

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,

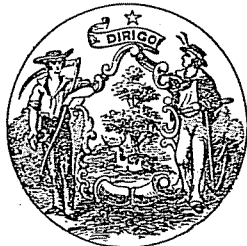
PASSED JANUARY 25, 1871;

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 86.

TRUSTEE PROCESS.

- SEC. 1. In what actions trustee process may be used.
2. Form of the writ.
 3. Mode of service.
 4. Effect of service on the trustee.
 5. In what county the action shall be commenced.
 6. Insertion of additional names of trustees.
 7. Notice to principal, if absent from the state. Trustee may appear for him.
 8. What corporations may be summoned as trustees.
 9. Trustee, about to leave the state, may disclose before a justice. Proceedings in such case.
 10. Court may appoint commissioner to take disclosure for other causes. Proceedings in such case.
 11. Any trustee may so disclose, by consent.
 12. An inhabitant of another state may be adjudged a trustee. Where writ may be returnable.
 13. Costs, if the trustee be discharged the first term. If adjudged trustee, he may retain his costs.
 14. Disclosure to be sworn to.
 15. Lien for costs on specific articles in his hands. Officer to pay same.
 16. Not to proceed against the principal, if the trustees all discharged, unless service on him.
 17. Additional compensation, if trustee dwell in another county.
 18. Liability of trustee for not appearing at the first term.
 19. Joint liability for costs if several fail to appear.
 20. Exception in favor of trustees residing out of the county, or absent from the state, at the time of service.
 21. If the action fails, costs for defendant and trustee.
 22. No costs to trustee on discontinuance, unless he appear.
 23. Trustee living out of the county may appear by attorney.
 24. Proceeding in such case.
 25. If plaintiff thinks proper to examine such trustee, how answers may be taken.
 26. Disclosure, how sworn to.
 27. Trustee not appearing, to be defaulted.
 28. Trustee may submit a statement of facts to the court.
 29. Disclosure deemed true; but any party may allege and prove other facts.
 30. Such proof may be submitted to the court or a jury.
 31. Testimony to be in writing.
 32. Proceedings, if trustee disclose an assignment of the principal's claim. Assignee may be summoned. If he appears, his title to be tried. If he does not appear, his claim to be void.
 33. Principal defendant may be a witness.
 34. Form of judgment against principal and trustees.
 35. Trustee may appear by consent, at a subsequent term, as of the first.
 36. Executor or administrator liable as a trustee for a debt or legacy, and stockholder of a corporation.

- CHAP. 86. SEC. 37. If a person dies, after being adjudged trustee, the goods and effects are held in the hands of the administrator.
38. If trustee dies before judgment, his administrator may be cited.
39. If the administrator do not appear, judgment may be rendered against him.
40. If he does not pay, scire facias to issue.
41. Proceedings if trustee dies within thirty days after judgment is rendered, to preserve the attachment.
42. Manner of issuing execution if administrator is adjudged trustee.
43. Remedy on his bond if he neglects to pay.
44. Specific articles in trustee's hands to be delivered to the officer, to be sold.
45. Remedy, if trustee refuses.
46. Mode of settling the value, as between the principal and trustee.
47. If part only is taken, balance to be delivered to the principal.
48. Officer to restore surplus proceeds of sale.
49. Trustee process, after commitment of the debtor. Effect thereof.
50. Proceedings, if trustee discloses property mortgaged to him.
51. On return of scire facias, amount of excess determined by the court and jury.
52. On disclosure, trustee shall deliver over property to the officer.
53. Officer having sold on execution any personal property, shall pay plaintiff, and the balance to debtor.
54. Trustee not prevented from selling the property mortgaged.
55. Cases in which a person shall not be adjudged trustee.
56. Effect, if defendant in a suit is summoned as trustee of the plaintiff.
57. Costs in such cases.
58. Proceedings, if defendant in an action pending is summoned as trustee of the plaintiff.
59. If first suit is not continued, and judgment rendered, defendant shall not afterwards be adjudged a trustee while liable on execution.
60. If before final judgment is rendered, defendant is adjudged trustee in the prior suit.
61. Money or goods may be attached by trustee process before they are payable.
62. Proceedings, if trustee does not pay costs, when liable.
63. Goods fraudulently conveyed, may be held by trustee process.
64. Trustee may retain in his hands pay for any demand justly due him; but not for unliquidated damages.
65. Form of judgment against a trustee.
66. Discharge of trustee no bar to the claim of principal.
67. Scire facias against trustee.
68. Judgment on scire facias.
69. When all defendants in writ are defaulted court may enter up joint or several judgments.
70. If any trustee defaulted on the scire facias was examined, judgment shall be rendered on the facts disclosed or proved.
71. Liability for costs, if discharged on scire facias, not having before been examined.
72. If examined in the original suit, he may be examined again on scire facias.
73. Goods and effects liable to another attachment, if not demanded in thirty days. Exception.
74. If there is no second attachment, principal may recover them.
75. Demand, how made, if trustee is out of the state; how if he has no dwelling place in the state.

SEC. 76. Effect of judgment against trustee.

77. Penalty, if trustee disclose falsely.

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

79. In case of exception, the whole case may be re-examined and remanded.

80. Form and service of trustee process for justice courts. In what county to be brought.

81. Default, if trustee does not appear. Costs, if discharged. May retain costs, if adjudged trustee. Costs on discontinuance.

82. Subsequent proceedings. Discharge of trustee, if judgment is less than five dollars, unless in case of set-off.

83. How execution shall issue, if defendant or trustee removes from the county.

84. Proceedings, if trustee is discharged, living in a county different from plaintiff and defendant.

WHEN TRUSTEE ACTIONS, BROUGHT ON JUDGMENT, MAY BE ABATED.

