

MAINE STATE LEGISLATURE

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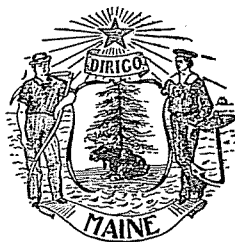
THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED SEPTEMBER 1, 1903, AND TAKING EFFECT JANUARY 1, 1904.

BY THE AUTHORITY OF THE LEGISLATURE.



AUGUSTA :
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CHAPTER 88.

TRUSTEE PROCESS.

GENERAL PROVISIONS.

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 or superior courts; or when the amount demanded in damages is not less than five, nor more than twenty dollars, before a municipal or police court, or a trial justice unless otherwise limited in the act establishing such court.

In what actions, trustee process may be used. R. S., c. 86, § 1. 57 Me., 408. 70 Me., 242.

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. See 1821, c. 63, § 6. 81 Me., 475.

SEC. 3. The officer serving it shall attach the goods and estate of the principal and give to him in hand or leave at his last and usual place of abode a summons of the form hereinafter prescribed; which is sufficient service on the principal whether any trustee is held or not. The summons shall be in substance as follows:

Service of writs. 1897, c. 281, § 1.

"STATE OF MAINE.

_____ ss.

To _____

Greeting:

We command you that you appear at our _____ court, next to be holden at _____ within and for the county of _____ aforesaid, on the _____ day of _____ next, then and there to answer to _____ in a plea of _____ which plea the said plaintiff has commenced, to be heard and tried at said court and your goods or estate are attached to the value of _____ dollars for security to satisfy the judgment which the said plaintiff may recover upon said trial. Fail not of appearance at your peril.

—form of summons.

And to _____, trustee of said _____. We command you to appear before our said court to be holden as aforesaid, to show cause if any you have, why execution to be issued upon such judgment as the said plaintiff may recover against the said principal defendant in said action, if any, should not issue against his goods, effects or credits in your hands or possession as trustee of said principal defendant.

Witness _____ Justice of our said court at _____ this _____ day of _____ in the year of our Lord one thousand nine hundred and _____.

Clerk."

SEC. 4. A like service on the trustee binds all goods, effects or credits of the principal defendant entrusted to and deposited in his possession, to respond to the final judgment in the action, as when attached by ordinary process. When a partnership is made a trustee in a trustee suit, service upon one member of the firm shall be a sufficient attachment of the property of the principal defendant in the possession of the firm, *provided*, that such service be made at the place of business of the firm, or that legal service be afterward made upon the other members of the firm. (a)

Effect of service on trustee. R. S., c. 86, § 4. —services on partnership. 1892, c. 157, § 1. 1903, c. 81.

(a) 32 Me., 33; 46 Me., 295; 47 Me., 304; 81 Me., 475.

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Where action must be brought.
R. S., c. 86, § 5.
6 Me., 406.
33 Me., 576.
54 Me., 315, 380.
57 Me., 409.
79 Me., 245.

Insertion of names of additional trustees.
R. S., c. 86, § 6.

—when suit is discontinued, trustee shall not be entitled to costs.

—proviso.
1893, c. 157, § 2.
1903, c. 135.

Notice to principal, if absent from the state.
R. S., c. 86, § 7.
1 Me., 325.
35 Me., 392.
36 Me., 303.
54 Me., 380.
60 Me., 173.
81 Me., 475.
—any trustee may appear for him.

Domestic corporations and foreign companies doing business in the state, may be summoned as trustees.
1897, c. 281, § 2.

—may answer by attorney or agent and disclose.

Taxes due corporation from defendant, exempt.
R. S., c. 86, § 9.

Trustee, about to leave the state, may disclose before a justice.
R. S., c. 86, § 10.

—proceedings.
See c. 109, § 30.

Court may appoint commissioner to take disclosure.
R. S., c. 86, § 11.

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.

