

MAINE STATE LEGISLATURE

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SEVENTH REVISION

THE
REVISED STATUTES

OF THE
STATE OF MAINE

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CHAPTER 95.

Commencement of Civil Actions; Indorsement and Service of Writs; Attachment of Property; Arrests; Limitations of Personal Actions.

Sections 1- 5	Forms and Requisites of Writs.
Sections 6- 8	Indorsement of Writs.
Sections 9- 16	Venue.
Sections 17- 20	Service of Writs on Residents.
Sections 21- 22	Service on Non-Residents.
Section 23	Want or Defect of Service Cured.
Sections 24- 30	Attachment of Personal Property.
Sections 31- 41	When Personal Property Attached May Be Sold on Writ.
Sections 42- 43	How Property of Part Owners, when Attached, May Be Disposed of.
Sections 44- 50	Attachment of Property Mortgaged or Pledged.
Sections 51- 54	Proceedings When Attaching Officer Dies, or is Removed, or Property is Replevied.
Sections 55- 59	Effect of Death of Party.
Sections 60- 66	Attachment of Real Estate.
Section 67	Property Exempt from Attachment and Execution.
Sections 68- 71	Homesteads.
Sections 72- 84	Dissolution of Attachments.
Sections 85- 86	Cross Actions against Non-Residents.
Sections 87- 89	Days on Which No Arrest Can be Made or Process Served.
Sections 90-113	Limitations of Personal Actions.

Forms and Requisites of Writs.

Sec. 1. Forms of writs remain until changed by court. R. S. c. 86, § 1. The forms of writs in civil actions remain as established; but the supreme judicial court, by general rules, may make such alterations therein, for all courts, as changes in the law or other causes require.

62 Me. 165.

Sec. 2. Actions to be commenced by original writs; framed to be *capias* and attachment, or original summons; writs to be sold only to attorneys. R. S. c. 86, § 2. 1917, c. 94. All civil actions, except *scire facias* and other special writs, shall be commenced by original writs; which, in the superior court, may be issued by the clerk in term time or vacation, and framed to attach the goods and estate of the defendant, and for want thereof to take the body, or as an original summons, with or without an order to attach goods and estate; and in actions against corporations and in other cases where goods or estate are attached, and the defendant is not liable to arrest, the writ and summons may be combined in one. A writ issued by the clerk of any county may be made returnable in any other county in which the action might be legally brought.

Clerks of the judicial courts, clerks and recorders of the municipal and police courts and trial justices of the state shall not sell or deliver any blank writs or precepts bearing the seal of said courts and the signature of said

clerks, recorders and trial justices, to any person except one who has been admitted as an attorney and counselor at law, and solicitor and counselor in chancery in accordance with the laws of this state.

See c. 91, §§ 2, 34; 12 Me. 196; 34 Me. 10; 39 Me. 142, 503; 60 Me. 352; 63 Me. 30; 66 Me. 251; 71 Me. 28, 406; 81 Me. 291; 87 Me. 436; *111 Me. 92; 127 Me. 113.

Sec. 3. Justice writs. R. S. c. 86, § 3. Writs issued by a trial justice, or judge of a municipal or police court, shall be signed by him, or by the clerk or recorder of such court, and sealed.

Sec. 4. Attachment and arrest on scire facias. R. S. c. 86, § 4. All writs of scire facias may contain a direction to the officer serving them, to attach the property of the defendants and to arrest their bodies, when liable to arrest, as in writs of attachment.

71 Me. 406.

Sec. 5. Unknown defendant may be sued by assumed name. R. S. c. 86, § 5. When the name of a defendant is not known to the plaintiff, the writ may issue against him by an assumed name; and if duly served, it shall not be abated for that cause, but may be amended on such terms as the court orders.

Indorsement of Writs.

Sec. 6. Indorsement of writ, petition or bill. R. S. c. 86, § 6. Every writ original, of scire facias, of error, of audita querela, petition for writ of certiorari, for review, or for partition, and bill in equity shall, when the plaintiff, petitioner, or complainant is not an inhabitant of the state, upon motion filed in court at the first term, as of course, be indorsed by some sufficient inhabitant of the state, or security for costs furnished by deposit in court, in such amount as the court shall direct; and if pending such suit the plaintiff, petitioner, or complainant removes from the state, such an indorser shall be procured or security for costs furnished on motion of the defendant or other party to the suit; but if one of such plaintiffs, petitioners, or complainants is an inhabitant of the state, no indorser or security shall be required except by special order of court.

3 Me. 28, 217; 10 Me. 46; 38 Me. 460; 39 Me. 132; *43 Me. 178; 51 Me. 479; 56 Me. 147; 72 Me. 374; 76 Me. 599; 79 Me. 51; 81 Me. 291; 92 Me. 247.

Sec. 7. Liability of indorser; must be sued within a year. R. S. c. 86, § 7. In case of avoidance or inability of the plaintiff or petitioner, the indorser is liable, in an action on the case, brought within one year after the original judgment, in the court in which it was rendered, to pay all costs recovered against the plaintiff. A return upon the execution by an officer of the county, where the indorser lives, that he has demanded of the indorser payment thereof, and that he has neglected to pay, or to show the officer personal property of the plaintiff sufficient to satisfy the execution, or that he cannot find the indorser within his precinct, is conclusive evidence of his liability in the suit.

11 Me. 445, 467, 492; 15 Me. 67; 16 Me. 20; 20 Me. 388; 24 Me. 228, 241, 355; 26 Me. 42; 39 Me. 132; 43 Me. 177; 47 Me. 341; *78 Me. 166.

Sec. 8. Court may require new indorser or additional deposit. R. S. c. 86, § 8. If pending such suit, petition, or process, any such indorser or deposit becomes insufficient or such indorser removes from the state, the court may require a new and sufficient indorser or additional deposit, and by consent of the defendant the name of the original indorser may be struck out; and such new indorser shall be liable or such deposit holden for all costs from the beginning of the suit; and if such new indorser is not provided or security furnished within the time fixed by the court, the action shall be dismissed and the defendant shall recover his costs.

Venue.

Sec. 9. Personal and transitory actions; transfer from one county to another. R. S. c. 86, § 9. Personal and transitory actions, except process of foreign attachment, and except as provided in the seven following sections, shall be brought, when the parties live in the state, in the county where any plaintiff or defendant lives; and when no plaintiff lives in the state, in the county where any defendant lives; and when not so brought, they shall, on motion or inspection by the court, be abated and the defendant allowed double costs. When the plaintiff and defendant live in different counties at the commencement of any such action, except process of foreign attachment, and during its pendency one party moves into the same county with the other, it may on motion of either, be transferred to the county where both then live, if the court thinks that justice will thereby be promoted; and be tried, as if originally commenced and entered therein; provided, however, that suits by the assignee of a non-negotiable chose in action, when brought in the superior court or in a municipal, or police court, shall be commenced in the county in which the original creditor might have maintained his action; and when brought before a trial justice, the writ shall be made returnable before a magistrate who would have had jurisdiction had the chose in action not been assigned.

12 Me. 19; *46 Me. 507; 54 Me. 315; 63 Me. 385; *65 Me. 169.

Sec. 10. Sheriff's bond. R. S. c. 86, § 10. Actions on bonds given by sheriffs to the treasurer of state, shall be brought in the county for which such sheriff is commissioned.

Sec. 11. Actions of debt on judgment. R. S. c. 86, § 11. Actions of debt, founded on judgment rendered by any court of record in the state, may be brought in the county where it was rendered, or in the county in which either party thereto, or his executor or administrator, resides at the time of bringing the action.

Sec. 12. Jurisdiction obtained by attachment. R. S. c. 86, § 12. In all actions commenced in any court proper to try them, jurisdiction shall be sustained, if goods, estate, effects, or credits of any defendant are found within the state and attached on the original writ; and service shall be made as provided in section twenty-one.