SEC. 85. Trustee actions brought on judgments on which execution might issue, or to vex, or to make costs, abated with costs.

HOW TRUSTEE MAY BE HELD WHEN DEMAND AGAINST HIM IS ASSIGNED.

SEC. 86. How demands assigned as security may be trusted and redeemed.

87. Plaintiff's rights in case of redemption by him.

SEC. 1. All personal actions, except those of detinue, replevin, actions on the case for malicious prosecution, for slander by writing or speaking, and for assault and battery, may be commenced by trustee process in the supreme judicial court; or when the amount demanded in damages is not less than five dollars, nor more than twenty dollars, before a municipal or police court, or a trial justice.

In what action trustee process may be used.
R. S. c. 86, § 1.
36 Me. 227.

SEC. 2. The writ shall be in the form established by law, authorizing an attachment of goods and estate of the principal defendant in his own hands, and in the hands of the trustees.

Form of writ.
R. S. c. 86, § 2.

SEC. 3. The officer serving it shall attach the goods and estate of the principal, and read it to him or leave a copy of it at his last and usual place of abode; which shall be a sufficient service on the principal, whether any trustee is held or not.

Service.
R. S. c. 86, § 3.

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

Effect of service on the trustee.
R. S. c. 86, § 4.
32 Me. 32.
47 Me. 298.

SEC. 5. If all the trustees live in the same county, the action shall be brought there; if they reside in different counties, in any county in which one of them resides; and in a trustee process against a corporation aggregate, its residence shall be deemed to be in the county in which it has its established or usual place of business, held its last annual meeting, or usually holds its meetings.

In what county action to be brought.
R. S. c. 86, § 5.
6 Me. 405.
33 Me. 575.
54 Me. 314, 380.

CHAP. 86.

Insertion of additional names of trustees.
R. S. c. 86, § 6.
19 Me. 91.
52 Me. 230.

SEC. 6. The plaintiff may insert the names of as many persons as trustees, as he deems necessary, at any time before the process is served on the principal, but not after; and he may have a further service made on any trustee, if found expedient, if the service is afterwards made or renewed on the principal; but no costs for services shall be taxed for the plaintiff in such case, except for that last made.

Notice to principal if absent from the state. Trustee may appear for him.
R. S. c. 86, § 7.
1 Me. 325.
35 Me. 391.
36 Me. 298.
54 Me. 380.

SEC. 7. When the principal is out of the state at the time of the service, and has no agent therein, notice shall be given as provided in section nineteen, chapter eighty-one; or proceedings may be had as provided in section three of chapter eighty-two, unless in the mean time he comes into the state before the sitting of the court; and when he does not appear in his own person or by attorney, any one or more of the trustees having goods, effects, or credits in their hands, and being adjudged trustees, may appear in his behalf, and in his name plead and defend the cause.

What corporations may be summoned as trustees.
R. S. c. 86, § 8.

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

Trustee, about to leave the state, may disclose before a justice. Proceedings in such case.
R. S. c. 86, §§ 9, 10.

SEC. 9. When any person summoned as trustee is about to depart from the state, or go on a voyage, and not return before the term of the court where he is summoned to appear, he may apply to a justice of the peace and quorum of the county where he resides, for a notice to the plaintiff in the suit to appear before said justice at a place and time appointed, for taking his disclosure. On service made and returned according to the order of the justice, the examination and disclosure shall be taken and sworn to before him; and being certified and returned to the court, the same proceedings may be had thereon as if it had been in court.

Court may appoint commissioner to take disclosure for other causes. Proceedings in such case.
1868, c. 144.

SEC. 10. The court before whom any trustee is summoned, may appoint a commissioner to take the examination and disclosure of such trustee when any other reasonable cause appears, and prescribe the notice to be given to the plaintiff, of the time and place thereof; and upon return of such service made, the examination and disclosure shall be taken and sworn to before the commissioner, and being certified by him and returned to court, the same proceedings may be had thereon as if it had been in court.

Any trustee may so disclose, by consent.
R. S. c. 86, § 11.

SEC. 11. The examination and disclosure of any person summoned as trustee may be taken, as provided in section nine, when the plaintiff and trustee consent thereto.

(a) 36 Me. 201; 37 Me. 320; 39 Me. 402; 45 Me. 207, 455; 47 Me. 298; 49 Me. 282; 51 Me. 370; 52 Me. 592; 54 Me. 587; 55 Me. 346.

SEC. 12. Any person summoned as trustee may be adjudged trustee by the court, though he was not then, and never had been an inhabitant of this state; and the writ may be made returnable in the county in which either the plaintiff or principal defendant resides. CHAP. 86.

SEC. 13. If any supposed trustee comes into court at the first term and submits himself to examination, on oath, after having in writing declared that at the time of the service of the trustee process upon him, he had not any goods, effects, or credits of the principal in his possession, he shall be entitled to his costs, as in civil actions where issue is joined for trial; and if adjudged a trustee, may deduct his costs from the amount in his hands. (a)

SEC. 14. The disclosure, when completed and subscribed by the trustee, shall be sworn to by him in open court, or before some justice of the peace.

SEC. 15. Where any person is adjudged trustee for specific articles in his hands, he shall have a lien thereon for his costs; and the officer, who disposes thereof on execution, shall pay the trustee the amount due him for costs, and deduct it from the amount of sale, and account to the creditor for the balance; the amount of such fees shall be indorsed on the execution by the clerk, and shall be evidence of the lien.

SEC. 16. If all the persons summoned as trustees are discharged, or the suit against them is discontinued, the plaintiff shall not proceed against the principal defendant, unless there was sufficient personal service of the writ on him; but he may assume the defence of the suit.

