

# MAINE STATE LEGISLATURE

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THE  
REVISED STATUTES

OF THE  
STATE OF MAINE,

PASSED JANUARY 25, 1871;

TO WHICH ARE PREFIXED  
THE CONSTITUTIONS

OF THE  
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX.

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BY AUTHORITY OF THE LEGISLATURE.



PORTLAND:  
PUBLISHED BY BAILEY & NOYES.

**CHAPTER 91.****MORTGAGES OF PERSONAL PROPERTY, LIENS AND THEIR ENFORCEMENT.****MORTGAGES OF PERSONAL PROPERTY.**

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## MORTGAGES OF PERSONAL PROPERTY.

Mortgages not valid except between the parties, unless recorded or possession taken. Where to be recorded. R. S. c 91, § 1.

SEC. 1. No mortgage of personal property, to secure payment of more than thirty dollars, shall be valid against any other person than the parties thereto, unless possession of such property is delivered to and retained by the mortgagee, or the mortgage is recorded by the clerk of the town or plantation, organized for any purpose, in

which the mortgager resides. Such a mortgage, made to secure the payment of thirty dollars or less, may be so recorded, and with the same effect. When all the mortgagers reside without the state, the mortgage shall be recorded in said town or plantation where the property is when the mortgage is made; but if a part of the mortgagers reside in the state, then in the towns or plantations in which such mortgagers reside. A mortgage made by a corporation shall be recorded in the town where it has its established place of business. If any mortgager resides in an unorganized place, the mortgage shall be recorded in the oldest adjoining town or plantation, organized as aforesaid, in the county. (a)

SEC. 2. The clerk, on payment of the same fees allowed to registers of deeds for like services, shall record all such mortgages delivered to him in a book kept for that purpose, noting therein, and on the mortgage, the time when it was received; and it shall be considered as recorded when received. Such clerk may appoint a citizen of said town his deputy, who may, in the clerk's absence from his office, record mortgages with the same effect as if done by the clerk. The appointment may be made in writing, as follows:

I hereby appoint \_\_\_\_\_ to perform the duties of town clerk as set forth in section two, of chapter ninety-one, of the revised statutes, in the town of \_\_\_\_\_, during my absence from the clerk's office.

\_\_\_\_\_, Clerk of the town of \_\_\_\_\_.

Said deputy shall be sworn to faithfully perform the duties of his office before he enters thereon.

SEC. 3. When the condition of a mortgage of personal property to secure the payment of more than thirty dollars is broken, the mortgager, or any person lawfully claiming under him, may redeem it at any time before it is sold, by virtue of a contract between the parties or on execution against the mortgager, or before the right of redemption is foreclosed, as hereinafter provided, by paying or tendering to the mortgager, or the person holding the mortgage by assignment thereof, recorded where the mortgage is recorded, the sum due thereon, or by performing or offering to perform the conditions thereof, when not for the payment of money, with all reasonable charges incurred; and the property, if not immediately restored, may be replevied, or damages for withholding it recovered in an action of the case.

SEC. 4. The mortgagee or his assignee, after condition broken, may give to the mortgager or his assignee, when his assignment is recorded where the mortgage is recorded, written notice of his intention

(a) 19 Me. 167; 21 Me. 86; 22 Me. 560; 24 Me. 104, 555; 25 Me. 419; 27 Me. 400; 30 Me. 184; 31 Me. 73; 32 Me. 28, 293; 33 Me. 318; 34 Me. 208; 37 Me. 181, 543; 40 Me. 412, 561; 42 Me. 130, 168; 44 Me. 11; 45 Me. 602; 46 Me. 293, 414; 47 Me. 9, 504; 48 Me. 26, 368, 548, 584; 49 Me. 97, 566; 50 Me. 127, 395; 51 Me. 601; 53 Me. 308; 55 Me. 76; 56 Me. 458.

CHAP. 91.  
1864, c. 243.  
1865, c. 287.  
1867, c. 64.

Clerk records mortgages, noting when received. May appoint a deputy, and how. R. S. c. 91, § 2. 1860 c. 158. 19 Me. 167. 31 Me. 73. 37 Me. 181. 40 Me. 284. 43 Me. 376.