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 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. When a trustee suit is discontinued or settled by the principal parties thereto, the trustee shall be entitled to no costs, *provided* the plaintiff or his attorney shall notify the trustee in writing seven days before the return day of the writ, that the suit has been discontinued. (a)

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 twenty-one of chapter eighty-three; or proceedings may be had as provided in section three of chapter eighty-four, unless in the meantime 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.

SEC. 8. All domestic corporations and all foreign or alien companies or corporations established by the laws of any other state or country, and having a place of business, or doing business within this state may be summoned as trustees, and trustee writs may be served on them as other writs are served on such companies or corporations, except that the service shall be by the summons described in section three of this chapter, and they may answer by attorney or agent, and make disclosures, which shall be signed and sworn to by such attorney or agent or such other person upon whom legal service of the writ may be made; and the same proceedings shall thereupon be had throughout except necessary changes in form, as in other cases of foreign attachment. (b)

SEC. 9. Any corporation summoned as trustee of a defendant, may set off and deduct from any amount found due the defendant from the trustee and attached by trustee process, the amount due from the defendant to the trustee for taxes.

SEC. 10. When a 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 of the county where he resides, for a notice to the plaintiff 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.

SEC. 11. The court before whom a trustee is summoned, may appoint a commissioner to take his examination and disclosure when any other reasonable cause appears, and may prescribe the notice to be given to the

(a) 19 Me., 44; 52 Me., 236; 67 Me., 397; 71 Me., 436.

(b) 34 Me., 590; 37 Me., 321; 47 Me., 304; 51 Me., 371; 52 Me., 593; 55 Me., 350; 62 Me., 256; 67 Me., 496; 81 Me., 473.

plaintiff, of the time and place thereof; and upon return of such service, 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.

SEC. 12. The examination and disclosure of any person summoned as trustee may be taken, as provided in section ten, when the plaintiff and trustee consent thereto.

SEC. 13. A person summoned as trustee may be adjudged trustee by the court, although he was not then, and never had been an inhabitant of the state; and the writ may be made returnable in the county in which either the plaintiff or principal defendant resides.

SEC. 14. If any supposed trustee comes into court at the first term and submits himself to an examination, on oath, after having in writing declared that at the time of the service of the trustee process upon him, he had no goods, effects or credits of the principal in his possession, he is entitled to his costs, as in civil actions where issue is joined for trial; and if adjudged a trustee, he may deduct his costs from the goods, effects and credits in his hands, and he shall be chargeable for the balance only to be paid on the execution. If such goods, effects and credits are not of sufficient value to discharge the costs taxed in his favor, he shall have judgment and execution against the plaintiff for the balance of such costs, after deducting the sum disclosed, in the same manner as if he had been discharged. (a)

SEC. 15. 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. 16. Where any person is adjudged trustee for specific articles in his hands, he has 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 be evidence of the lien.

(a) 3 Me., 49; 18 Me., 336, 363; 29 Me., 464.

Answers to interrogatories; 18 Me., 188; 33 Me., 32; 34 Me., 589; 38 Me., 134; 41 Me., 325; 45 Me., 218; 46 Me., 229.

Persons, claims and property not subject to trustee process; 17 Me., 30; 24 Me., 450; 27 Me., 298; 32 Me., 33; 33 Me., 416; 34 Me., 125; 39 Me., 165; 42 Me., 136, 366; 46 Me., 295; 48 Me., 82, 322, 367; 49 Me., 82; 53 Me., 550; 71 Me., 127.

Interest; 18 Me., 336.

Costs; 10 Me., 467; 18 Me., 336; 29 Me., 464; 46 Me., 22, 93, 229; 56 Me., 80; 59 Me., 427.

When charged; 4 Me., 494, 543; 6 Me., 80, 383; 7 Me., 396; 11 Me., 197; 12 Me., 120; 13 Me., 263, 421, 429; 15 Me., 87; 17 Me., 255; 19 Me., 44, 57; 20 Me., 370; 34 Me., 204; 37 Me., 286; 38 Me., 134; 42 Me., 134; 68 Me., 445; 69 Me., 271; 73 Me., 291; 75 Me., 41, 397; 76 Me., 33; 77 Me., 195; 79 Me., 572; 80 Me., 329; 81 Me., 467; 83 Me., 396; 92 Me., 102.