SEC. 17. When the trustee, at the time the writ was served on him, did not live in the county where the writ is returnable, the court shall, in case of his discharge, allow him, in addition to his legal fee, a reasonable compensation for his time and expenses in appearing and defending.

SEC. 18. If any person resident in the county in which the writ is returnable, is summoned, and neglects to appear and submit to examination at the return term, without reasonable excuse, he shall be liable for all costs afterwards arising in the suit, to be paid out of

(a) 3 Me. 47; 18 Me. 361, 332; 29 Me. 464. Answers to interrogatories; 18 Me. 187; 34 Me. 586; 38 Me. 133; 41 Me. 324; 45 Me. 216; 46 Me. 226.

Persons, claims and property not subject to trustee process; 3 Me. 347; 17 Me. 29; 24 Me. 448; 27 Me. 296; 32 Me. 32; 33 Me. 414; 34 Me. 123; 39 Me. 164; 42 Me. 365, 402; 46 Me. 293; 48 Me. 81, 322, 367; 49 Me. 78; 53 Me. 549.

Interest; 18 Me. 332.

Costs; 10 Me. 453, 467; 18 Me. 332; 29 Me. 464; 46 Me. 15, 91, 226; 54 Me. 314; 56 Me. 79.

When charged; 4 Me. 492, 542; 6 Me. 79, 381; 7 Me. 394; 8 Me. 342, 401; 11 Me. 41, 196; 12 Me. 117; 13 Me. 261, 420, 423; 15 Me. 86; 17 Me. 252; 19 Me. 42, 56; 20 Me. 369; 34 Me. 202; 37 Me. 281; 38 Me. 133; 42 Me. 132.

When discharged; 6 Me. 263; 10 Me. 453; 17 Me. 29, 89; 18 Me. 332; 22 Me. 28, 282; 24 Me. 448; 26 Me. 133, 448, 531; 27 Me. 296; 28 Me. 389; 32 Me. 32; 33 Me. 31; 34 Me. 123; 35 Me. 57, 145, 156, 227; 36 Me. 136, 201, 298; 37 Me. 314; 39 Me. 164, 402; 42 Me. 132, 296, 365, 381; 45 Me. 207; 46 Me. 167, 293; 48 Me. 367; 49 Me. 78, 282; 51 Me. 370; 52 Me. 592; 53 Me. 106; 54 Me. 104.

An inhabitant of another state may be adjudged trustee; where writ may be returnable. R. S. c. 86, § 12. 33 Me. 414.

Costs, if trustee be discharged first term; adjudged trustee retains his costs. R. S. c. 86, § 13.

Disclosure to be sworn to. R. S. c. 86, § 14. 36 Me. 293.

Lien for costs on articles in his hands. Officer to pay same. R. S. c. 86, § 15.

If all trustees discharged, not to proceed against the principal, unless service on him. R. S. c. 86, § 16.

Compensation if trustee lives in another county. R. S. c. 86, § 17.

Liability of trustee for not appearing at the first term. R. S. c. 86, § 18. 29 Me. 464.

CHAP. 86. his own goods or estate, if judgment is rendered for the plaintiff; unless paid out of the goods or effects in his hands belonging to the principal.

Joint liability for costs if several trustees fail to appear. R. S. c. 86, § 19.

SEC. 19. When several trustees, resident in the county where the action is pending, are summoned and neglect to appear, the judgment for costs shall be rendered against them jointly.

Exception in favor of trustees out of the county and residing out of state. R. S. c. 86, § 20.

SEC. 20. Persons summoned as trustees, resident out of the county where the suit is pending, shall not be liable for any costs arising on the original process; and if the person summoned as trustee is out of the state, at the time the writ is served on him, and appears at the first term of the court after his return, he shall be allowed for his costs and charges as if he had appeared at the return term.

If the action fails, costs for defendant and trustee. R. S. c. 86, § 21.

SEC. 21. When the plaintiff does not support his action, the court shall award costs against him in favor of the principal, and in favor of the persons summoned as trustees severally, who appeared and submitted to examination on oath; and several executions shall issue accordingly.

No costs to trustee unless he appear. R. S. c. 86, § 22. 29 Me. 464.

SEC. 22. When a person summoned as trustee does not come into court, and declare he had no property or credits of the principal in his hands when the writ was served, and submit himself to examination on oath, the court shall not award costs in his favor, though the suit is discontinued.

Trustee living out of county, may appear by attorney. R. S. c. 86, § 23. 35 Me. 156.

SEC. 23. A person summoned as trustee, and then not living in the county where the writ is returnable, shall not be required to appear in person in the original suit, or in a suit on scire facias; but he may appear by attorney, and declare whether he had any goods or effects of the principal in his hands, when the writ was served; and thereupon offer to submit himself to examination on oath.

Proceedings. R. S. c. 86, § 24.

SEC. 24. If the plaintiff proceeds no further, the declaration shall be considered as true.

If plaintiff thinks proper to examine trustee, how answers may be taken. R. S. c. 86, § 25.

SEC. 25. But if he thinks proper to examine such supposed trustee on oath, the answers may be taken in the county in which the trustee dwells, before a judge of the supreme judicial court, or a justice of the peace.

Disclosure, how sworn to. R. S. c. 86, § 26.

SEC. 26. When a trustee has submitted himself to examination on oath in court, his disclosure may be sworn to before a judge of the court, or a justice of the peace; and being filed in court, shall have the same effect as if sworn to in open court.

Trustee not appearing, to be defaulted. R. S. c. 86, § 27.