58 Me. 301; *65 Me. 254; 68 Me. 272; 89 Me. 177; 99 Me. 422.

Sec. 13. Local and transitory actions, in which counties, towns and other corporations are parties. R. S. c. 86, § 13. Local and transitory actions shall be commenced and tried as follows: when both parties are counties, in any county adjoining either; when a county is plaintiff, if the defendant lives therein, in an adjoining county; if he does not live therein, in the county in which he does live; when a county is defendant, if the plaintiff lives therein, in that county or in an adjoining county; if he does not live therein, in that county or in that in which he does live; when a corporation is one party and a county the other, in any adjoining county; when both parties are towns, parishes, or school districts, in the county in which either is situated; when one party is a town, parish, or school district, and the other some corporation or natural person, in the county in which either of the parties is situated or lives; but all actions against towns, for damages by reason of defects in highways, shall be brought and tried in the county in which the town is situated. All other corporations may sue and be sued in the county in which they have an established place of business, or in which the plaintiff or defendant, if a natural person, lives.

53 Me. 420; 58 Me. 536.

Sec. 14. Actions for forfeitures. R. S. c. 86, § 14. When a forfeiture is recoverable in a civil action, such action shall be brought in the county in which the offense was committed, unless a different provision is made by statute; and if on trial it does not appear that such offense was committed in the county where the action was brought, the verdict shall be in favor of the defendant.

81 Me. 462.

Sec. 15. Certain actions in behalf of state. R. S. c. 86, § 15. An action in behalf of the state to enforce the collection of state taxes upon any corporation, or to recover of any person or corporation moneys due the state, public funds, or property belonging to the state, or the value thereof, may be brought in any county; provided, that on motion of the defendant, any justice of the superior court holding the term at which such action is returnable, may, for sufficient reasons shown, remove the same to the docket of said court in any other county for trial, and may, upon such removal, award costs to the defendant for one term, to be paid by the treasurer of state on presentation of the certificate of the amount thereof, from the clerk of courts of the county from which said action is transferred.

See c. 11, § 13; c. 12, § 75.

Sec. 16. Justice actions, how served. R. S. c. 86, § 16. An action against two or more defendants residing in different counties, to be tried before a trial justice or municipal or police court, may be brought in the county where either resides; and the writ and execution shall be directed to and executed by the proper officers in each of such counties; but if there is only one defendant, such action shall be commenced in the county where he resides.

See c. 97, § 10; 12 Me. 18; 15 Me. 189.

Service of Writs on Residents.

Sec. 17. Service by separate summons. R. S. c. 86, § 17. When goods or estate are attached a separate summons, in form by law prescribed, shall be delivered to the defendant, or left at his dwelling-house or last and usual place of abode, at least fourteen days before the sitting of the court to which it is returnable, which shall be sufficient service.

See c. 100, § 3; 16 Me. 370; 31 Me. 495; 37 Me. 51; 43 Me. 402; 59 Me. 291; *69 Me. 343; 80 Me. 408; *96 Me. 224; *101 Me. 346; *120 Me. 189; 121 Me. 152.

Sec. 18. Original summons may be served by reading or copy, except writs of replevin. R. S. c. 86, § 18. 1919, c. 118. Where the process is by original summons, wherein the law does not require a separate summons to be left with the defendant, service by reading the writ or original summons to the defendant, or by giving him in hand, or leaving at his dwelling-house or last and usual place of abode, a certified copy thereof, at least fourteen days before it is returnable, is sufficient, except a writ of replevin which shall be served by giving the defendant in hand or leaving at his dwelling-house or last and usual place of abode a certified copy thereof at least fourteen days before it is returnable.

Sec. 19. Service on municipal and other corporations, how made; service upon any foreign or alien corporation; time of service. R. S. c. 86, § 19. 1917, c. 191. In suits against a county, the summons shall be served by leaving an attested copy thereof with one of the county commissioners or their clerk; against a town, parish, religious society or school district, with the clerk, or one of the selectmen or assessors, if there is any such officer; if not, with a member of such corporation; and against any other corporation, however created, with its president, clerk, cashier, treasurer, general agent or director;

CHAP. 95

if there is no such officer or agent found within the county where such corporation is established, or where its records or papers are by law required to be kept, with any member thereof; and in all suits and proceedings at law or in equity against any foreign or alien company or corporation established by the laws of any other state or country, and having a place of business within this state or doing business herein, service of the writ, bill, petition or other process is sufficient, if made by leaving an attested copy thereof with the president, clerk, cashier, treasurer, agent, director or attorney of such company or corporation, or by leaving such copy at the office or place of business of such company or corporation within this state; and in each case, it shall be so served fourteen days at least before the return day thereof.

See c. 5, § 135; c. 63, § 39; 16 Me. 372; 47 Me. 304; 67 Me. 496; 71 Me. 360; *91 Me. 434.

Sec. 20. Service on domestic corporation, when no officer can be found. R. S. c. 86, § 20. When no officer, general agent, or member of a domestic corporation, can be found in the county in which the same is located, or in the county in which its last certificate of election of clerk was filed, the officer having any process for service on such corporation, may file a copy thereof, in the registry of deeds of the county in which such corporation was located, or in which its last certificate of election of clerk was filed, and make return of his doings, which shall be sufficient service.

See c. 15, § 18; c. 126, § 17.

Service on Non-Residents.

Sec. 21. Service on non-resident defendants; court may order notice. R. S. c. 86, § 21. If any defendant is not an inhabitant of the state, the writ may be served on him by leaving a summons or copy, as the case may be, with his tenant, agent, or attorney in the state, at least fourteen days before the sitting of the court; and if his goods or estate are attached, and he has no such tenant, agent, or attorney, after entry, the court in the county where the process is returnable, or before entry, the court in any county, may order notice to the defendant, or a justice thereof in vacation may make such order signed by him on the back of the process; and if it is complied with and proved, he shall answer to the suit. A trial justice or judge of a municipal or police court, may in like cases, order like notice on any process returnable or pending before him.

As to constitutionality of part of this section, see 108 Me. 253.

6 Me. 219; 19 Me. 108; *36 Me. 303; 51 Me. 586; 54 Me. 380; 55 Me. 552; 56 Me. 341; 58 Me. 301; *65 Me. 253; 68 Me. 272; 81 Me. 475; 89 Me. 177; *96 Me. 224; 99 Me. 424; 101 Me. 347; *108 Me. 255.

Sec. 22. Service on foreign insurance and express companies. R. S. c. 86, § 22. In actions by inhabitants of this state against insurance companies established by any other state or country, on policies of insurance, signed or countersigned by agents in this state, on property or lives, or against accidents in this state; and in such actions against express companies so established, service is sufficient if made on the person who signed or countersigned such policies, or on any agent or attorney of either such company, or if left at the last and usual place of abode of such person, agent, or attorney at least thirty days before the return day of the suit; but the court may, in any case, order further notice.

See c. 60, §§ 118, 119.

Service of process on towns whose charters have been repealed, c. 5, § 135; on foreign corporations acting as trustee under mortgages made by domestic corporations, c. 56, § 114; on foreign insurance companies, c. 60, § 118; on foreign surety, credit insurance or title insurance companies, c. 60, § 150; on foreign fraternal beneficiary associations, c. 61, § 10; on non-resident motor vehicle owners, c. 29, §§ 130-133.

Want or Defect of Service Cured.

Sec. 23. New service by special order. R. S. c. 86, § 23. When the property of a defendant is attached on a writ, and no service is made on him before entry, or if service in any case is defective for any cause, without fault of the plaintiff or his attorney, the court may order a new service, which, when made, is as effectual as if proper service had been made in the first instance; but no first order for service shall be made at any other than the return term; and no subsequent order, if any person interested objects thereto unless for good cause shown.

*58 Me. 301; 75 Me. 462; *77 Me. 404; 101 Me. 346; 106 Me. 114; 127 Me. 170.