How mortgage may be redeemed after breach of condition. Replevied if not delivered. R. S. c. 91, § 4. 1861, c. 23, §§ 1, 2. 49 Me. 34. 54 Me. 558.

Notice of foreclosure, how to be given and served. 1861, c. 23, §§ 2, 3. 1862, c. 121.

CHAP. 91. to foreclose the same, by leaving a copy thereof with the mortgager or such assignee, or if the mortgager is out of the state, though resident therein, by leaving such copy at his last and usual place of abode, or by publishing it once a week, for three successive weeks in one of the principal newspapers published in the town where the mortgage is recorded. When the mortgager or his assignee of record is not a resident of the state and there is no newspaper published in such town, such notice may be published in any newspaper printed in the county where the mortgage is recorded.

Sworn copy of notice to be recorded. Evidence of the facts. Mortgager out the state to appoint agent to receive pay, or no forfeiture. 1861 c. 23, § 4.

SEC. 5. The notice with an affidavit of service or a copy of the publication, with the name and date of the paper in which it was last published, shall be recorded where the mortgage is recorded, and the copy of such record shall be evidence that the notice has been given. If the mortgagee or his assignee is not a resident of the state, he shall at the time of recording such notice, record therewith his appointment of an agent resident in the same town, to receive satisfaction of the mortgage; and payment or tender thereof may be made to him. If he does not appoint such agent, the right to redeem shall not be forfeited.

Right of redemption forfeited in sixty days. Exceptions. R. S. c. 91, § 3. 1861 c. 23 §§ 5, 6.

SEC. 6. The right to redeem shall be forfeited, except as provided in the preceding sections, if the money to be paid or other thing to be done is not paid or performed, or tender thereof made, within sixty days after such notice is recorded; but nothing in the preceding sections shall defeat a contract of bottomry respondentia transfer, assignment, or hypothecation of a vessel or goods at sea, or abroad, if possession is taken as soon as may be after their arrival in the state. (a)

#### LIENS ON VESSELS.

Lien on vessel building, for labor and material, how enforced. On material, how enforced. On vessel after launching, or for repairs, how enforced. 1838, c. 15, § 1. 33 Me. 479. 34 Me. 205. 36 Me. 384. 40 Me. 291, 409. 41 Me. 397. 42 Me. 77, 141. Form of writ for enforcing lien. How signed, sealed and attested, and where returnable.

SEC. 7. Any person who furnishes labor or materials for building a vessel, shall have a lien on it therefor, which may be enforced by attachment thereof, within four days after it is launched. He shall also have a lien on the materials furnished before they become part of the vessel, which may be enforced by attachment; and a person who furnishes labor or materials for a vessel after it is launched, or for its repair, shall have a lien on it therefor, which may be enforced by attachment within four days after the work has been completed.

SEC. 8. The form of a writ for enforcing such lien, shall be in substance as follows:

#### STATE OF MAINE.

—SS.

To the sheriff of our county of ———, or his deputy:

Greeting.

[L. S.] We command you to attach the ship or vessel (here give

(a) 24 Me. 131; 29 Me. 9, 429; 31 Me. 104, 501; 36 Me. 47; 32 Me. 174; 39 Me. 448; 42 Me. 163; 55 Me. 76.

such a description of the vessel as will identify it,) and summon all CHAP. 91. persons interested, in the manner directed by law, to appear before our justices of our — court, next to be held at —, within, and for the county of —, on the — Tuesday of — next, then and there in our said court, to answer to A. B., of —, who claims a lien on said ship or vessel for (here describe briefly the nature of the lien,) to the amount of — dollars and — cents, according to the specification hereto annexed, which amount, C. D., of —, who owes the same, neglects and refuses to pay, to the damage of said A. B., as he says, the sum of — dollars, which shall then and there be made to appear, with other due damages; and have you there, this writ with your doings thereon.

Witness, —, at —, the — day of —, in the year of our Lord, one thousand eight hundred and —.

E. F., Clerk.

Said writ shall be signed, sealed and tested like other writs in civil actions, and returned in the county where said vessel is.