SEC. 27. When a person duly summoned as trustee, neglects to appear and answer to the suit, he shall be defaulted, and adjudged trustee as alleged.

Trustee may submit a statement of facts to the court. R. S. c. 86, § 28.

SEC. 28. If a person summoned admits that he has in his hands goods, effects, or credits, of the principal, or wishes to refer that question to the court upon the facts, he may make a declaration of such facts as he deems material, and submit himself thereupon to a

further examination on oath; and such declaration and further examination, if any, shall be sworn to as before provided. (a) CHAP. 86.

SEC. 29. The answers and statements sworn to by a trustee, shall be deemed true, in deciding how far he is chargeable, until the contrary is proved, but the plaintiff, defendant, and trustee, may allege and prove any facts material in deciding that question. (b)

SEC. 30. Any question of fact, arising upon such additional allegations, may, by consent, be decided by the court, or submitted to a jury in such manner as the court directs.

SEC. 31. All testimony relating to such additional allegations shall be given by depositions taken and filed in the usual manner.

SEC. 32. When it appears by the answers of a trustee, that any effects, goods, or credits in his hands are claimed by a third person in virtue of an assignment from the principal debtor, or in some other way, the court may permit such claimant, if he sees cause, to appear. If he does not appear voluntarily, notice may be issued and served on him, as the court directs; and if he appears, he may be admitted as a party to the suit so far as respects his title to the goods, effects, or credits in question; and may allege and prove any facts not stated or denied in the disclosure of the trustee; but if he does not appear in person or by attorney, the assignment shall have no effect to defeat the plaintiff's attachment. (c)

SEC. 33. On the trial between the attaching creditor and such claimant, the principal defendant may be examined as a witness for either party, if there is no other objection to his competency except his being a party to the original suit.

SEC. 34. When the plaintiff recovers judgment against the principal, and there is any supposed trustee, who has not appeared and been discharged by disclosure or discontinuance of the suit against him, the court shall award judgment and execution against the goods, effects, and credits in his hands, as well as against the principal, in the usual form.

SEC. 35. If an agreement is entered on the docket between the plaintiff and supposed trustee, that he may appear at a subsequent term of the court, with all the advantages that he would have on appearing and answering at the first term, the same shall be allowed him by the court.

SEC. 36. Any debt or legacy due from an executor or administrator, and any goods, effects, and credits in his hands, as such, may be attached by trustee process. The amount, which a stockholder of a corporation is liable to pay to a judgment creditor thereof, may be

Disclosure deemed true; but any party may allege and prove other facts.
1862, c. 120.

Proof may be submitted to court or jury.
R. S. c. 86, § 30.
29 Me. 485.
35 Me. 227.

Testimony to be in writing.
R. S. c. 86, § 31.
Proceedings, if trustee disclose an assignment of the principal's claim.
R. S. c. 86, § 32.

Principal defendant may be a witness.
R. S. c. 86, § 33.

Form of judgment against principal and trustee.
R. S. c. 86, § 34.

Trustee may appear by consent at another term, as of the first.
R. S. c. 86, § 35.
29 Me. 464.

Executor or administrator liable as trustee; also stockholders of corporations.
R. S. c. 86, § 36.
19 Me. 200.
39 Me. 402.

(a) 21 Me. 23; 33 Me. 31; 35 Me. 227.

(b) 17 Me. 89; 18 Me. 187; 25 Me. 73, 256; 42 Me. 132.

(c) 1 Me. 328; 3 Me. 346; 5 Me. 410; 11 Me. 446; 16 Me. 252; 17 Me. 252, 327; 22 Me. 40; 26 Me. 133; 29 Me. 485; 33 Me. 410; 37 Me. 408; 40 Me. 88; 42 Me. 381; 46 Me. 15; 48 Me. 42.

CHAP. 86. attached by a creditor of such judgment creditor, by trustee process served on such stockholder at any time after the commencement of the judgment creditor's action against him, and before the rendition of judgment therein.

If a person dies after being trustee, goods held in hands of administrator.

R. S. c. 86, § 37.
1 Me. 333.
11 Me. 34.

If trustee dies before judgment, his administrator may be cited.
R. S. c. 86, § 38.
21 Me. 28.
39 Me. 402.
47 Me. 557.

SEC. 37. If any person, summoned as a trustee in his own right, dies before the judgment recovered by the plaintiff is satisfied, the goods, effects, and credits in his hands at the time of attachment, shall remain bound thereby; and his executors or administrators shall be liable therefor as if the writ had been originally served on them.

SEC. 38. If he dies before judgment in the original suit, his executor or administrator may appear voluntarily, or may be cited to appear as in case of the death of a defendant in a common action; and the further proceedings shall then be conducted as if the executor or administrator had been originally summoned as trustee; except that the examination of the deceased, if any had been taken and filed, shall have the same effect as if he were living.

If administrator do not appear, judgment may be rendered against him.
R. S. c. 86, § 39.

SEC. 39. If in such case the executor or administrator does not appear, the plaintiff, instead of suggesting the death of the deceased, may take judgment against him by default, or otherwise, as if he were living; and the executor or administrator shall pay, on the execution, the amount which he would have been liable to pay to the principal defendant; and he shall be thereby discharged from all demands on the part of the principal defendant in the suit for the amount so paid, as if he had been himself adjudged trustee.

If he does not pay, scire facias to issue.
R. S. c. 86, § 40.

SEC. 40. If the executor or administrator in the case last mentioned does not voluntarily pay the amount in his hands, the plaintiff may proceed by writ of scire facias, as if the judgment in the first suit had been against him as trustee; but if he is discharged, he may recover costs or not at the discretion of the court.

Proceedings if trustee dies within thirty days after judgment, to preserve the attachment.
R. S. c. 86, § 41.