Attachment of Personal Property.

Sec. 24. Personal property subject to attachment. R. S. c. 86, § 24. All goods and chattels may be attached, and held as security to satisfy the judgment for damages and costs which the plaintiff may recover, except such as, from their nature and situation, have been considered as exempt from attachment according to the principles of the common law as adopted and practiced in the state, and such as are hereafter mentioned. Such personal property may be attached on writs issued by a trial justice, or judge of a police or municipal court in any county, when directed to the proper officer.

See § 67; 75 Me. 450; 84 Me. 276.

Sec. 25. Personal property attached, may be kept on premises where found; to remain on premises until owner can give bond. R. S. c. 86, § 25. Personal property attached may be kept upon the premises where the same is found and the attaching officer may appoint a keeper thereof; but if the owner of said property or the occupant of said premises requests the officer, in writing, to remove said keeper, the officer shall remove the property attached or the keeper without unreasonable delay. If the defendant, in writing, requests the officer making the attachment to allow said property attached to remain upon the premises where found until he may give a bond dissolving said attachment, the officer shall not remove said property until the defendant has had a reasonable opportunity to give said bond.

Sec. 26. Attachment of hay and animals, left in hands of debtor. R. S. c. 86, § 26. When hay in a barn, horses, or neat cattle are attached, and are suffered to remain, by permission of the officer, in the defendant's possession on security given for their safe-keeping and delivery to the officer, they are not subject to a second attachment to the prejudice of the first.

7 Me. 179; 18 Me. 276; 19 Me. 94; 37 Me. 328; 62 Me. 82; 65 Me. 491.

Sec. 27. Attachment of bulky personal property may be recorded in town clerk's office. R. S. c. 86, § 27. When any personal property is attached which by reason of its bulk or other special cause cannot be immediately removed, the officer may within five days thereafter, file in the office of the clerk of the town in which the attachment is made, an attested copy of so much of his return on the writ, as relates to the attachment, with the value of the defendant's property which he is thereby commanded to attach, the names of the parties, the date of the writ, and the court to which it is returnable, and such attachment is as effectual and valid, as if the property had remained in his possession and custody. The clerk shall receive the copy, noting thereon the time, enter it in a suitable book, and keep it on file for the inspection of those interested therein. When the attachment is made in an unincorporated place, such copy shall be

CHAP. 95

filed and recorded in the registry of deeds, for the registry district in which said unincorporated place is located.

19 Me. 94, 439; 45 Me. 62; 65 Me. 491; 74 Me. 49, 551; 76 Me. 437; 77 Me. 422; 81 Me. 302, 601; 84 Me. 276; 89 Me. 233, 299; 91 Me. 70; 93 Me. 492; 102 Me. 123; 103 Me. 203, 276; *110 Me. 58; *114 Me. 50; 127 Me. 244.

Sec. 28. Attachment of shares in a corporation. R. S. c. 86, § 28. When the share or interest of any person in an incorporated company is attached on mesne process, an attested copy of the writ with a notice thereon of the attachment, signed by the officer, shall be left with the clerk, cashier, or treasurer of the company; and such attachment is a lien on such share or interest, and on all accruing dividends; and if the officer having the writ exhibits it to the official of the company having custody of the account of shares or interest of the stockholders, and requests a certificate of the number held by the defendant, and such official unreasonably refuses to give it, or wilfully gives him a false certificate thereof, he shall pay double the damages occasioned by such refusal or neglect; to be recovered against him in an action on the case by the creditor.

See c. 98, § 14; 63 Me. 514.

Sec. 29. Attachment of franchise and other property of corporation. R. S. c. 86, § 29. The franchise and all right to demand and take toll, and all other property of a corporation, may be attached on mesne process, and the attaching officer shall leave an attested copy of the writ with a notice of the attachment thereon, signed by him, with the clerk, treasurer, or some officer or member of the corporation, as provided in section nineteen.

42 Me. 425.

Sec. 30. Successive attachment on same writ or property. R. S. c. 86, § 30. Successive attachments in one or more counties may be made upon the same writ by the same or different officers before service of the summons upon the person whose property is attached; but none after such service. Personal property attached on process may be subsequently attached by a different officer, who shall furnish the last preceding attaching officer with a copy of the precept within a reasonable time.

When Personal Property Attached May Be Sold on Writ.

Sec. 31. Sale on writ of personal property attached. R. S. c. 86, § 31. When personal property is attached, the officer, by consent of the debtor and creditor, may sell it on the writ before or after entry, observing the directions for selling on execution; and if it is attached by different officers, it may be so sold by the first attaching officer; or in case of his death, if he was a deputy sheriff, by the sheriff or another deputy by written consent of the debtor and all attaching creditors; and the proceeds, after deducting necessary expenses, shall be held by the officer making the sale, subject to the successive attachments, as if sold on execution.

39 Me. 32, 387; 48 Me. 535; 54 Me. 169.

Sec. 32. Perishable goods may be sold without consent. R. S. c. 86, § 32. When personal property liable to perish, be wasted, greatly reduced in value by keeping, or be kept at great expense, is attached, and the parties do not consent to a sale thereof, the same may be examined and appraised before or after entry of the action, as provided in sections thirty-three to forty-one, inclusive.

Sec. 33. Appraisal in certain cases. R. S. c. 86, § 33. At the request of either party interested, the officer shall give notice of the time and place of appraisal, with the names of the parties to the action, and of the supposed

owner of the property, by posting notices thereof in two or more public places in the town where the property was attached, or by giving personal notice thereof to all parties to the suit four days at least before the appraisal. He shall prepare a schedule of the property, and cause three disinterested appraisers, acquainted with the nature and value of such goods, to be appointed, one by the creditor, one by the debtor, and one by himself; and if either party neglects to make an appointment, he shall appoint one in behalf of such party.

31 Me. 154; 36 Me. 166; 39 Me. 32; 48 Me. 535; 49 Me. 62; 61 Me. 531; 69 Me. 388; 75 Me. 444.

Sec. 34. Proceedings by appraisers. R. S. c. 86, § 34. The appraisers shall be sworn by the officer without fee, or by a justice of the peace or trial justice, and shall examine such property; and if in their opinion, any part of it is liable to perish, be wasted, be greatly reduced in value by keeping, or be kept at great expense, they shall appraise it at its value in money.

36 Me. 166.

Sec. 35. Property to be delivered to debtor on depositing money or giving bond to satisfy judgments; bond to be returned with officer's doings. R. S. c. 86, § 35. Thereupon, at the request of the debtor, the property shall be delivered to him, on his depositing with the officer the appraised value thereof in money, or giving bond to him with two sufficient sureties, conditioned to pay him said value, or satisfy all judgments recovered in the suits in which the property is attached, if demanded before the attachments expire, or within thirty days after the time when the creditors might demand payment out of the proceeds of the property if sold as hereinafter provided; and he shall return such bond with the writ on which the first attachment is made, with a return of his doings in relation thereto.

31 Me. 155; 36 Me. 166.

Sec. 36. Bond may be sued by any creditor. R. S. c. 86, § 36. If the bond is forfeited, any one or more of the creditors may bring an action of debt thereon in the name of the officer, and shall indorse their names on the writ. If judgment is for the defendants, execution for costs shall be issued against them jointly, or one against each for his proportion, as the court thinks just. If judgment is for the plaintiffs, the money recovered shall be applied to pay their necessary expenses in prosecuting the suit, not reimbursed by costs recovered of the defendants; and the residue belongs to the attaching creditors according to their priorities; but no execution shall be awarded for the use of any creditor, without reserving what may be due on any prior attachment, whether the creditor therein is a party to the suit on the bond or not.