When discharged; 6 Me., 263; 17 Me., 30, 94; 18 Me., 336; 22 Me., 29; 24 Me., 450; 26 Me., 135, 450, 542; 27 Me., 299; 28 Me., 390; 32 Me., 33; 33 Me., 32; 34 Me., 125; 35 Me., 59, 148, 157, 232; 36 Me., 137, 209, 303; 37 Me., 316; 39 Me., 165, 404; 42 Me., 136, 297, 366, 382; 45 Me., 208; 46 Me., 167, 295; 48 Me., 367; 49 Me., 82, 284; 51 Me., 371; 52 Me., 593; 53 Me., 106; 54 Me., 104; 72 Me., 450; 75 Me., 100, 385; 76 Me., 468; 78 Me., 158, 244; 87 Me., 203; 89 Me., 65.

—proceedings.

Trustee may so disclose, by consent. R. S., c. 86, §12.

Non-resident, adjudged trustee. R. S., c. 86, §13. 33 Me., 416. 81 Me., 474.

Trustee who comes into court is entitled to costs. R. S., c. 86, §14.

—how paid.

Disclosure to be sworn to. R. S., c. 86, §15. See c. 109, § 30.

Lien for costs or articles in his hands. R. S., c. 86, § 16.

—officer to pay same.

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Discharge of trustees, effect of, upon principal.
R. S., c. 86, §17.
58 Me., 301.

Compensation, if trustee lives in another county.
R. S., c. 86, §18.

Liability of trustee for not appearing at first term.
R. S., c. 86, §19.
See § 62.
29 Me., 464.
54 Me., 330.

Trustees, when jointly liable for costs.
R. S., c. 86, §20.

Exception in favor of trustees out of their county, and those residing out of state.
R. S., c. 86, §21.

If the action fails, costs for defendant and trustee.
R. S., c. 86, §22.

No costs for trustee, unless he appears.
R. S., c. 86, §23.
29 Me., 464.

65 Me., 302.
Trustee, living out of county, may appear by attorney.
R. S., c. 86, §24.

Proceedings.
R. S., c. 86, §25.

Examination of trustee.
R. S., c. 86, §26.

Disclosure, how sworn to.
R. S., c. 86, §27.
70 Me., 163.

Trustee not appearing, defaulted.
R. S., c. 86, §28.

Trustee may submit a statement of facts.
R. S., c. 86, §29.

SEC. 17. 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 defense of the suit.

SEC. 18. When the trustee, at the time when 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. 19. If a 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 is liable for all costs afterwards arising in the suit, to be paid out of 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.

SEC. 20. 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.

SEC. 21. Persons summoned as trustees, residing out of the county where the suit is pending, are not 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 after his return, he shall be allowed for his costs and charges as if he had appeared at the return term.

SEC. 22. 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.

SEC. 23. When a person summoned as trustee does not come into court, and declare that 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, although the suit is discontinued.

SEC. 24. A person summoned as trustee, and not then living in the county where the writ is returnable, need not 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. (a)

SEC. 25. If the plaintiff proceeds no further, the declaration shall be considered true.

SEC. 26. 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 justice of the supreme judicial or superior court, or a justice of the peace.

SEC. 27. When a trustee has submitted himself to examination on oath in court, his disclosure may be sworn to before a justice 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.

SEC. 28. When a person summoned as trustee, neglects to appear and answer to the suit, he shall be defaulted, and adjudged trustee as alleged.

SEC. 29. 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

(a) 35 Me., 158; 65 Me., 302.