SEC. 9. The specification annexed to the writ, shall contain a just, true and particular account of the demand claimed to be due the plaintiff with all just credits; the name of the persons personally liable to him, and names of the owners of the ship or vessel if known to him, and shall be verified by the oath of one plaintiff, or of some person in his behalf that the amount claimed in said specification is justly due from the person named in the writ, and specification as owing it, and that he believes that by the laws of this state, he has a lien on such ship or vessel for the whole or a part thereof.

Specification to be annexed to the writ. What to contain, to be verified by oath. What must be sworn to. 1858, c. 15, § 3.

SEC. 10. If the vessel at the time is on the stocks, the attachment shall be made by filing in the office of the clerk of the town in which such vessel is, within forty-eight hours thereafter, a copy of so much of his return on the writ, as relates to the attachment with the name of the plaintiff, the name of the person liable for the debt, the description of the vessel as given in the writ, the date of the writ, the amount claimed, and the court to which it is returnable, and by leaving a copy of such certificate with one of the owners of the vessel, if known to him and residing within his precinct, or with the master workman thereon; if the attachment is so made the officer need not take possession of the vessel before it is launched, unless specially directed by the plaintiff or his attorney to do so; but he shall as soon as may be afterwards; but he may take possession at any time before it is launched; and if he does, he shall not hinder the work thereon, or prevent or delay the launching. If the vessel is launched at the time of attachment, it shall be attached like other personal property.

Vessel on the stocks, attachment how made. Possession, when to be taken by officer. If before launching, work not to be hindered. When it is launched how attachment is made. 1858, c. 15, §§4, 5.

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Service of writ on debtor and on owners. Form of notice to owners, how served and posted fourteen days before court. 1858 c. 15, §§ 6, 7.

SEC. 11. The writ shall be served on persons, named as personally liable for the plaintiff's claim, as in other personal actions against them, or the owners of the vessel, who are known or reside in the county where the vessel is, by a notice in substance, as follows, and served as summonses are:

— ss. To the owners of the ship or vessel, (describe it as in writ,) Greeting.

Take notice that the above-described vessel is attached on a writ in favor of — who claims a lien thereon for the sum of — (naming the amount of the claim,) due him by C. D., and that said writ is returnable to the — court to be held at —, in and for the county of —, on the — Tuesday of —, A. D. 18—, when and where you may appear and defend if you see fit.

Dated, &c.

G. H., Sheriff, or Deputy Sheriff;

and by a notice in like form posted in some conspicuous place on the vessel attached. The attachment, service and notices shall be made fourteen days at least before the term of the court to which the writ is returnable.

Writs made after first attachment to be served by same officer. If disqualified, by a qualified officer. 1858 c. 15, § 8. Action how to be entered on docket and who may defend on giving bond. 1858 c. 15, §§ 9, 10.

SEC. 12. On all writs made after the first attachment and while any lien attachment is pending, the attachment and services shall be made as aforesaid by the same officer, or if he is disqualified, by any qualified officer, by his giving notice thereof to the first attaching officer.

Defendant may offer to be defaulted, and its effect. Vessel owner may admit certain sum due, and its effect. 1858, c. 15, §§ 11, 12.

SEC. 13. At the return term, the actions shall be entered on the docket as follows: The person claiming the lien as plaintiff; the person alleged to be personally liable as defendant, and the name or other description of the vessel attached, and the owners or mortgagees of the vessel, or any plaintiff in suit wherein it is attached for a lien, may appear for and defend any action so far as relates to the validity and amount of the lien claim; but no such plaintiff shall so defend until he gives bond, to the satisfaction of the court, to pay the costs awarded against him.

SEC. 14. The defendant may offer to be defaulted as in other cases; and the owners of the vessel may admit, in writing filed with the clerk, that a certain sum is due the plaintiff as a lien on the vessel; and if the plaintiff does not recover a greater sum as lien, he shall recover no costs against such owner or the vessel or its proceeds after the admission is filed; but such owner shall recover costs thereafter.

Court to decide questions of cost as in equity. 1858, c. 15, § 13.

SEC. 15. The court, except as provided in the preceding section, may decide all questions of costs and apportion them as they think proper, as in cases in equity.



SEC. 16. At the request of either party, the following questions of fact shall be submitted to a jury: "What amount claimed in the writ is due from the defendant to the plaintiff?" and "For how much of such amount has the plaintiff a lien on the vessel attached?" And the verdict shall be in answer to these questions. If the parties waive a jury trial, these questions shall be decided by the court, on a hearing or report of an auditor appointed by the court.