Sec. 37. Attaching creditor, not a party to the suit on bond, may avail himself thereof, or of the judgment therein. R. S. c. 86, § 37. An attaching creditor not a party to such suit, on his motion before final judgment therein, may become a party on such terms as the court orders, as if he had been a party originally; and his name shall then be indorsed on the writ; or he may bring scire facias on the judgment and recover the sum due him on the bond. But no creditor whose cause of action on the bond accrued more than a year prior to the suit thereon, shall have judgment or execution therein; nor bring such scire facias unless within a year after the cause of action accrued.

Sec. 38. Sale after appraisal. R. S. c. 86, § 38. If such property, after its appraisal, is not delivered to the debtor as aforesaid, the officer shall sell it, make return of all his doings relating thereto, and hold and dispose of the proceeds as in a sale by consent.

48 Me. 535; 61 Me. 531.

Sec. 39. Proceeds may be further attached in hands of the officer. R. S. c. 86, § 39. The proceeds of such property sold by consent or after an appraisal, may be further attached by the officer as property of the defendant while remaining in his hands; and held and disposed of as if the property itself had been attached; but after retaining enough to satisfy all attachments existing thereon at any time, nothing herein shall prevent his paying the surplus to the debtor.

48 Me. 538; 69 Me. 388.

Sec. 40. Right by priority in case of sale, preserved. R. S. c. 86, § 40. When goods, which are sold, or appraised and delivered to the debtor in the manner before provided, have been attached by several creditors, any one of them may demand and receive satisfaction of his judgment, notwithstanding any prior attachments, if he is otherwise entitled to demand the money, and a sufficient sum is left of the proceeds of the goods, or of their appraised value, to satisfy all prior attachments.

Sec. 41. Replevin of property attached and claimed by one not a party to suit; sale. R. S. c. 86, § 41. When personal property, attached on mesne process, is claimed by a person not a party to the suit, he may replevy it within ten days after notice given him therefor by the attaching creditor, and not afterwards; and after that, the attaching officer, without impairing the rights of such person, at the request and on the responsibility of the plaintiff, and with consent of other attaching creditors, if any, may sell it at auction as on execution, unless the debtor claims it as his, and forbids the sale.

*59 Me. 112; 75 Me. 444.

How Property of Part Owners, when Attached, May Be Disposed of.

Sec. 42. Property of part owner attached, to be appraised and delivered to another owner, on giving bond; bond to be returned with writ. R. S. c. 86, § 42. When personal property is attached in a suit against one or more part owners thereof, at the request of another part owner, it shall be appraised as hereinbefore provided, one appraiser to be chosen by the creditor, one by the officer and the other by the requesting part owner; and thereupon it shall be delivered to such part owner on his giving bond to the officer with two sufficient sureties, conditioned to restore it in like good order, pay the appraised value of the defendant's share therein, or satisfy all judgments recovered in the attaching suits, if demanded within the time during which it would be held by the attachments. Such bond shall be returned with the writ, with the doings of the officer thereon, and if forfeited, like proceedings may be had as are provided in section thirty-six.

50 Me. 397.

Sec. 43. Part owner so paying, has lien on property, and may sell; but if attachment is dissolved, must restore it. R. S. c. 86, § 43. If any part of such appraised value is so paid, the defendant's share of the property is thereby pledged to the party paying; and if not redeemed, he may sell it, and account to the defendant for the balance, if any; but if the attachment is dissolved, he shall restore such share to the defendant or to the attaching officer for him.

Attachment of Property Mortgaged or Pledged.

Sec. 44. Attachment of personal property mortgaged, pledged, or under lien. R. S. c. 86, § 44. 1929, c. 246, § 1. Personal property not exempt from attachment, mortgaged, pledged, or subject to any lien created by law, and of which

the debtor has the right of redemption, may be attached, held, and sold as if unencumbered, subject to the provisions of the following six sections.

50 Me. 128, 397; 58 Me. 419; 60 Me. 378; 84 Me. 232; 85 Me. 241; 113 Me. 64.

Sec. 45. When officer attaching mortgaged property is exempt from suit. R. S. c. 86, § 45. 1917, c. 162, § 1. 1929, c. 246, § 2. When personal property, attached on a writ, or seized on execution, is claimed by virtue of such mortgage, pledge, or lien, the claimant shall not bring an action against the attaching officer therefor; (a) until he has given him at least forty-eight hours' written notice of his claim and the true amount thereof; (b) if the officer or creditor within that time discharges the claim by paying same or tendering the amount due thereon; (c) within that time restores the property; (d) or where the property was attached on a writ or seized on execution while in the hands or possession of the mortgagor, the attaching creditor within that time summons the claimant to answer in the same action such questions as may be put to him relative to the consideration, validity, and amount due secured by such mortgage. Such summons may be in substantially the following form:

STATE OF MAINE.

....., ss. To.....
..... Greeting:

WE COMMAND YOU, that you appear at our.....Court, to be held at....., within and for the County of..... aforesaid, on the.....day of....., A. D. 19 , then and there to answer unto..... in a plea of the case.....as in our writ of attachment, dated the.....day of....., A. D. 19 , and made returnable to said court on the.....day of....., A. D. 19 , is fully set forth, in which.....ofis named defendant and on which writ the following described property, claimed by you as mortgagee, was attached as the property of said defendant; viz.,

..... then and there to answer in such action, such questions as may be put to you relative to the consideration, validity, and amount justly due secured by such mortgage, and abide the judgment of court thereon.

FAIL NOT OF APPEARANCE AT YOUR PERIL.

Witness, the HONORABLE.....Justice of the Superior Court (Judge of said Court) at, the day of in the year of our Lord one thousand nine hundred and

From the office of

Clerk.

Such summons shall be made returnable on any day, after ten days and within ninety days, of its date and served by copy, attested by the officer making such service. If said mortgagee fails to appear and answer, as therein directed, the court may estop him from claiming any interest in such attached goods by virtue of such mortgage.

58 Me. 31; 59 Me. 114; 60 Me. 378; 63 Me. 465; 72 Me. 71; 73 Me. 199; 78 Me. 81; 82 Me. 420; 83 Me. 351, 381; 84 Me. 232; 100 Me. 289; 113 Me. 62, 64.

Sec. 46. Mortgagee must account within ten days after notice; penalty for false account. R. S. c. 86, § 46. The officer may give the claimant written notice of his attachment; and if he does not, within ten days thereafter, deliver to the officer a true account of the amount due on his claim, he thereby waives the right to hold the property thereon; and if his account is false, he forfeits to the creditor double the amount of the excess, to be recovered in an action on the case.

58 Me. 31, 419; 59 Me. 114; 60 Me. 378; 83 Me. 350; 84 Me. 232; *113 Me. 61;
125 Me. 57.

Sec. 47. Proceedings when validity of mortgage is established. 1917, c. 162, § 2. 1929, c. 246, § 3. If upon examination held under the provisions of section forty-five, or upon the verdict of a jury as hereinafter provided, it appears that the mortgage is valid, the court, having first ascertained the amount justly due upon it, may direct the attaching creditor to pay the same to the mortgagee or his assigns within such time as it orders; and if he does not pay or tender the amount within the time prescribed, the attachment shall be vacated and the property shall be restored. If the attaching creditor pays or tenders the amount directed to be paid within such time and the mortgagee or his assigns fails to immediately assign such mortgage to the attaching creditor, the mortgagee or his assigns shall be estopped from claiming any interest in such attached goods by virtue of his mortgage.

Sec. 48. Validity of mortgage may be tried before jury; costs. 1917, c. 162, § 3. If the attaching creditor denies the validity of the mortgage, and moves that the validity may be tried by jury, the court shall order such trial upon an issue which shall be framed under its direction and if, upon such examination or verdict, the mortgage is adjudged valid, the mortgagee or his assigns shall recover his costs.

Sec. 49. Proceedings if creditor redeems and officer sells. R. S. c. 86, § 47. 1917, c. 162, § 4. 1929, c. 246, § 4. When the attaching creditor has paid to the mortgagee or his assigns the amount ordered by the court, the sheriff, after making the sale, shall pay to the creditor, and the creditor may retain out of the proceeds of the property attached, when sold, the amount so paid with interest, and the balance shall be applied to the payment of his debt.