SEC. 41. If any person, against whom execution issues as trustee, is not living at the expiration of thirty days after final judgment in the trustee suit, the demand, to be made by force of the execution for continuing the attachment as provided in the seventy-third section, may be made on his executor or administrator at any time within thirty days after his appointment; and shall have the same effect as if made within thirty days after the judgment.

Manner of issuing execution if administrator is adjudged trustee.
R. S. c. 86, § 42.

SEC. 42. When an executor or administrator is adjudged trustee on account of goods, effects, or credits in his hands or possession merely as executor or administrator, in a suit originally commenced against him as a trustee, or against the deceased, or in the original suit, or on a writ of scire facias, the execution shall not be served on his own goods or estate, or on his person; but he shall be liable for the amount in his hands, in like manner and to the same extent only, as he would have been to the principal defendant if there had been no trustee process.

SEC. 43. If after final judgment against an executor or administrator for any certain sum due from him as trustee, he neglects to pay it, the original plaintiff in the foreign attachment shall have the same remedy for recovering the amount, either upon a suggestion of waste or by a suit on the administration bond, as the principal defendant in the foreign attachment would have had upon a judgment recovered by himself for the same demand against the executor or administrator.

CHAP. 86.

Remedy on his bond if he neglects to pay.
R. S. c. 86, § 43.

SEC. 44. When any person summoned as trustee is bound to deliver to the principal defendant any specific articles, he shall deliver them, or so much thereof as may be necessary, to the officer holding the execution; and they shall be sold by the officer, and the proceeds applied and accounted for, as if they had been taken on execution in common form.

Articles in trustee's hands to be delivered to officer, to be sold.
R. S. c. 86, § 44.
13 Me. 420.

SEC. 45. If the trustee neglects or refuses to deliver them, or sufficient to satisfy the execution, the judgment creditor may have his remedy on a scire facias, as provided in sections from sixty-seven to seventy-two inclusive of this chapter; and the debtor his remedy for an overplus belonging to him, as at common law.

Remedy if trustee refuses.
R. S. c. 86, § 45.

SEC. 46. When by the terms of the contract between the trustee and the principal debtor, any mode of ascertaining the value of the property to be delivered to the officer is pointed out, the officer shall, on the application of the trustee, notify the principal debtor previously to the delivery, that the value may be thus ascertained, as far as it may affect the performance of the contract; and in other cases the value of the property, as between the principal and the trustee, shall be estimated and ascertained by the appraisal of three disinterested men, chosen, one by the trustee, one by the officer, and one by the principal, if he see cause; and if he neglects or refuses, by the officer; and they shall all be duly sworn to appraise the same, and the officer, justice, and appraisers, shall certify their doings on the execution.

Mode of settling the value, as between the principal and trustee.
R. S. c. 86, § 46.

SEC. 47. When a part of such goods and articles is taken in execution as aforesaid, the trustee may deliver the residue to the principal, or tender it to him within thirty days after satisfaction of the execution, as he might have delivered the whole.

If part only is taken, balance to be delivered to principal.
R. S. c. 86, § 47.

SEC. 48. Any surplus money, remaining in the hands of the officer, after satisfying the execution and fees, shall be paid to the principal, if within his precinct, if not, to the trustee.

Officer to restore surplus.
R. S. c. 86, § 48.

SEC. 49. When a judgment creditor has caused the debtor to be committed in execution, and afterwards discovers goods, effects, or credits of the debtor, not attachable by the ordinary process of law, he may have the benefit of the trustee process like any other creditor, if, within seven days after the service of the process, he discharges the debtor from prison by a written direction to the jailer,

Trustee process, after commitment of the debtor. Effect thereof.
R. S. c. 86, § 49.
1 Me. 158.
13 Me. 420.

CHAP. 86. stating the reason therefor; but such discharge shall not annul or affect the judgment.

Proceedings,
if trustee dis-
closes property
mortgaged to
him.
R. S. c. 86, § 50.
13 Me. 428.
32 Me. 174.
35 Me. 57, 145.
36 Me. 136.
37 Me. 314.
42 Me. 132, 365.
46 Me. 293.
49 Me. 78.
56 Me. 333.

SEC. 50. When a trustee states in his disclosure that he had, at the time the process was served on him, in his possession, property not exempted by law from attachment, mortgaged, pledged, or delivered to him by the principal defendant to secure the payment of a sum of money due to him, and that the principal defendant has an existing right to redeem it by payment thereof, the court or justice, before which the action is pending, shall order, that, on payment or tender of such money by the plaintiff to said trustee within such time as the court orders, and while the right of redemption exists, he shall deliver over the property to the officer serving the process, to be held and disposed of as if it had been attached on mesne process; and in default thereof, that he shall be charged as the trustee of the principal debtor. This order shall be entered on the records of the court or justice.

On return of
scire facias ex-
cess deter-
mined by court
or jury.
R. S. c. 86, § 51.

SEC. 51. On the return of the scire facias against such trustee, if it appears that the plaintiff has complied with the order of the court or justice, and the trustee has refused or neglected to comply therewith, the court or justice shall enter up judgment against him for the amount due and returned unsatisfied on the execution, if there appears to be in his hands such an amount of the property mortgaged over and above the sum due him; but if not, then for the amount of said property exceeding that sum, if any; and this amount of excess shall, on the trial of the scire facias, be determined by the court or jury.

On disclosure
trustee to de-
liver property
to officer.
R. S. c. 86, § 52.