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What questions shall be submitted to jury and found in verdict; or if jury trial waived, decided by court. 1858, c. 15, §§ 14, 15.

SEC. 17. Upon ascertaining the amount aforesaid, judgment shall be rendered in his favor against the defendant, as in other personal actions, for the amount found not to be a lien on the vessel, with such costs as the court awards; and a separate judgment shall be rendered in his favor against said defendant and the vessel attached, for the amount decided to be a lien, with such costs as the court awards; and separate executions shall be issued thereon.

Judgment, how to be rendered against defendant. 1858, c. 15, § 16.

SEC. 18. Parties shall have the same right of exceptions, motions for new trials and writs of error, as in other actions.

Right of exceptions as in other cases. 1858, c. 15, § 16. Court may order vessel sold on execution. Proceeds to be paid into court. Manner of sale, title of purchaser. 1858, c. 15, § 17.

SEC. 19. When judgment is recovered in any suit on which a vessel was attached, the court may issue an order to the attaching officer to sell it at auction, and to pay the proceeds thereof into court after deducting the expenses of sale and for taking care of the vessel while under attachment. Such officer shall sell it as other personal property is sold on execution; and the purchaser shall hold it free from any prior claim.

SEC. 20. If such proceeds are more than all the judgments recovered against such vessel, and the amounts claimed in the undecided suits, the court may order the judgments as fast as they are recovered against said vessel, to be paid from said fund until all such suits are terminated and all judgments satisfied. The balance, if any, the court may, on petition, order to be paid to the persons legally entitled thereto.

Distribution of proceeds and of a surplus. 1858, c. 15, § 18. 45 Me. 293.

SEC. 21. If such proceeds are not enough to pay in full the judgments recovered and the claims still undecided, the court may order the money to remain until all the suits are terminated, and then divide pro rata; or it may direct a sufficient amount to be retained to pay on the undecided claims their proportion, and divide the residue ratably among the judgments recovered, and if after all the suits are terminated and the judgments recovered subsequent to the first division have received the same proportion as prior judgments, there is any sum remaining, it shall be divided among the judgments, pro rata, and in such division the court shall make such orders as will prevent the enforcement of a double lien, and secure the just rights of all.

When proceeds not enough, to be distributed pro rata, and when double liens to be prevented. 1858, c. 15, § 19.

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How vessel attached for non lien claim by sheriff or deputy, may be attached on lien claim; how when attached by constable.

1858, c. 15, § 21.

How vessel attached for lien, may be attached for non-lien claim against owner, and its effect.

1858, c. 15, § 22.

When vessel attached on both kinds of claims is sold, balance after paying lien claims, applied to non-lien claims.

1858, c. 15, § 23.

Admiralty powers of court.

1858, c. 15, § 24.

Liens on lime, limerock, and on slate, for thirty days, to be enforced by attachment.

R. S. c. 9, § 15, 1860 c. 131.

Lien on buildings and lots for labor and materials, how enforced.

1868, c. 207, § 1.

1869, c. 57, § 1.

16 Me. 268.

28 Me. 511.

33 Me. 141, 370.

34 Me. 98.

35 Me. 73, 291,

481.

52 Me. 293.

54 Me. 345.

SEC. 22. If the vessel has been already attached by a sheriff or his deputy, where a writ is issued for such lien claim, it shall be served by such officer; if attached by a constable, he shall give up to the officer having the lien writ the possession and the receipt upon which he attached it with his return of the facts thereon; and the attachment shall hold subject to the legal priorities of the lien claim.

SEC. 23. A vessel attached for a lien claim, may be attached by the same officer, in the ordinary manner, in a suit against the owners thereof, and such attachment shall be valid, subject to the legal priorities of the lien attachments.

SEC. 24. When a vessel attached for liens, and also in the ordinary manner, is sold by order of the court, and the proceeds are more than sufficient to satisfy the lien judgments, the surplus shall be paid to the officer to hold on the writs, not founded on the lien claims.

SEC. 25. The court like a court in admiralty, may make all orders necessary for carrying out the provisions hereof, according to their true intent and meaning.