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)

SEC. 30. 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. 31. 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. (c)

SEC. 32. When it appears by the answers of a trustee, that any goods, effects or credits in his hands are claimed by a third person by virtue of an assignment from the principal debtor, or in some other way, the court may permit such claimant to appear, if he see cause. If he does not appear voluntarily, notice may be issued and served on him, as the court directs; 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 he 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 plaintiff's attachment. (d)

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 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. (e)

SEC. 37. If a person, summoned as a trustee in his own right, dies before the judgment recovered by the plaintiff is satisfied, the goods,

(a) 21 Me., 24; 33 Me., 32; 35 Me., 232; 75 Me., 387.

(b) 17 Me., 95; 18 Me., 188; 25 Me., 75, 264; 42 Me., 139; 57 Me., 588; 58 Me., 319; 65 Me., 364; 66 Me., 394; 68 Me., 199; 71 Me., 69; 79 Me., 562; 86 Me., 137; 89 Me., 67; 92 Me., 132; 93 Me., 459.

(c) 58 Me., 319; 68 Me., 199; 70 Me., 507.

(d) 1 Me., 328; 3 Me., 348; 5 Me., 411; 11 Me., 448; 16 Me., 254; 17 Me., 255, 328; 22 Me., 82; 26 Me., 135; 29 Me., 487; 33 Me., 441; 35 Me., 232; 37 Me., 410; 40 Me., 91; 42 Me., 383; 46 Me., 20; 48 Me., 43; 59 Me., 425; 66 Me., 394; 69 Me., 321; 73 Me., 261, 498; 74 Me., 348; 77 Me., 425; 78 Me., 324; 79 Me., 262; 80 Me., 128; 85 Me., 440; 87 Me., 307; 88 Me., 421; 91 Me., 578; 92 Me., 102; 94 Me., 367; 96 Me., 413.

(e) 19 Me., 203; 39 Me., 404; 65 Me., 301; 74 Me., 485; 78 Me., 158; 80 Me., 329.

Disclosure true, prima facie.
R. S., c. 86, § 30.

Proof may be submitted to court or jury.
R. S., c. 86, § 31.

Proceedings, if trustee discloses an assignment of the principal's claim.
R. S., c. 86, § 32.

Principal defendant may testify.
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., 461.

Executor or administrator is liable as trustee; also stockholders of corporations.
R. S., c. 86, § 36.

If trustee dies after service, goods

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to be held in hands of administrator.
R. S., c. 86, § 37.
11 Me., 38.
If trustee dies before judgment, his administrator may be cited.
R. S., c. 86, § 38.
21 Me., 24.
39 Me., 404.
47 Me., 563.

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

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

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

Manner of issuing execution, if administrator is adjudged trustee.
R. S., c. 86, § 42.
74 Me., 485.

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

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

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

effects and credits in his hands at the time of attachment, remain bound thereby; and his executors or administrators are 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 an ordinary action; and 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.

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 himself been adjudged trustee.

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.

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 section seventy-three, may be made on his executor or administrator at any time within thirty days after his appointment, with the same effect as if made within thirty days after the judgment.

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 is 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 has 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.

SEC. 44. When a 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.

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

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 application of the trustee, notify the principal debtor previous to the delivery, that the value may be thus ascertained, so 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 sees cause; and if he neglects or refuses, by the officer; 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. 65 Me., 302.

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, residue shall 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 shall restore surplus. R. S., c. 86, §48.

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

Trustee process, after commitment of the debtor. R. S., c. 86, §49. 1 Me., 162. 13 Me., 421.

—effect thereof.

SEC. 50. When a trustee states in his disclosure that he had, at the time when 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 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 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. (a)

Proceedings, if trustee discloses property mortgaged to him. R. S., c. 86, §50. See c. 52, § 97; c. 113, § 5.

SEC. 51. On 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 that 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 the amount of this excess shall, on the trial of the scire facias, be determined by the court or jury.

On return of scire facias, excess to be determined by court or jury. R. S., c. 86, §51.

SEC. 52. If, by the disclosure, it appears that the property in the hands of the supposed trustee was mortgaged, pledged or subject to a lien to indemnify him against any liability, or to secure the performance of any

On disclosure, trustee shall deliver property to officer. R. S., c. 86, §52. 60 Me., 175.

