating to the enlistment of any person in the United States' service, from this state, and of all facts pertaining to the situation of such person, to the time of and including his discharge, as found upon the records of his office, shall be prima facie evidence of the facts so certified, in any suit or proceeding in any of the courts and tribunals of this state.

Adjutant gen-
erals certificate
to be evidence.
1867, c. 111.

SEC. 102. When the testimony of a subscribing witness to any deed, or of the magistrate who took the acknowledgment thereof, has been taken in the trial of any civil cause, in relation to the execution, delivery, or registry of such deed, and such witness has since died, proof of such former testimony shall be admissible in the trial of any other civil cause involving the same question, if the parties are the same, or where one of the parties is the same, and the adverse party acted as agent or attorney for the adverse party in

Testimony of
a deceased sub-
scribing wit-
ness, or mag-
istrate, may be
given in subse-
quent suit.
1867, c. 118.

CHAP. 82. the former suit, but such testimony shall be liable to impeachment, like the testimony of a living witness.

Writing dated on the Lord's day, not void unless made on that day.

SEC. 103. No deed, contract, receipt, or other instrument in writing, shall be held void by reason of being dated on the Lord's day, without other proof than the date, of its being made and delivered on that day.

COSTS.

Party prevailing recovers cost.

R. S. c. 82, § 94.

Costs how regulated when plaintiff appeals from judgment in his favor.

R. S. c. 82, § 95.

4 Me. 66.

Costs in actions of replevin.

R. S. c. 82, § 96.

SEC. 104. In all actions, the party prevailing, shall recover costs, unless otherwise specially provided. (a)

SEC. 105. When a plaintiff appeals from a judgment of a municipal or police court, or a trial justice in his favor, and does not recover, in the appellate court, a greater sum as damages, he shall recover a quarter of the sum last recovered, for costs. (b)

SEC. 106. In actions of replevin, when the jury find that each party owned a part of the property, they shall find and state in their verdict the value of the part owned by the plaintiff when replevied, without regard to the value as estimated in the replevin bond; and if such value does not exceed twenty dollars, the plaintiff shall recover for costs only one quarter part of such value. (c)

Costs in actions which should have been commenced before justice. Full costs on report of referees.

R. S. c. 82, § 97.

28 Me. 204.

32 Me. 100.

SEC. 107. In actions commenced in the supreme judicial court, except those by or against towns for the support of paupers, if it appears on the rendition of judgment, that the action should have been commenced before a municipal or police court, or a trial justice, the plaintiff shall not recover for costs more than one quarter part of his debt or damages. On reports of referees, full costs may be allowed, unless the report otherwise provides. (d)

When damages reduced by set-off, full costs.

R. S. c. 82, § 98.

SEC. 108. When an account is filed in set-off and plaintiff recovers not exceeding twenty dollars, he is entitled to full costs, if the jury certify in their verdict that the damages were reduced as low as that sum by reason of the amount allowed in set-off. (e)

Costs of evidence not doubled or trebled.

R. S. c. 82, § 99.

SEC. 109. When a party recovers double or treble costs, the fees of witnesses, depositions, copies, and other evidence are not to be doubled or trebled.

(a) When parties recover costs. 2 Me. 397; 5 Me. 19, 281; 6 Me. 116; 12 Me. 345, 458; 15 Me. 58; 19 Me. 22; 20 Me. 124; 26 Me. 74; 30 Me. 557; 37 Me. 548; 38 Me. 190; 39 Me. 465; 54 Me. 437.

When parties do not recover costs. 13 Me. 49; 19 Me. 204; 43 Me. 14; 35 Me. 14; 38 Me. 255.

Parties liable for cost. 5 Me. 174; 6 Me. 48; 7 Me. 399; 10 Me. 431; 13 Me. 255; 18 Me. 332; 29 Me. 302, 559; 41 Me. 458.

(b) 1 Me. 15, 17; 7 Me. 356; 10 Me. 69; 54 Me. 436.

(c) 2 Me. 162; 6 Me. 261; 12 Me. 51; 40 Me. 284; 49 Me. 322.

(d) 1 Me. 406; 4 Me. 66; 8 Me. 106, 138; 11 Me. 143; 12 Me. 345; 21 Me. 385; 28 Me. 204; 32 Me. 80, 100; 34 Me. 207; 43 Me. 318; 47 Me. 456; 49 Me. 335; 50 Me. 336; 51 Me. 460; 53 Me. 514.

Report of referees, 14 Me. 396.