## LIEN ON LIME, LIMEROCK AND SLATE.

SEC. 26. Any person who digs, hauls, or furnishes rock for the manufacture of lime, has a lien thereon for his personal services, and the rock so furnished, for thirty days after such rock is manufactured into lime, or until such lime is sold, or shipped on board a vessel; any person who labors in mining, quarrying, or manufacturing slate in any quarry, has a lien for the wages of his labor on all the slate mined, quarried or manufactured in the quarry by him or his co-laborers, for thirty days after the slate arrive at their port of shipment. Said liens shall have precedence of all other claims, and may be enforced by attachment within the times aforesaid.

## LIENS ON BUILDINGS AND LOTS.

SEC. 27. A person who performs or furnishes labor or materials in erecting, altering, or repairing a house, building or appurtenances, by virtue of a contract with or by consent of the owner, has a lien thereon, and on the land on which it stands, or on any interest such owner has in the same, to secure payment thereof with costs, to be enforced by attachment; and if a levy is made thereon, the appraisers may set out a suitable lot for said building, if they think the whole is not needed therefor. If the debtor has no legal interest in the land on which the building is erected, the lien attaches to the building and may be enforced as before provided; and if the owner of such land or building, so contracting, is a minor or married woman, such lien shall exist, and such minority or coverture shall not bar a recovery in any suit brought to enforce it.

SEC. 28. If the labor or materials were not furnished by a contract with the owner of the property to be affected, such lien shall not attach unless the person before furnishing the labor or materials, gives notice to such owner of his intention to claim the lien. The owner may prevent such lien for labor or materials, not then performed or furnished, by giving written notice to the person performing or furnishing the same, that he will not be responsible therefor.

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When labor and materials, not furnished to owner of building no lien without notice to him. How he may prevent lien. 1868, c. 207, §§ 2, 3.

SEC. 29. The lien mentioned in the preceding section shall be dissolved unless the claimant within thirty days after he ceases to labor or furnish materials as aforesaid, files in the office of the clerk of the town in which such building is situated, a true statement of the amount due him, with all just credits given, together with a description of the property intended to be covered by the lien, sufficiently accurate to identify it, and the names of the owners, if known; which shall be subscribed and sworn to by the person claiming the lien, or by some one in his behalf, and recorded in a book kept for that purpose, by said clerk, who is entitled to the same fees therefor as for recording mortgages.

Lien dissolved unless sworn claim filed in town clerk's office in thirty days. Clerk's fees. 1868, c. 207 § 4. 1869, c. 57 § 2.

SEC. 30. No inaccuracy in such statement relating to said property, if the same can be reasonably recognized, or to the amount due for labor or materials, shall invalidate the proceedings, unless it appears that the person making it willfully claims more than his due.

No inaccuracy shall avoid if reasonably certain in description. 1868 c. 207 § 5. 1869, c. 57 § 2.

SEC. 31. A suit to enforce the liens in the four preceding sections must be commenced within ninety days after the last labor is performed or materials so furnished, or the lien shall be dissolved.

Suit must be commenced in ninety days or lien dissolved. 1868, c. 207 § 6. 35 Me. 291. 54 Me. 345.

SEC. 32. When the owner dies within the ninety days and before commencement of a suit, it may be commenced within sixty days after notice given of the appointment of an executor or administrator, and the lien shall be extended accordingly.

When owner dies before suit, how to be brought and when.

SEC. 33. When a lease of land, with a rent payable, is made for the purpose of erecting a mill or other buildings thereon, such buildings and all the interest of the lessee shall be subject to a lien and liable to be attached for the rent due. Such attachment, made within six months after the rent becomes due, shall be effectual against any transfer of the property by the lessee.

R. S. c. 91, § 17. 1850, c. 159, § 2. Lien on buildings placed on land leased, for rent, how enforced. R. S. c. 91, § 18.

LIENS ON LOGS AND LUMBER.

SEC. 34. A person who labors at cutting, hauling, rafting or driving logs, or lumber, shall have a lien thereon for the amount due for his personal services, which shall take precedence of all other claims, except liens reserved to the states of Maine and Massachusetts; to continue for sixty days after the logs or lumber arrive at the place of

Lien on lumber for labor for sixty days after arrival at destination. R. S. c. 91, § 19. 1868, c. 135.