(a) 13 Me., 429; 32 Me., 174; 35 Me., 59, 148; 36 Me., 137; 37 Me., 316; 42 Me., 136, 366; 46 Me., 295; 49 Me., 83; 56 Me., 334; 58 Me., 285; 67 Me., 161; 75 Me., 399.

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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 the 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 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, shall first pay plaintiff, and then pay the balance to debtor.
R. S., c. 86, § 53.

SEC. 53. The officer, having sold on execution any personal property delivered to him by virtue of this chapter, after deducting the fees and charges of sale, shall pay to 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 fourteen.

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

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 have been authorized by the terms of the contract between him and the principal defendant.

When not to be adjudged trustee.
R. S., c. 86, § 55.
71 Me., 442.
90 Me., 306.

SEC. 55. No person shall be adjudged trustee:—

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

—officer.

II. 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;

—public officer.

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

—contingency

IV. 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)

—judgment.
62 Me., 256.
72 Me., 454.

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

—month's personal wages.
1901, c. 244.

VI. 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 is not exempt in any suit for taxes or for necessities furnished him or his family; moreover, wages of minor children and of women, are not, in any case, subject to trustee process on account of any debt of parent or husband; (b)

—wages of children and women for debt of parent or husband.

VII. 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

—payment, before notice.
72 Me., 520.

(a) 3 Me., 49; 30 Me., 388; 35 Me., 232; 47 Me., 563; 49 Me., 284; 50 Me., 298; 63 Me., 67; 65 Me., 535; 70 Me., 141; 71 Me., 441; 73 Me., 572; 75 Me., 103, 386; 80 Me., 104; 89 Me., 383; 95 Me., 235.

(b) 22 Me., 494; 36 Me., 465; 37 Me., 202; 60 Me., 344; 61 Me., 524; 71 Me., 435; 72 Me., 449; 73 Me., 24; 80 Me., 129; 82 Me., 416; 92 Me., 132; 93 Me., 460; 96 Me., 414; 97 Me., 374.

made, he paid the debt due to the principal defendant, or gave his negotiable security therefor;

VIII. By reason of any amount due for board furnished a member of the legislature, while in attendance thereon. (a)

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.

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

SEC. 58. If, during the pendency of an action, the defendant is summoned as 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 afterwards be adjudged a trustee on account of the demand thus recovered against him, while he is liable to an execution thereon. (b)

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. (b)

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

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

SEC. 63. If an alleged trustee has in his possession 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. (d)

SEC. 64. Every trustee may retain or deduct out of the goods, effects and credits in his hands, all his demands against the principal defendant,

—member of legislature.

Effect, if defendant is summoned as trustee of plaintiff.
R. S., c. 86, § 56.
17 Me., 255.
36 Me., 308.
58 Me., 319.
72 Me., 452.

Costs in such cases.
R. S., c. 86, § 57.
58 Me., 319.

Proceedings, if defendant in action pending, is summoned as trustee of plaintiff.
R. S., c. 86, § 58.
17 Me., 255.
58 Me., 319.
72 Me., 452.

Defendant not adjudged trustee, after judgment in first suit.
R. S., c. 86, § 59.

Effect, if before final judgment, defendant is adjudged trustee on the other suit.
R. S., c. 86, § 60.

Money, etc., may be trusted before it is 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 trustee.
R. S., c. 86, § 63.

Trustee may retain pay due him,

(a) Additional exemptions; life and accident policies and money due thereon. c. 49, §§ 106, 130; policies in fraternal beneficiary associations, § 148; receipts of agricultural societies, c. 60, § 26.

(b) 72 Me., 453.

(c) 4 Me., 532; 22 Me., 182; 65 Me., 535; 74 Me., 485; 89 Me., 383.

(d) 25 Me., 264; 29 Me., 487; 35 Me., 332; 46 Me., 296; 48 Me., 325; 57 Me., 419; 66 Me., 247; 67 Me., 162; 75 Me., 54.