SEC. 52. If, by the disclosure, it appears that the property in the hands of the supposed trustees was mortgaged, pledged, or subject to a lien to indemnify him against any liability, or to secure the performance of any contract or condition, and that the principal defendant has an existing right to redeem it, the court may order, that, upon the discharge of such liability or performance of such contract or condition by the plaintiff, within such time as the court or justice orders, and while the right of redeeming exists, such trustee shall deliver over the property to the officer, to be by him held and disposed of as if it had been attached.

Officer having
sold property
on execution,
to pay plain-
tiff, and bal-
ance to debtor.
R. S. c. 86, § 53.

SEC. 53. The officer, having sold on execution any personal property delivered to him in virtue of this chapter, after deducting the fees and charges of sale, shall pay the plaintiff the sum by him paid or tendered to the trustee, or applied in the performance of such contract or condition, or discharge of such liability, and the interest from the time of such payment, tender, or application, to the time of sale; and so much of the residue, as is required therefor, he shall apply in satisfaction of the plaintiff's judgment, and pay the balance, if any, to the debtor, first paying the trustee his costs accruing

before the service of the scire facias, as provided in section thirteen. CHAP. 86.

SEC. 54. Nothing contained in this chapter shall prevent the trustee from selling the goods in his hands for the payment of the sum for which they were mortgaged, pledged, or otherwise liable, at any time before the amount due to him is paid or tendered as aforesaid, if the sale would be authorized by the terms of the contract between him and the principal defendant.

Trustee not prevented from selling property mortgaged.
R. S. c. 86, § 54.

SEC. 55. No person shall be adjudged trustee,

First.—By reason of any negotiable bill, draft, note, or other security drawn, accepted, made, or indorsed by him, except in the cases provided in the sixty-third section;

Cases in which a person shall not be adjudged trustee.
R. S. c. 86, § 55.
1859, c. 89.
1862, c. 100.

Second.—By reason of any money or other thing received or collected by him as an officer, by force of a legal process in favor of the principal defendant in the trustee process, although it has been previously demanded of him by the defendant;

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

Fourth.—By reason of any money or other thing due from him to the principal defendant, unless at the time of the service of the writ upon him, it is due absolutely and not on any contingency; (a)

Fifth.—By reason of any debt due from him on a judgment, while he is liable to an execution thereon;

Sixth.—By reason of any amount due from him to the principal defendant as wages for his personal labor, or that of his wife or minor children, for a time not exceeding one month next preceding the service of the process; and not exceeding twenty dollars of the amount due to him as wages for his personal labor; and this shall not be exempt in any suit for necessities furnished him or his family;

22 Me. 494.
36 Me. 464.
37 Me. 199.

Seventh.—Where service was made on him by leaving a copy, and before actual notice of such service or reasonable ground of belief that it was made, he paid the debt due to the principal defendant, or gave his negotiable security therefor;

Eighth.—By reason of any amount due for board furnished any member of the legislature, while in attendance upon the sessions thereof.

SEC. 56. When an action is brought for the recovery of a demand, and the defendant is summoned as a trustee of the plaintiff, the action shall be continued to await the disclosure of the trustee, unless the court otherwise orders, and if the defendant is adjudged trustee, the disclosure and the proceedings thereon may be given in evidence on the trial of the action between the trustee and his creditor.

Effect, if defendant in suit is summoned as trustee of plaintiff.
R. S. c. 86, § 56.
17 Me. 252.
36 Me. 307.

(a) 3 Me. 47; 30 Me. 384; 35 Me. 227; 47 Me. 557; 49 Me. 282; 50 Me. 296.

CHAP. 86.

Costs in such cases.
R. S. c. 86, § 57.

Proceedings, if defendant in action pending is summoned as trustee of plaintiff.
R. S. c. 86, § 58.
17 Me. 252.

If first suit is not continued and judgment rendered, defendant not adjudged trustee afterwards.
R. S. c. 86, § 59.
Effect if before final judgment is rendered, defendant is adjudged trustee.
R. S. c. 86, § 60.

Money, &c. may be attached by trustee process before payable.
R. S. c. 86, § 61.

Proceedings if trustee does not pay costs, when liable.
R. S. c. 86, § 62.

Goods fraudulently conveyed, may be held by trustee process.
R. S. c. 86, § 63.

Trustee may retain pay for any demand due him, but not for unliquidated damages.
R. S. c. 86, § 64.
7 Me. 356.

SEC. 57. If the amount disclosed is as large as the sum recovered in the action, the trustee shall be liable to no costs after the service of the trustee process upon him; otherwise, he shall be liable to legal costs.

SEC. 58. If, during the pendency of an action, the defendant is summoned as the trustee of the plaintiff, the first suit may nevertheless proceed so far as to ascertain by a verdict or otherwise, what sum, if any, is due from the defendant; but the court may, on motion of the plaintiff in the trustee suit, continue it for judgment, until the termination of the trustee suit, or until the attachment therein is dissolved by the discharge of the trustee, or satisfaction of the judgment otherwise.

SEC. 59. If the first suit is not continued, and judgment is rendered therein, the defendant shall not be adjudged afterwards a trustee on account of the demand thus recovered against him, while he is liable to an execution thereon.

SEC. 60. If, before final judgment is rendered in the first suit, the defendant in that suit is adjudged trustee in the other and pays thereon the money demanded in the first suit, or any part of it, the fact shall be stated on the record of the first suit, and judgment therein shall be rendered for the costs due to the plaintiff and for such part of the debt or damages, if any, as remains due and unpaid.

SEC. 61. Any money or other thing due absolutely, to the principal defendant, may be attached before it has become payable; but the trustee shall not be compelled to pay or deliver it before the time appointed therefor by the contract. (a)

SEC. 62. If the person summoned as trustee, and liable for costs as provided in section eighteen, does not voluntarily pay them, when demanded by the officer serving the execution, he shall state the fact in his return on the execution; and if it appears by the return that they have not been paid by any one, the court shall award execution against such trustee for the amount of such costs.