Sec. 50. When attaching creditor does not recover judgment. 1917, c. 162, § 5. If the attaching creditor, after having paid the amount ordered by the court, does not recover judgment, he may nevertheless hold the property until the debtor has repaid with interest the amount so paid.

Proceedings when Attaching Officer Dies, or is Removed, or Property is Replevied.

Sec. 51. Goods attached by an officer are not assets of his estate. R. S. c. 86, § 48. Personal property attached by an officer and in his possession, and his claim for damages when it is taken from him, remain subject to such attachment in case of his death, as if he were alive, and are not assets belonging to his estate.

Sec. 52. If replevied, are liable to further attachments. R. S. c. 86, § 49. Such property replevied from the officer, is liable to further attachments, as if in his possession; and if there is judgment for a return in the replevin suit, the plaintiff and his sureties are liable for the whole property or its value, although some attachments were made after the replevin.

Sec. 53. If officer dies or is removed, property attached by him is liable to further attachments by other officers; how such attachments may be made. R.

S. c. 86, § 50. If an attaching officer dies or is removed from office while the attachment is in force, whether the property was in his possession or not, it and its proceeds may be further attached by any other officer, the same as it might have been by the first officer. Such further attachments shall be made by a return setting forth an attachment in common form and by whom the property was previously attached; and if the goods have not been replevied, by leaving a certified copy of the writ, omitting the declaration, and of the return of that attachment, with the former officer, if living, or if dead, with his executor or administrator, or if none has been appointed, with the person having possession of the goods; or if the goods have been replevied, and the officer who made the original attachment is dead, such copy shall be left with his executors or administrators, or with the plaintiff in replevin; and the attachment shall be considered as made, when such copy is delivered in either of the modes before described.

Sec. 54. Limitation of right to attach goods replevied. R. S. c. 86, § 51. Goods, taken by replevin from an attaching officer, shall not be further attached as property of the original defendant in any other manner, than that provided in the two preceding sections, so long as they are held by the person who replevied them, or by any one holding under him, unless the original defendant has acquired a new title to the goods.

Effect of Death of Party.

Sec. 55. Attachments, when dissolved by death of insolvent. R. S. c. 86, § 52. The attachment of personal property continues in force after the death of the debtor as if living, unless before a sale thereof on execution, his estate is decreed insolvent; but it is dissolved by such decree, and the officer, on demand thereafter, shall restore such property to the executor or administrator on payment of his legal fees and charges of keeping.

See §§ 72, 73; 1 Me. 333; 46 Me. 353; 73 Me. 421.

Sec. 56. Liability if property is sold before demand; set-off not allowed. R. S. c. 86, § 53. If, after such decree and before such demand, the officer has sold the property on execution, he is liable to the executor or administrator in an action, not of trespass, but for money had and received, for the proceeds, if in his hands; but if paid over to the judgment creditor, such creditor is so liable, and he shall not set off any demand which he has against the executor or the administrator, or against the estate of the deceased.

Sec. 57. Appraisal of property under attachment. R. S. c. 86, § 54. After the death of a defendant and before a decree of insolvency on his estate, the executor or administrator may demand of the attaching officer a certified copy of his return on the writ, with a description of the property attached, so that it may be described in the inventory of the estate subject to the attachment, and the appraisers may demand a view thereof so as to appraise it; and if the officer fails to comply with either demand, he forfeits to the executor or administrator not less than ten dollars, nor more than thirty dollars.

Sec. 58. Actions by officers for goods attached and taken from them, do not abate by party's death. R. S. c. 86, § 55. An action, brought by an officer for taking from him personal property attached by him, does not abate by the death of either party; but may be prosecuted by or against his executor or administrator. If the officer is dead and his representative recovers the property or money, it shall be held and applied as if he were alive; but if he fails to recover, he

CHAP. 95

shall return the property or pay the damages awarded in full, although the estate of the deceased is insolvent.

Sec. 59. If officer dies pending suit and no administrator is appointed, party in interest may carry on suit. R. S. c. 86, § 56. If an officer authorized to serve precepts, dies pending a suit for or against him for official neglect or misconduct, and no administration is granted on his estate within three months thereafter, the party for whose benefit the suit is so prosecuted or defended, may carry it on in his own name by entering his appearance and giving security for costs, as the court directs.

Attachment of Real Estate.

Sec. 60. Real estate and interests subject to attachment; officer need not view. R. S. c. 86, § 57. All real estate liable to be taken on execution as provided in chapter ninety; the right to cut and carry away grass and timber from land sold by this state or Massachusetts, the soil of which is not sold; and all other rights and interests in real estate, may be attached on mesne process, and held to satisfy the judgment recovered by the plaintiff; but the officers need not enter on or view the estate to make such attachment.

10 Me. 119; 14 Me. 34; 19 Me. 52; 23 Me. 166, 172; 27 Me. 451; 28 Me. 414; 35 Me. 523; 39 Me. 344; 42 Me. 286, 325; 46 Me. 437, 481; 52 Me. 357; 55 Me. 571; 77 Me. 296; 88 Me. 292; 95 Me. 250; *97 Me. 495; *126 Me. 49.

Sec. 61. Real estate may be attached on writs from certain municipal or police courts. R. S. c. 86, § 58. If a municipal or police court has a regular seal, and a recorder, and has jurisdiction in any action where the amount of damage claimed exceeds twenty dollars, real estate and interests in real estate attachable on writs from the superior court, may be attached on writs, or taken on executions from such court, where the amount of the debt or damage, exclusive of costs, exceeds twenty dollars.

Sec. 62. When attachment of right of redemption, holds premises free. R. S. c. 86, § 59. When a right of redeeming real estate mortgaged or taken on execution, is attached; and such estate is redeemed or the encumbrance removed before the levy of the execution, the attachment holds the premises discharged of the mortgage or levy, as if they had not existed.

39 Me. 24; 43 Me. 249; 118 Me. 80; 127 Me. 393.

Sec. 63. No attachment of real estate is valid, unless recorded in registry of deeds and claim is specified in writ; seizure on execution creates no lien on real estate, unless filed in registry of deeds; seizure takes effect from time of filing. R. S. c. 86, § 60. No attachment of real estate on mesne process creates any lien thereon, unless the nature and amount of plaintiff's demand is set forth in proper counts, or a specification thereof is annexed to the writ, nor unless the officer making it, within five days thereafter, files in the office of register of deeds in the county or district in which some part of said estate is situated, an attested copy of so much of his return on the writ, as relates to the attachment, with the value of the defendant's property which he is thereby commanded to attach, the names of the parties, the date of the writ, and the court to which it is returnable. If the copy is not so filed within five days, the attachment takes effect from the time it is filed, if before the entry of the action, although it is after service on the defendant. No seizure of real estate on execution where there is no subsisting attachment thereof made in the suit in which such execution issues, creates any lien thereon, unless the officer making it, within five days thereafter files in the office of the register of deeds in the county or district in which some part of said estate is situated, an attested copy of so much

of his return on said execution as relates to the seizure, with the names of the parties, the date of the execution, the amount of the debt and costs named therein, and the court by which it was issued. If the copy is not so filed, the seizure takes effect from the time it is filed. And such proceedings shall be had in such office by the register of deeds, as are prescribed in chapter fifteen. Provided, however, that all recorded deeds take precedence over unrecorded attachments.

18 Me. 302; 29 Me. 271; 39 Me. 344; *42 Me. 341; 48 Me. 413, 567; 51 Me. 168, 322; 52 Me. 410; *54 Me. 420; 55 Me. 451, 571; 59 Me. 438; 60 Me. 249; *65 Me. 580; 69 Me. 502, 543; 72 Me. 222; 73 Me. 218, 405; 74 Me. 293; 78 Me. 518; 83 Me. 499; 84 Me. 536; 85 Me. 400; 88 Me. 292; *94 Me. 436; 107 Me. 107, 190; 124 Me. 104.