(e) 5 Me. 74; 31 Me. 130; 44 Me. 427; 56 Me. 70.

SEC. 110. On application of a private person for a writ of review, certiorari, mandamus, or quo warranto, or like process, the court may or not allow costs to a person appearing on notice as respondent. CHAP. 82.

SEC. 111. When costs have been allowed against a plaintiff on nonsuit or discontinuance, and a second suit is brought for the same cause, before the costs of the former suit are paid, further proceedings shall be stayed, till such costs are paid, and the suit may be dismissed, unless they are paid at such time as the court appoints.

SEC. 112. When a suit is brought in the name of the state for the benefit of a private person, his name and place of residence shall be indorsed on the writ; and if the defendant prevails, judgment for his costs shall be rendered against such person, and execution issued, as if he were plaintiff.

SEC. 113. When a defendant prevails against the state in a civil suit, judgment for his costs shall be rendered against it, and the treasurer of the county shall pay the amount on a certified copy of the judgment; and the amount shall be allowed to him in his account with the state.

SEC. 114. When the state recovers costs in a civil suit no fees shall be taxed for the travel of an attorney.

SEC. 115. The name and place of residence, if known, of an assignee shall, at any time during the pendency of the suit, be indorsed by the request of the defendant on the back of a writ or process commenced in the name of his assignor, or further proceedings thereon shall be stayed; and if the defendant prevails, judgment for his costs shall be rendered against the plaintiff and such assignee, as if both had been originally joined in the action; but if not so indorsed and proceedings are stayed, the defendant may maintain an action on the case against the assignee for his costs.

SEC. 116. If the name of such assignee is not known to the defendant until after he has recovered judgment against the plaintiff for costs, he may maintain an action on the case against such assignee for his costs, within six years from the time of judgment; and such judgment for costs may be set-off between such assignee and the defendant, as if the assignee had been plaintiff in the suit.

SEC. 117. When a plaintiff brings divers actions at the same term of a court against the same party, which might have been joined in one, or brings more than one suit on a joint and several contract, he shall recover costs in only one of them, unless the court certifies that there was good cause for commencing them.

SEC. 118. A plaintiff shall not be allowed costs in an action on a judgment of any tribunal, on which an execution could issue when such suit was commenced, except in trustee process.

Costs may or may not be allowed on petitions for review and the like—
R. S. c. 82, § 100.

21 Me. 400.
Costs of first suit to be paid before second one is tried.
R. S. c. 82, § 101,
32 Me. 36.
48 Me. 161.

A person suing in the name of the state is liable for costs.
R. S. c. 82, § 102.

State liable for costs in a civil suit.
R. S. c. 82, § 103.
26 Me. 74.

No fees taxed for attorney when state recovers costs.
R. S. c. 82, § 104.

In suit in name of assignor, assignee's name to be indorsed or defendant may sue him for costs.
R. S. c. 82, § 105.

1867, c. 123.
29 Me. 560.
55 Me. 455.

If such assignee is not known, defendant may in action on the case recover costs against him and off-set judgment.
R. S. c. 82, § 106.

In divers actions against the same party at the same term, only one bill of cost allowed.
R. S. c. 82, § 107.

34 Me. 273.
55 Me. 454.

When costs not allowed in actions on judgments.
R. S. c. 82, § 108.
33 Me. 211.
56 Me. 80.

CHAP. 82.

Travel in actions by a corporation.
R. S. c. 82,
§ 109.

Power of the court over costs on amendments or continuances not affected.
R. S. c. 82,
§ 110.

Bankrupt recovers no costs until certificate is produced in court.
R. S. c. 82,
§ 111.

U. S. tax paid recoverable as costs.
1862, c. 144.
Costs may be passed upon by the court during term and exceptions filed. Otherwise clerk's decision final.
1868, c. 130.

Rights of action against the party or perjured witnesses for damages, when a judgment has been obtained by perjury.
1864, c. 253,
§§ 1, 2.

Execution, when issued, and returnable.
R. S. c. 82,
§ 112.
8 Me. 207.

Not after one year, exception.
R. S. c. 82,
§ 113.

May be renewed within three years.
R. S. c. 82,
§ 114.

SEC. 119. In actions of a corporation, its travel is to be computed from the place where situated, if local, otherwise from the place where its business is usually transacted, not exceeding forty miles, unless its agent actually travels a greater distance to attend court.

SEC. 120. The power of the court to require payment of costs, or to refuse them as condition of amendment or continuance, is not affected by the provisions of this chapter.