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but not for unliquidated damages.
R. S., c. 86, § 64.

Form of judgment against a trustee.
R. S., c. 86, § 65.
25 Me., 282.
28 Me., 455.
34 Me., 124, 589.
42 Me., 134.
70 Me., 113, 164.

Discharge no bar to claim of principal.
R. S., c. 86, § 66.
58 Me., 319.

Scire facias against trustee.
R. S., c. 86, § 67.
23 Me., 63.
40 Me., 260.
48 Me., 171.
58 Me., 113.
65 Me., 302.
66 Me., 164.
93 Me., 96.

Judgment on scire facias.
R. S., c. 86, § 68.
88 Me., 501.

Judgment when all defendants are defaulted.
R. S., c. 86, § 69.

If trustee, defaulted on scire facias, was examined in first suit, judgment on his disclosure.
R. S., c. 86, § 70.
40 Me., 259.
46 Me., 92, 350.

—costs.

Liability for costs, if discharged on scire facias, not having been before examined.
R. S., c. 86, § 71.

If examined in original suit, trustee

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

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.

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

SCIRE FACIAS.

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.

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

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.

SEC. 70. If a 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 is not liable for costs on the scire facias.

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 for costs only, if resident in the county where the original process was returnable; but if not resident in such county, he shall not pay or recover costs. (b)

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;

(a) 7 Me., 361; 54 Me., 539; 62 Me., 125; 65 Me., 302; 74 Me., 485; 76 Me., 37; 85 Me., 166.

(b) 7 Me., 130; 36 Me., 303; 40 Me., 260; 48 Me., 82; 60 Me., 173.

and he may then prove any matter proper for his defense; and the court may enter such judgment, as law and justice require, upon the whole matter appearing on such examination and trial. (a)

may be examined again.
R. S., c. 86, §72.

MISCELLANEOUS PROVISIONS.

SEC. 73. When a person is adjudged trustee, if the goods, effects and credits in his hands, are not demanded of him by virtue of the execution within thirty days after final judgment, their attachment 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 continues until the expiration of thirty days after such debt is payable in money, or the property aforesaid is demanded of the trustee. (b)

Goods and effects are liable to another attachment, if not demanded within thirty days; exception.
R. S., c. 86, §73.

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

If no second attachment, principal may recover.
R. S., c. 86, §74.
64 Me., 349.

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 dwelling-house or place of abode in the 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 is a sufficient demand for the purposes mentioned in the two preceding sections.

Demand, how to be made if trustee is out of the state, or has no dwelling in the state.
R. S., c. 86, §75.

SEC. 76. The judgment against any person as trustee discharges 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 afterwards sued for the same by the defendant or his executors or administrators, such judgments and disposal 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. Such payment, delivery or accounting for may be made either to the officer holding the execution or to the plaintiff or his attorney of record, and may be proved by the officer's return upon the execution, by indorsement made thereon by the plaintiff or his attorney of record, or by any other competent evidence.

Effect of judgment against trustee.
R. S., c. 86, §76.
1893, c. 160.
18 Me., 335.
34 Me., 73.
48 Me., 143.
65 Me., 302.
93 Me., 460.

SEC. 77. Whoever summoned as trustee, upon his examination wilfully and knowingly answers falsely, 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.

Penalty, for false disclosure.
R. S., c. 86, §77.
16 Me., 435.
57 Me., 338, 419.

SEC. 78. If a person summoned as 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 is not liable for 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 is exempt from costs on scire facias, in certain cases.
R. S., c. 86, §78.
60 Me., 346.

(a) 15 Me., 345; 25 Me., 266; 41 Me., 131; 60 Me., 173.

(b) 34 Me., 73; 36 Me., 308; 58 Me., 286; 64 Me., 349; 65 Me., 302.

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On exceptions, whole case may be re-examined by law court. R. S., c. 86, § 79.