Sec. 64. Action not effectual against person not party thereto, until attachment is made and recorded. R. S. c. 86, § 61. No action commenced, either by original writ or bill in equity inserted in a writ of attachment, in which the title to real estate is involved, is effectual against any person not a party thereto or having actual notice thereof, until an attachment of such real estate is duly made and recorded in the registry of deeds in and for the county or district in which such real estate is situated, in the same manner as attachments of real estate in other cases are now recorded.

94 Me. 322.

Sec. 65. When right of redemption, or to a deed by contract, is attached, the creditor may redeem or pay. R. S. c. 86, § 62. When a right to redeem real estate under mortgage, levy, sale on execution or for taxes, or a right to a conveyance by contract, is attached, the plaintiff in the suit, before or after sale on execution, may pay or tender to the person entitled thereto, the amount required to discharge such encumbrance or fulfil such contract; and thereby the title and interest of such person vest in the plaintiff, subject to the defendant's right to redeem; but such redemption by the defendant or any person claiming under him by a title subsequent to the attachment, shall not affect such attachment, but it shall continue in force, and the prior encumbrance as against it, shall be deemed discharged.

72 Me. 515; 84 Me. 285.

Sec. 66. Mortgagee or contractor to state, on demand, the sum due him; and on payment, to release his interest in premises. R. S. c. 86, § 63. Such person, on written demand, shall give the plaintiff a true written statement of the amount due him; and on payment or tender thereof, shall release all his interest in the premises; and if he refuses, he may be compelled to do so by a bill in equity. But such release shall recite that under authority of this and the preceding section, the plaintiff had attached the premises and paid or tendered the amount due the grantor; the plaintiff shall thereupon hold such title in trust for the defendant, and subject to his right of redemption, without power of alienation until after one year from the termination of said suit, or from the sale of the equity on any execution recovered therein.

72 Me. 515; 84 Me. 285.

Property Exempt from Attachment and Execution.

Sec. 67. Personal property. R. S. c. 86, § 64. The following personal property is exempt from attachment and execution:

I. The debtor's apparel; household furniture necessary for himself, wife and children, not exceeding one hundred dollars in value, and one bed, bedstead, and necessary bedding for every two such persons.

16 Me. 265.

CHAP. 95

II. All family portraits, Bibles, and schoolbooks in actual use in the family; one copy of the statutes of the state, and a library not exceeding one hundred and fifty dollars in value.

III. All his interest in one pew in a meeting-house where he and his family stately worship.

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

74 Me. 100.

V. All produce of farms until harvested; one barrel of flour; corn and grain necessary for himself and family, not exceeding thirty bushels; all potatoes and other provisions raised or bought, and necessary for himself and family; and all flax raised on a half acre of land, and all articles manufactured therefrom for the use of himself and family.

41 Me. 80.

VI. The tools necessary for his trade or occupation, materials and stock designed and procured by him and necessary for carrying on his trade or business and intended to be used or wrought therein, not exceeding fifty dollars in value, and one sewing machine not exceeding one hundred dollars in value for actual use by himself or family.

10 Me. 136; 28 Me. 178; 106 Me. 447; 108 Me. 265.

VII. One pair of working cattle, or instead thereof one pair of mules or one or two horses not exceeding in value three hundred dollars, and a sufficient quantity of hay to keep them through the winter season. If he has more than one pair of working cattle or mules, or if the two horses exceed in value three hundred dollars, he may elect which pair of cattle or mules or which horse shall be exempt. If he has a pair of mules or one or two horses so exempt, he may also have exempt for each of said horses or mules, one harness not exceeding twenty dollars in value; and one horse sled not exceeding the same value; but if he has at the same time an ox sled, he may elect which sled shall be exempt.

45 Me. 72; 46 Me. 360; 55 Me. 107; 58 Me. 418; 75 Me. 397; 82 Me. 164.

VIII. Domestic fowl, not exceeding fifty dollars in value, two swine, one cow, and one heifer under three years old, or if he has no oxen, horse or mule, two cows, and he may elect the cow or cows and heifer, if he has more than are exempt, ten sheep and the wool from them, and the lambs raised from them until they are one year old, and a sufficient quantity of hay to keep said cattle, sheep, and lambs through the winter season.

14 Me. 315; *17 Me. 70; 38 Me. 136.

IX. One plough, one cart or truck wagon, or one express wagon, one harrow, one yoke with bows, ring, and staple, two chains, one ox sled, and one mowing machine.

*71 Me. 164; 84 Me. 85; 88 Me. 304; 108 Me. 265.

X. One boat not exceeding two tons burden, usually employed in fishing business, belonging wholly to an inhabitant of the state.

XI. The personal property of any copartnership, or the interest of any copartner therein shall be exempt from attachment on mesne process or seizure on execution for any individual debt or liability of such copartner, but such copartner's interest in the partnership property may be reached and applied in payment of any judgment against him in the manner provided in section thirty-nine of chapter ninety-one.

Additional exemptions; shares of stock in cemetery corporations, c. 24, § 20; two shares of stock in loan and building associations, c. 57, § 102; life and accident policies and money due thereon, c. 60, §§ 144, 173; money due from policies in fraternal beneficiary associations, c. 61, § 17; personal baggage while held under innkeeper's lien, c. 36, § 15; outfit furnished members of active militia and officers, c. 18, § 65; teachers' pensions, c. 19, § 224; claims under "Workmen's Compensation Act," c. 55, § 23.

Homesteads.

Sec. 68. Homestead. R. S. c. 86, § 65. A lot of land and dwelling-house and outbuildings thereon, the property of a householder in actual possession thereof and not the owner of an exempted lot purchased from the state, is exempt from attachment and levy on execution as provided in the following sections.

73 Me. 238; 97 Me. 424.

Sec. 69. Claim for homestead exemption to be recorded in registry of deeds; amount of exemption. R. S. c. 86, § 66. Such person may file in the registry of deeds in the county or district where the land lies, a certificate signed by him, declaring his wish for such exemption, and describing the land and buildings; and the register shall record it in a suitable book; and so much of such property as does not exceed five hundred dollars in value, is exempt from attachment or levy on execution issued on a judgment recovered for any debt, contracted jointly or severally by such person after the date of the recording thereof; and the record in the register's office is prima facie evidence that the certificate purporting to be there recorded, was made, signed, and filed as there appears.

Sec. 70. Proceedings when creditor claims that homestead is worth more than \$500. R. S. c. 86, § 67. When such property is claimed by a creditor to be of greater value than five hundred dollars, it may be seized on execution, and the appraisers shall first set off such part thereof as the debtor may select, and if he neglects so to do, the officer may select for him, to such value, by metes and bounds; and they shall then appraise and set off to the creditor, so much of the remainder as may be necessary to satisfy the execution; the appraisers shall be sworn accordingly and the officer shall make return of his doings thereon.

Sec. 71. Widow and children may occupy during widowhood and minority; not exempt from mechanics' lien. R. S. c. 86, § 68. After his death, the exempted premises shall not be sold for payment of his debts during the widowhood of his widow, or the minority of any of his children; but may be occupied by his widow during her widowhood and by his children during minority, free from claim by any creditor of his estate. But this and the three preceding sections do not exempt such property from the lien of mechanics or material men.

Dissolution of Attachments.