SEC. 63. If any alleged trustee has in his possession any goods, effects, or credits of the principal defendant, which he holds under a conveyance fraudulent and void as to the defendant's creditors, he may be adjudged a trustee on account thereof, although the principal defendant could not have maintained an action therefor against him. (b)

SEC. 64. Every trustee shall be allowed to retain or deduct out of the goods, effects, and credits in his hands, all his demands against the principal defendant, of which he could have availed himself, if he had not been summoned as trustee, by way of set-off on trial, or by

(a) 4 Me. 532; 22 Me. 180.

(b) 15 Me. 73; 25 Me. 256; 29 Me. 485; 35 Me. 328; 46 Me. 293; 48 Me. 322.

a set-off of judgments or executions between himself and the principal defendant, except unliquidated damages for wrongs and injuries ; and he shall be liable for the balance only, after their mutual demands are adjusted. CHAP. 86.

SEC. 65. When a person is adjudged trustee on disclosure in the original suit, the amount for which he is chargeable shall be fixed by the court, subject to exceptions, and be conclusive on scire facias, unless, for cause shown, an additional disclosure is allowed ; but on default, the amount need not be expressed in the judgment ; and in all cases on scire facias, if he is adjudged trustee, the amount for which he is chargeable shall be expressed in the judgment.

Form of judgment against a trustee.
R. S. c. 86, § 65.
25 Me. 256.
28 Me. 485.
34 Me. 123, 586.
42 Me. 132.

SEC. 66. If any alleged trustee is discharged, the judgment shall be no bar to an action brought by the principal defendant against him for the same demand.

Discharge of trustee no bar to claim of principal.
R. S. c. 86, § 66.

SEC. 67. When a person adjudged a trustee in the original action does not, on demand of the officer holding the execution pay over and deliver to him the goods, effects, and credits in his hands, and the execution is returned unsatisfied, the plaintiff may sue out a writ of scire facias against such trustee, from the court or justice that rendered the judgment, to show cause why judgment and execution should not be awarded against him and his own goods and estate, for the sum remaining due on the judgment against the principal defendant.

Scire facias against trustee.
R. S. c. 86, § 67.
23 Me. 60.
48 Me. 171.

SEC. 68. After such writ has been duly served on him, if he neglects to appear and answer thereto, he shall be defaulted ; and if he was not duly examined in the original suit, judgment shall be rendered against him for the whole sum remaining due on the judgment against the principal defendant.

Judgment on scire facias.
R. S. c. 86, § 68.

SEC. 69. When all the defendants in a writ of scire facias are defaulted, not having been examined in the original suit, the court may enter up joint or several judgments, as the case requires, and issue execution in common form.

When all defendants are defaulted, joint or several judgment.
R. S. c. 86, § 69.

SEC. 70. If any trustee, defaulted on the scire facias, was examined in the original suit, judgment shall be rendered on the facts stated in his disclosure, or proved at the trial, for such part of the goods, effects, and credits, for which he is chargeable as trustee, as remain in his hands, if any, or so much thereof as is then due and unsatisfied on the judgment against the principal defendant ; but if it appears that such person paid and delivered the whole amount thereof on the execution issued on the original judgment, he shall not be liable for any costs on the scire facias.

If trustee defaulted on scire facias was examined, judgment on disclosure.
R. S. c. 86, § 70.
40 Me. 256.
46 Me. 91, 348.

SEC. 71. If the trustee appears and answers to the scire facias, and was not examined in the original suit, he may be examined as he might have been on the original suit ; and if, on such examination, he appears not chargeable, the court shall render judgment against him

Liability for costs if discharged on scire facias, not having been before

CHAP. 86. for costs only, if resident in the county where the original process examined.
 R. S. c. 86, § 71. was returnable; but if not resident in such county, he shall not pay or recover any costs. (a)

SEC. 72. If he had been examined in the original suit, the court may permit or require him to be examined anew in the suit of scire facias; and he may then prove any matter proper for his defence; and the court may enter such judgment, as law and justice require, upon the whole matter appearing on such examination and trial. (b)

SEC. 73. When any person is adjudged a trustee, if the goods, effects, and credits in his hands, are not demanded of him by virtue of the execution within thirty days next after final judgment; the attachment of them by the original process is dissolved; and they are liable to another attachment as though the prior attachment had not been made; but when the debt due from the trustee to the principal defendant is payable at a future day, or specific property is in his hands which he is bound to deliver at a future day, the attachment shall continue until the expiration of thirty days after such debt is payable in money, or the property aforesaid is demanded of the trustee.

SEC. 74. If there is no second attachment, the principal defendant in the suit may recover the goods, effects, and credits, if not so demanded, as if they had not been attached.

SEC. 75. When the officer holding the execution cannot find the trustee in the state, a copy of the execution may be left at his dwelling-house, or last and usual place of abode, with notice to the trustee indorsed thereon, and signed by the officer, signifying that he is required to pay and deliver, towards satisfying such execution, the goods, effects, and credits, for which he is liable. When such trustee has no such dwelling-house or place of abode in this state, such copy and notice may be left at his dwelling-house or place of abode without the state, or be delivered to him personally by the officer, or other person by his direction; and such notice in either case shall be deemed a sufficient demand for all the purposes mentioned in the two preceding sections.

SEC. 76. The judgment against any person as trustee shall discharge him from all demands by the principal defendant or his executors or administrators, for all goods, effects and credits, paid, delivered, or accounted for by the trustee thereon; and if he is afterward sued for the same by the defendant or his executors or administrators, such judgments, and disposition of the goods, effects, and credits as above stated, being proved, shall be a bar to the action for the amount so paid or delivered by him.