CHAP. 91. destination for sale or manufacture; and be enforced by attachment. (a)

Booimage may be paid by officer. Lien not defeated by taking a note. Notice to owner.  
R. S. c. 91, § 20.

SEC. 35. The officer making such attachment may pay the boomage thereon, not exceeding the rate per thousand on the quantity actually attached by him, and return the amount paid on the writ, which shall be included in the damages recovered. The action or lien shall not be defeated by taking a note, unless it was taken in discharge of the amount due and of the lien. Notice of the suit, such as the court orders, shall be given to the owner of the logs or lumber, and he may be admitted to defend it. (b)

#### GENERAL PROVISIONS FOR ENFORCEMENT OR DISCHARGE.

Lien attachments to have precedence of other incumbrances, and may be maintained, though debtor dies and estate is insolvent. Writ must show it is for lien.  
R. S. c. 91, § 21.  
1862 c. 131, § 2.  
Sec c. 6, § 22.  
37 Me. 350.  
Tender discharges lien.  
R. S. c. 91, § 22.  
35 Me. 73.

SEC. 36. Suits to enforce any of the liens before named in this chapter shall have precedence of all attachments and incumbrances made after the lien attached, and not made to enforce a lien, and may be maintained although the employer or debtor is deceased and his estate represented insolvent; and his executor or administrator may be summoned and held to answer to an action brought to enforce the lien. The declaration must show that the suit is brought to enforce the lien; but all the other forms and proceedings therein, shall be the same as in ordinary actions of assumpsit. (c)

SEC. 37. All liens named herein may be discharged by tender of a sum sufficient to pay all that is justly due, made by the debtor or owner of the property, or their agents.

#### LIEN ON GOODS AND PERSONAL BAGGAGE.

35 Me. 153.  
38 Me. 192.  
42 Me. 50.

SEC. 38. Innholders or keepers of boarding houses have a lien on the goods and personal baggage of their guests and boarders, to secure the payment of any money due from them for board or lodging; and may enforce the same by a sale of such goods or baggage in a manner hereinafter provided.

#### LIENS HOW ENFORCED ON GOODS IN POSSESSION.

Lien on goods in possession, enforced by sale.  
R. S. c. 91, § 23.  
Petition to be filed; contents of it.  
R. S. c. 91, § 24.

SEC. 39. Any person, having a lien on any article in his possession, may enforce it by a sale thereof, as hereinafter provided.

SEC. 40. The person claiming the lien may file, in the supreme judicial court in the county where he resides, or in the office of the clerk thereof, a petition briefly setting forth the nature and amount of his claim, a description of the article possessed, and the name and residence of its owners, if known to him, and a prayer for process to enforce his lien.

(a) 9 Me. 21; 24 Me. 214; 33 Me. 283, 430; 34 Me. 273, 286; 35 Me. 60, 126; 36 Me. 536, 542; 38 Me. 80, 130; 39 Me. 443; 42 Me. 497; 43 Me. 578; 45 Me. 316, 566; 46 Me. 365; 49 Me. 73; 56 Me. 150, 297.

(b) 35 Me. 126; 41 Me. 469; 43 Me. 455, 578; 45 Me. 85; 47 Me. 143, 152; 50 Me. 428.

(c) 23 Me. 511; 33 Me. 141, 283; 34 Me. 273, 286; 35 Me. 291; 36 Me. 334; 37 Me. 550; 41 Me. 370; 42 Me. 77, 130, 141; 38 Me. 130; 45 Me. 157, 316; 50 Me. 428; 53 Me. 308.

SEC. 41. If the owners are set forth in a petition filed in the clerk's office, and are residents of this state, the clerk may issue an order of notice to such owners, by serving them with a copy of the petition and order thereon, fourteen days before the next term of the court in such county.

CHAP. 91.  
Service on owners within the state.  
R. S. c. 91, § 25.

SEC. 42. If the owners are not known, or not residents in the state, or the petition is filed in court, the court may order reasonable notice to the owners and others interested; which may be returnable at the same or a subsequent term, and be by personal service of a copy of the petition with the order of court thereon, or by publication in a newspaper, or both, as the court directs. But such order shall always allow at least fourteen days from the service or publication, before the time fixed for the appearance of the persons notified.