Sec. 72. Attachment continues for thirty days after judgment; attachment of real estate expires in five years subject to certain exceptions. R. S. c. 86, § 69. An attachment of real or personal estate continues for thirty days, and no longer, after final judgment in the original suit, and not in review or error; except attachments of real estate taken on execution; or equities of redemption sold on execution; or an obligee's conditional right to a conveyance of real estate sold on execution; or property attached and replevied; or property attached belonging to a person dying thereafter, or specially provided for in any other case; but an attachment of real estate shall expire at the end of five years from the date of filing the same in the office of the register of deeds in the county or district where the said real estate or some part of it is situated, unless the said register shall, within said period, at the request of the plaintiff or his attorney

bring forward the same upon the book of attachments, and at the expiration of five years from the time of such first, or any subsequent bringing forward, such attachment shall expire unless within said period it is again brought forward in like manner. The register shall be entitled to the same fee for bringing forward such attachment upon the said book of attachments, as for the original entry thereof.

See c. 90, § 46; c. 96, §§ 5, 160; c. 100, § 73; c. 110, § 16; 12 Me. 242; 14 Me. 431; 22 Me. 382; 57 Me. 88; *92 Me. 380; 97 Me. 497; 127 Me. 110.

Sec. 73. Attachments, how dissolved. R. S. c. 86, § 70. All attachments of real or personal estate are dissolved by final judgment for the defendant; by a decree of insolvency on his estate before a levy or sale on execution; by insolvency proceedings commenced within four months, as provided in the insolvency law; by a reference of the suit and all demands between the parties thereto, by a rule of court, and judgment on the report of the referees; and by an amendment of the declaration, by consent of parties, so as to embrace a larger demand than it originally did, and judgment for the plaintiff thereon, unless the record shows that no claims were allowed the plaintiff not originally stated in the writ.

The insolvency law was last printed in R. S. 1903, c. 72.

See c. 90, § 39; 4 Me. 278; *7 Me. 351; 14 Me. 431; 19 Me. 422; 43 Me. 472; 49 Me. 241, 310; 53 Me. 415; 55 Me. 527; *57 Me. 88, 89; 58 Me. 331; 59 Me. 101; 65 Me. 129; 73 Me. 421; *93 Me. 430.

Sec. 74. Certificate of dissolution of attachment; plaintiff or his attorney may release attachment. R. S. c. 86, § 71. 1917, c. 271. 1929, c. 237. When an attachment is dissolved by judgment for the defendant, or if the writ upon which the attachment is made is not entered in the court to which it was returnable within the first five days of the return term, the clerk of the court shall give any person applying therefor a certificate of that fact, which the register of deeds shall note on the margin of the record of the attachment. The said clerk of courts may charge a fee of fifty cents for such certificate. Before or after the entry of said writ in said court, or before or after judgment thereon, or if said writ is not entered in court, the plaintiff, or his attorney in such suit, may discharge the attachment in writing on the margin of the record thereof, or said plaintiff or said attorney may give a certificate, signed, sealed, and acknowledged by him, that said attachment is in whole or in part discharged, which the register of deeds shall record with a reference thereto on the margin of the records of attachments. The register of deeds shall note the record of said discharge on the margin of the records of attachments within an hour of the delivery to him of either of the aforesaid certificates. Such attachments may be discharged on the record thereof in the registry of deeds by an attorney at law authorized in writing by the plaintiff in said suit, provided, however, that said writing is first recorded or filed in said registry of deeds with a reference thereto made by said register of deeds on the margin of the record of the attachment.

*73 Me. 79; 76 Me. 417.

Sec. 75. Real estate attachment to be discharged of record when dissolved. 1917, c. 169, § 1. When an attachment of real estate is made in any action and the writ is not entered in court, or when any attachment of real estate is dissolved by lapse of time or failure to levy upon the judgment debt within the time prescribed by law to preserve said attachment, and the said attachment then remains undischarged upon the records of the registry of deeds, the plaintiff upon the demand of the defendant shall either cause the said attachment to be discharged upon the records of the registry of deeds, or give a certificate,

signed, sealed and acknowledged by him that said attachment is discharged when said certificate is prepared and presented to the plaintiff by the defendant, which said certificate the register of deeds shall record with reference thereto on the margin of the record of said attachment.

Sec. 76. Proceeding when plaintiff fails or refuses to discharge attachment. 1917, c. 169, § 2. If the plaintiff shall upon demand unreasonably delay or refuse to discharge the said attachment as prescribed in section seventy-five, then a bill in equity against the said plaintiff may be filed by the defendant in the county in which the attachment of said real estate has been made; upon said bill, such notice shall be given as may be ordered in term time or in vacation, and upon proof thereof, such proceedings may be had according to the usual course of suits in equity, and said attachment shall be discharged by a decree of court duly filed in the registry of deeds which the register of deeds shall record with reference thereto on the margin of the record of said attachment.

Sec. 77. Debtor may petition for a valuation and release. R. S. c. 86, § 72. Any defendant, whose interest in real estate is attached on mesne process, may petition a justice of the superior court, in term time or vacation, setting forth the names of the parties to the suit, the court and county in which it is returnable or pending, the fact of the attachment, the particular real estate, and his interest therein, its value, and his desire to have it released from the attachment. Such justice shall issue a written notice, which shall be served on all parties to the suit living in the state, including trustees mentioned in section eighty-two, and on the plaintiff's attorney, ten days at least before the time fixed therein for a hearing.

Sec. 78. Valuation and release on bond of debtor. R. S. c. 86, § 73. If, at the hearing, such justice finds that such interest is worth as much as the amount ordered in the writ to be attached, he shall order such defendant to give bonds to the plaintiff, with sufficient sureties, conditioned to pay the judgment recovered by the plaintiff, with his costs on the petition, within thirty days after judgment. If he finds that it is worth less, the bond shall be conditioned to pay the value of such interest so found and costs on the petition, within said time.

Sec. 79. Proceedings and bond to be filed in clerk's office. R. S. c. 86, § 74. The petition and proceedings thereon shall be filed in the clerk's office in the county where the action is pending or returnable, and recorded as a part of the case; and the bond, when approved by such justice, shall also be filed therein for the use of the plaintiff.

Sec. 80. Certificate of proceedings from clerk recorded in registry of deeds. R. S. c. 86, § 75. The clerk shall give the petitioner an attested copy of the petition and proceedings, with a certificate, under seal of the court, attached thereto, that such bond has been duly filed in his office; and the recording of such copy and certificate in the registry of deeds in the county where such real estate or interest therein lies, vacates the attachment.

Sec. 81. Same proceedings vacate attachment of personal property. R. S. c. 86, § 76. When personal property is attached, the same proceedings may be had, as provided in the four preceding sections, and the officer shall also be notified of the hearing; and the delivery to him of the copy and certificate mentioned in the preceding section, vacates the attachment, and he shall return the property to the petitioner on demand. When the property attached is stock in a banking or other corporation, or is such that the attachment must be recorded in the town clerk's office, such copy and certificate shall be filed with the officer of such corporation who shall be entitled to twenty cents for filing the same

and necessary certificate thereof, or with the town clerk with whom the attachment is filed; and thereby the attachment is vacated.

Sec. 82. Foreign attachments are vacated by same proceedings. R. S. c. 86, § 77. In cases of foreign attachment, the same proceedings originated by any principal defendant may be had, except that the bond to the plaintiff shall be conditioned to pay the amount, if any, which he may finally recover against the trustees, with costs on the petition, within thirty days after judgment, not exceeding the amount of the judgment against the principal defendant. The justice shall also require the petitioner to give bond to each trustee named in the petition, with sureties, in a sum sufficient to protect him against any judgment recovered by the plaintiff and paid by him, and his legal costs in the suit, and the costs allowed him by such justice at the hearing on the petition, if he appears. Such bonds, when approved by such justice, shall be filed in the clerk's office for the use of the trustees. The delivery of the copy and certificate, hereinbefore mentioned, to the trustees, vacates the attachment of any goods, effects, or credits in their hands belonging to the petitioner.

Sec. 83. Costs. R. S. c. 86, § 78. The party finally prevailing in the suit shall recover the costs of these proceedings, taxed as costs of court in other cases, and certified by such justice, and execution shall issue therefor.