SEC. 121. When a defendant pleads a discharge in bankruptcy, obtained after the commencement of the suit, he can recover no costs before the time when the certificate was produced in court.

SEC. 122. Any tax required by act of congress on any process or proceeding in court, or on any evidence used therein, shall be allowed, as costs, to the prevailing party paying it.

SEC. 123. When a nonsuit or default is entered, or verdict rendered, or a report of referees accepted, in an action, either party on application to the court, may have the costs recoverable taxed by the clerk, and passed upon by the court during the term; and any party aggrieved by the decision, may file exceptions thereto; but if no such application is made, the clerk, after adjournment, shall determine costs, and his decision shall be final.

ACTION FOR PERJURY.

SEC. 124. When a judgment has been obtained against a party by the perjury of a witness or witnesses introduced at the trial by the adverse party, the injured party may bring an action on the case within three years after such judgment or after final judgment in any proceedings for a review thereof, against such adverse party, or any perjured witness, or confederate in the perjury, to recover the damages sustained by him, by reason of such perjury; and the judgment in the former action shall be no bar thereto.

EXECUTIONS.

SEC. 125. Executions may be issued on a judgment of the supreme judicial court after twenty-four hours from its rendition, returnable within three months. (a)

SEC. 126. No first execution can be issued after one year from the time of judgment, except in cases provided for by section four; in which the first execution may be issued not less than one, nor more than two years from the time of judgment.

SEC. 127. An alias or pluries execution may be issued within three years after the day of the return of the preceding execution and not afterward.

(a) 2 Me. 109; 8 Me. 207; 11 Me. 177; 15 Me. 64; 24 Me. 304; 27 Me. 557; 49 Me. 414.

SEC. 128. When execution is not issued within the times prescribed by the two preceding sections, a writ of scire facias against the debtor may be issued to show cause why execution on the judgment should not be issued, and if no sufficient cause be shown, execution may be issued thereon.

SEC. 129. On executions, issued on judgments or acknowledgments of debt, interest shall be collected from the time of judgment, or payment, and the form of the execution be varied accordingly.

SEC. 130. A justice of the court in which the judgment was rendered, upon proof by affidavit or otherwise of the loss or destruction of an execution unsatisfied in whole or in part, may order a new execution to be issued for what remains unsatisfied.

SEC. 131. When the report of commissioners appointed by the probate court to decide upon exorbitant, unjust or illegal claims against a solvent estate, has been returned and finally accepted in favor of a creditor, and the amount allowed him is not paid within thirty days thereafter, he may file a certified copy of such report in the office of the clerk of the courts, and apply in writing to a judge of the supreme judicial court for an execution; and he shall order a hearing thereon, with or without notice to the adverse party. The application shall be entered on the docket of the court if in session, otherwise on the docket of the preceding term. If no sufficient cause is shown to the contrary, the judge shall direct an execution to be issued for the amount allowed the creditor by such report, with interest from its return to the probate court, and costs allowed by the probate court, if any, three dollars for clerks' fees, and travel and attendance, and expense of copies and service of notices, as in suits at law.

STENOGRAPHERS.

SEC. 132. At any term of the supreme judicial court, the presiding justice may appoint a stenographer to report the proceedings thereof, who shall be an officer of the court, and be sworn to a faithful discharge of his duty. Under the direction of the court, he shall take full notes of all oral testimony, and other proceedings in the trial of causes, including the charge of the judge, and furnish, for the use of the court, a fair, legible, long-hand copy of so much of his notes as the court directs. He shall receive for his services, from the treasury of the county in which the court is held, the sum allowed by the court, not exceeding five dollars a day for attendance, six cents a mile for actual travel, and ten cents for every one hundred words of the long-hand copy furnished for the use of the court. He shall also furnish a copy of so much of the evidence and other proceedings, taken by him, as either party to the trial requests, on payment therefor, by such party at the rate aforesaid.

CHAP. 82.

When execution is not so issued, scire facias may be brought on judgment.
R. S. c. 82, § 115.

Executions framed to collect interest on judgments.
R. S. c. 82, § 116.

New execution may be issued on proof of loss.
R. S. c. 82, § 117.

When amount allowed to a creditor by commissioners on solvent estate, is not paid in thirty days, S. J. C. may order an execution issued for debt, interest and cost. Clerk's fees.
1865, c. 293.

Stenographers; their appointment, duties and compensation.
1867, c. 116.
1868, c. 146.