Service on owners when unknown or out of the state.  
R. S. c. 91, § 26.

SEC. 43. At the time fixed in the notice, any party interested in the article as owner, mortgagee, or otherwise, may appear, and after appearance, the proceedings shall be the same as in an action on the case, in which the petitioner is plaintiff and the party appearing is defendant. Questions of fact, at the instance of either party, shall be submitted to a jury on an issue framed under the direction of the court.

When owner appears, proceedings. Jury trial.  
R. S. c. 91, § 27.

SEC. 44. If in the opinion of the court the article on which the lien is claimed is not of sufficient value to pay the petitioner's claim, with the probable costs of the suit, the court may order the persons appearing in defence to give bond to the petitioner, with sufficient sureties approved by the court, to pay such costs as are awarded against him, so far as they are not paid out of the proceeds of the articles on which the lien is claimed.

Owner may be required to give bond, for costs.  
R. S. c. 91, § 28.

SEC. 45. After trial and final adjudication in favor of the petitioner, the court may order any competent officer to sell the article on which the lien is claimed, as personal property is sold on execution, and out of the proceeds, after deducting his fees and the expenses of sale, to pay to the petitioner the amount and costs awarded him, and the balance to the person entitled to it, if they are known to the court, otherwise into court.

Court may order property to be sold to pay lien.  
R. S. c. 91, § 29.

SEC. 46. Money paid into court may be paid over to the person legally entitled to it, on petition and order of the court. If it is not called for at the first term after it is paid into court, it shall be paid into the county treasury; and if afterwards the person entitled to it petitions and establishes his claim to it, the court may order the county treasurer to pay it to him.

Disposition of the proceeds.  
R. S. c. 91, § 30.

SEC. 47. Liens for less amount than twenty dollars, may be enforced before any trial justice for the county where the person having the lien resides, and all the proceedings, rights, and liabilities, shall be the same as hereinbefore provided, as far as the nature of

Lien less than \$20.00, trial justices have jurisdiction. Appeal.  
R. S. c. 91, § 31.

CHAP. 92. the tribunal will admit; and either party may appeal, and the proceedings shall be the same as in appeals in civil actions before a trial justice.

## CHAPTER 92.

### THE RIGHT OF ERECTING MILLS AND MILL-DAMS, AND OF FLOWING LANDS AND DIVERTING WATER TO SUPPLY MILLS, AND THE MODE OF OBTAINING DAMAGES THEREFOR.

- SEC. 1. Right to erect and maintain mill-dams, and to divert water by a canal for mills.
2. Not to injure a mill or canal previously built.
3. Restriction as to height of dam and quantity of water.
4. Damages for flowing, &c., recoverable on complaint.
5. Form of complaint.
6. How presented and served. May be inserted in writ and how served.
7. What may be pleaded in bar.
8. Mode of trial. Costs for respondent if complainant fails.
9. Proceedings, if complainant recovers.
10. Trial by jury. Commissioners' report to be evidence.
11. Acceptance of Commissioners' report.
12. Verdict or report to bar any future action.
13. Yearly damages, how fixed.
14. Security to be given for yearly damages, if required.
15. Complainant may sue for damages, if unpaid. Lien upon mill and land for damages.
16. Mill and land may be seized and sold on the execution after thirty days. Effect of such sale.
17. Right of redemption, how enforced.
18. Either party may file a new complaint.
19. Restriction of this right.
20. Owner may offer an increased compensation. Consequence.
21. Injured party may offer to accept a less compensation. Consequence.
22. Tenants may make such offers as well as owners.
23. Restriction of suits for damages.
24. Double damages if dam is raised higher, kept up longer, or more water diverted than allowed by the judgment.
25. Agreement of parties binding, if recorded.
26. Judgment no bar to a new complaint.
27. Tender of damages, and effect thereof.
28. Complaint not to abate by death of either party.
29. If complaint abates, rights may be preserved by new complaint within a year.
30. Provisions of this chapter apply to streams forming the boundary of the state.
31. Compensation of commissioners. Costs.
32. Owner or mortgage in possession, liable for acts of tenants in certain cases.