(a) 7 Me. 129; 36 Me. 298; 40 Me. 256; 48 Me. 81.

(b) 4 Me. 435; 15 Me. 340; 25 Me. 256; 40 Me. 256; 41 Me. 131.

SEC. 77. If any person summoned as a trustee, upon his examination willfully and knowingly answers falsely, he shall be deemed guilty of perjury; and shall pay to the plaintiff in the suit so much of the judgment recovered against the principal defendant as remains unsatisfied, with interest and costs, to be recovered in an action on the case.

CHAP. 86.

Penalty if trustee discloses falsely.
R. S. c. 86, § 77.
16 Me. 433.

SEC. 78. If any person summoned as a trustee is prevented from appearing in the original suit by absence from the state, or any other reason deemed sufficient by the court, and a default is entered against him, he shall not be liable for any costs on the scire facias; but, on his disclosure, the court may allow him his reasonable costs and charges, to be retained or recovered as if he had appeared in the original suit.

Trustee exempt from costs on scire facias in certain cases.
R. S. c. 86, § 78.

SEC. 79. In all cases under the trustee process in the supreme judicial court, where exceptions are taken to the ruling and decision of a single judge as to the liability of the trustee to be charged, the whole case may be re-examined and determined by the law court, and remanded for further disclosures or other proceedings, as the court thinks justice requires.

In case of exceptions, whole case may be re-examined by law court.
R. S. c. 86, § 79.
29 Me. 485.
34 Me. 123.
35 Me. 145.
42 Me. 132.

TRUSTEE PROCESS IN JUSTICE COURTS.

SEC. 80. When a trustee process is issued by a municipal or police court or a trial justice, the writ shall be in the form now in use, and may contain a direction to attach property of the principal in his own hands, as well as in the hands of the person named as trustee, and be served as a trustee process issued by a judicial court, seven days before the return day; and shall be brought in the county where either of the supposed trustees resides; and if not so brought, it shall be dismissed and the trustees recover their costs.

Form and service of trustee process for justice courts. In what county brought.
R. S. c. 86, § 80.
12 Me. 17.

SEC. 81. When the person summoned does not appear and answer to the suit, he shall be defaulted, adjudged trustee, and be liable to costs on scire facias; if he appears at the return day and submits himself to an examination on oath and is discharged, he shall be allowed his legal costs; but if he is charged, he may retain the amount of his costs; and when the plaintiff discontinues his suit against him or the principal, he shall be allowed his costs.

Default if trustee does not appear. Costs.
R. S. c. 86, § 81.

SEC. 82. All subsequent proceedings in such causes shall be had, as is prescribed in this chapter in trustee processes in the supreme judicial court, varying forms as circumstances require; but when, in a trustee process before such court or justice the debt recovered against the principal is less than five dollars, the trustee shall be discharged, unless the judgment is so reduced by means of a set-off filed in the case.

Subsequent proceedings. Discharge of trustee if judgment less than five dollars unless in case of set-off.
R. S. c. 86, § 82.

SEC. 83. If after a judgment is rendered in such trustee process, the principal defendant or trustee removes out of the county in which

How execution shall issue if defendant or

CHAP. 86. it was rendered, such court or justice may issue execution against either, directed to the proper officer of any other county where he is supposed to reside.

trustee re-
moves.

R. S. c. 86, § 83.

Proceedings, if
trustee living
in another
county, is dis-
charged.

R. S. c. 86, § 84.

SEC. 84. When an action is brought against a trustee in a county where he resides, but where neither the plaintiff nor defendant resides, and the trustee is discharged, or the action discontinued as to him, the action shall still proceed if there was legal service on the principal defendant, unless it appears, by plea in abatement, that the trustee was collusively included in the writ for the purpose of giving the court in such county jurisdiction.

WHEN TRUSTEE ACTIONS ON JUDGMENT MAY BE ABATED.

Trustee action
brought on
judgment on
which execu-
tion might is-
sue, and
debtor has at-
tachable prop-
erty, or to vex
or make costs,
abated with
costs.
1859, c. 64.

SEC. 85. When action is commenced by trustee process on a judgment, on which an execution might legally issue, and it appears to the court or justice that, at the time of bringing it, the defendant openly had visible property liable to attachment, sufficient to satisfy such judgment; or that it was brought for the purpose of vexation; or to accumulate costs, it shall, at any time, on motion, be abated, with costs to the defendant.

HOW TRUSTEE MAY BE HELD WHEN DEMAND AGAINST HIM IS ASSIGNED.

How demands
assigned as se-
curity may be
trustered and
redeemed.
1863, c. 201, § 1.

SEC. 86. When it appears that a person summoned as trustee, is indebted to the principal defendant on any demand on which he might be held as trustee, but that it has been conditionally assigned as security, and the principal defendant has a subsisting right to redeem it, the court may order, that on the fulfilment of such conditions by the plaintiff, within the time fixed by the court, and while the right to redeem exists, the trustee shall be held for the full amount of such demand; and when the court is satisfied that its order has been complied with, it may charge the trustee accordingly.

Plaintiff's
rights in case
of redemption
by him.
1863, c. 201, § 2.

SEC. 87. The officer making demand on the trustee on the execution, shall first deduct from the amount received by him the sum paid by the plaintiff to redeem, if any, with interest, and apply the balance towards the execution; but if the demand has been redeemed otherwise than by the payment of money, the plaintiff shall be subrogated for the holder thereof, and have the same rights and remedies against the principal defendant, and may enforce them, at his own expense, in the name of such holder or otherwise.