SEC. 79. Whenever exceptions are taken to the ruling and decision of a single justice as to the liability of a trustee, the whole case may be re-examined and determined by the law court, and remanded for further disclosure or other proceedings, as justice requires. (a)

TRUSTEE PROCESS IN INFERIOR COURTS.

Form and service of trustee process for inferior courts. R. S., c. 86, § 80. See 1821, c. 63, § 6. 12 Me., 18.

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 shall recover their costs.

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

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 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, the trustee shall be allowed his costs.

—costs.

Subsequent proceedings. R. S., c. 86, § 82. —discharge of trustee if judgment is less than five dollars, save in set-off.

SEC. 82. All subsequent proceedings in such causes shall be the same as in the supreme judicial court, varying the forms as circumstances require; but when, in a trustee process before such municipal or police court or trial 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.

How execution shall issue, if principal or trustee removes. R. S., c. 86, § 83.

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

Proceedings, if trustee, living in another county, is discharged. 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 is 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 suit on judgment on which execution might issue, may be abated with costs. R. S., c. 86, § 88. See c. 84, § 148.

SEC. 85. When an action is commenced by trustee process on a judgment on which 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.

(a) 29 Me., 489; 34 Me., 124; 35 Me., 146; 42 Me., 134; 59 Me., 198; 60 Me., 346; 75 Me., 54; 89 Me., 67; 92 Me., 107; 94 Me., 370; 96 Me., 413.

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

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 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.

SEC. 87. The officer making demand on the trustee upon the execution, shall first deduct from the amount received by him the sum paid by the plaintiff to redeem, if any, with interest, and shall 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.

Note. Proceedings to dissolve attachment on trustee process by application to court c. 83, § 77; by bond properly approved, c. 83, § 79.
Costs taxable for trustee, c. 117, § 14.

Demands assigned as security, may be trusted and redeemed. R. S., c. 86, § 89.

Plaintiff's rights, in case of redemption by him. R. S., c. 86, § 90. 60 Me., 173.

CHAPTER 89.

ACTIONS BY OR AGAINST EXECUTORS AND ADMINISTRATORS.

SEC. 1. Writs and executions against executors and administrators, for costs for which they are not personally liable, and for debts due from the deceased, run against his goods and estate in their hands. (a)

SEC. 2. Executions for costs run against the goods and estate, and for want thereof against the bodies of executors and administrators, in actions commenced by or against them, and in actions commenced by or against the deceased in which they have appeared, for costs that accrued after they assumed the prosecution or defense, to be allowed to them in their administration account, unless the judge of probate decides that the suit was prosecuted or defended without reasonable cause.

SEC. 3. When a proper officer makes his return, on an execution issued under section one, that he cannot find personal property of the deceased, or other means to satisfy it, a writ of scire facias, suggesting waste, may be issued against the executor or administrator; and if he does not show cause to the contrary, execution shall issue against him for the amount of the judgment and interest, not exceeding the amount of waste, if proved.

SEC. 4. When an executor or administrator ceases to be such, an action pending in his favor or against him may be prosecuted by or against an administrator de bonis non; and if he does not appear after due notice, judgment may be rendered, as if the suit had been commenced by or against him for debt and for costs, as herein provided. An administrator de bonis non may maintain an action on uncollected judgments recovered by the deceased, or by his executors or administrators, before their death or removal from office.

(a) 14 Me., 324; 23 Me., 253; 24 Me., 27; 36 Me., 246; 61 Me., 471; 96 Me., 381.

Process against estate in their hands. R. S., c. 87, § 1.

Executions for costs against their own goods and estate. R. S., c. 87, § 2. 6 Me., 49. 23 Me., 253. 24 Me., 29. 70 Me., 463. 96 Me., 381, 383.

Execution against the estate of deceased, if returned unsatisfied, proceedings. R. S., c. 87, § 3. 2 Me., 112. 97 Me., 393.

Administrator de bonis non may prosecute and defend, and sue judgments. R. S., c. 87, § 4. 14 Me., 324. 32 Me., 131, 175. 69 Me., 150. 78 Me., 141.