Sec. 84. Attachment may be vacated on bond, conditioned to pay the judgment. R. S. c. 86, § 79. When real estate or personal property is attached on mesne process, and in all cases of attachment on trustee process, the attachment shall be vacated, upon the defendant, or some one in his behalf, delivering to the officer who made such attachment, or to the plaintiff or his attorney, a bond to the plaintiff in such sum not less than the ad damnum of the writ and with such sureties as may be approved by the plaintiff or his attorney, or by any justice or clerk of the superior court; conditioned that within thirty days after the rendition of the judgment, or after the adjournment of the court in which it is rendered, or after the certificate of decision of the law court shall be received in the county where the cause is pending, he will pay to the plaintiff or his attorney of record, the amount of said judgment including costs; the bond shall be returned by the officer with the process, for the benefit of the plaintiff, and thereupon all liability of the officer to the plaintiff by reason of such attachment shall cease. Upon request the plaintiff or his attorney, shall give to the defendant a certificate acknowledging the discharge of such attachment, which may be recorded in the registry of deeds or town clerk's office, as the case may be, in which the return of the attachment is filed. If stock in any corporation is attached, such certificate shall be filed with the officer of the corporation, with whom the return of such attachment is filed, and he shall record the same. In trustee process the alleged trustee shall not be liable to the principal defendant for the goods, effects, and credits in his hands or possession until such certificate shall be delivered to him, and upon receiving such certificate, he shall be discharged from further liability in said trustee action, and need not disclose, and shall not recover costs.

107 Me. 335; 122 Me. 406; 125 Me. 57, 212.

Cross Actions against Non-Residents.

Sec. 85. In cross actions and set-offs against non-residents, service may be made on their attorneys. R. S. c. 86, § 80. When an action is brought by a person not an inhabitant of the state, nor to be found therein to be served with process, he shall be held to answer to any action brought against him here by

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

46 Me. 420; 62 Me. 496; *97 Me. 26.

Sec. 86. Actions may be continued for absent party to defend, or to set off judgment or execution. R. S. c. 86, § 81. The court in which either of such actions is pending, may grant continuance, to enable the absent party to defend, or either party to set off his judgment or execution against the other; but they shall not be delayed by the neglect or default of either party.

46 Me. 421; 62 Me. 496.

Days on Which No Arrest Can be Made or Process Served.

Sec. 87. Exemption from arrest on certain holidays. R. S. c. 86, § 82. 1923, c. 50, § 4. No person shall be arrested in a civil action, on mesne process, or execution, or on a warrant for taxes, on the day of annual thanksgiving, the nineteenth day of April, the thirtieth day of May, the fourth day of July, the first Monday of September, Armistice Day, November eleventh, or Christmas; and on the day of any military training, inspection, review or election, no officer or soldier required by law to attend the same, shall be arrested on any such processes.

16 Me. 136.

Sec. 88. Exemption from arrest on election days. R. S. c. 86, § 83. No elector shall be arrested, except for treason, felony, or breach of the peace, on the days of election of United States, state, or town officers.

Sec. 89. Civil process served on Lord's Day, void; officer liable. R. S. c. 86, § 84. No person shall serve or execute any civil process on the Lord's Day; but such service is void, and the person executing it is liable in damages to the party aggrieved, as if he had no process.

75 Me. 395; *96 Me. 173.

Limitations of Personal Actions.

Sec. 90. Enumeration of actions to be commenced within six years. R. S. c. 86, § 85. The following actions shall be commenced within six years after the cause of action accrues and not afterwards.

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

9 Me. 77; 15 Me. 168; 17 Me. 299; 23 Me. 562; 36 Me. 363; 37 Me. 392; 38 Me. 151; 53 Me. 206; 58 Me. 281, 321, 430; 60 Me. 423; 63 Me. 11; *66 Me. 444; 69 Me. 519; *70 Me. 20; 71 Me. 314, 504; 73 Me. 347; 82 Me. 155; 85 Me. 123.

II. Actions upon judgments of any court not a court of record, except municipal and police courts, trial justices, and justices of the peace in this state.

III. Actions for arrears of rent.

IV. Actions of account, of assumpsit or upon the case, founded on any contract or liability, express or implied.

63 Me. 79; 70 Me. 18; 74 Me. 358, 400; 96 Me. 149.

CHAP. 95

V. Actions for waste, of trespass on land, and of trespass, except those for assault and battery and false imprisonment.

9 Me. 77.

VI. Actions of replevin, and other actions for taking, detaining, or injuring goods or chattels.

VII. All other actions on the case, except for slanderous words and for libel.

121 Me. 297; *122 Me. 213.

Sec. 91. Against sheriff for escape; for misconduct. R. S. c. 86, § 86. Actions for escape of prisoners committed on execution, shall be actions on the case, and be commenced within one year after the cause of action accrues; but actions against a sheriff, for negligence or misconduct of himself or his deputies, shall be commenced within four years after the cause of action accrues.

74 Me. 262; *78 Me. 336.

Sec. 92. Assault, libel, etc., in two years. R. S. c. 86, § 87. Actions for assault and battery, and for false imprisonment, slander, and libel, shall be commenced within two years after the cause of action accrues.

61 Me. 235; 78 Me. 336; 94 Me. 363.

Sec. 93. Scire facias against bail, sureties in criminal recognizances and trustees, in one year. R. S. c. 86, § 88. 1927, c. 42. No scire facias shall be served on bail unless within one year after judgment was rendered against the principal; nor on sureties in recognizances in criminal cases unless within one year after default of the principal; nor against any person adjudged trustee, unless within one year from the expiration of the first execution against the principal and his goods, effects, and credits in the hands of the trustee. And no action of debt in behalf of the state against sureties and recognizances in criminal cases shall be brought unless within one year after default of principal.

*125 Me. 218.

Sec. 94. Not applicable to witnessed notes, bank-bills, or cases otherwise limited. R. S. c. 86, § 89. The foregoing limitations do not apply to actions on promissory notes signed in the presence of an attesting witness, or on the bills, notes, or other evidences of debt issued by a bank; nor to any case or suit limited by statute to be commenced within a different time.

7 Me. 25; 16 Me. 473; 19 Me. 73; 21 Me. 178; 23 Me. 497; 26 Me. 332; 30 Me. 120, 164; 31 Me. 161; *38 Me. 182, 352; 49 Me. 334; 51 Me. 303; *60 Me. 408; 63 Me. 79; 64 Me. 225; *66 Me. 444; 79 Me. 596; 102 Me. 147; *114 Me. 58.

Sec. 95. Mutual and open accounts current. R. S. c. 86, § 90. In actions of debt or assumpsit to recover the balance due, where there have been mutual dealings between the parties, the items of which are unsettled, whether kept or proved by one party or both, the cause of action shall be deemed to accrue at the time of the last item proved in such account.

*4 Me. 339; 38 Me. 151; 51 Me. 106; 59 Me. 224; 63 Me. 507; 65 Me. 171; 72 Me. 35; 77 Me. 395; 97 Me. 406, 407; *103 Me. 408; 115 Me. 11; 120 Me. 348.

Sec. 96. Minors, etc., may sue after disability is removed. R. S. c. 86, § 91. If a person entitled to bring any of the aforesaid actions is a minor or married woman, insane, imprisoned or without the limits of the United States when the cause of action accrues, the action may be brought within the times limited herein, after the disability is removed.

13 Me. 401; 29 Me. 218; 37 Me. 307; 54 Me. 92; 66 Me. 444; *84 Me. 83; 94 Me. 363.

Sec. 97. General limitation of twenty years. R. S. c. 86, § 93. Personal actions on any contract, not otherwise limited, shall be brought within twenty years after the cause of action accrues.

*28 Me. 83; 30 Me. 164; *66 Me. 444; *70 Me. 20.

Sec. 98. When writ fails of service, or is defeated, or judgment is reversed, new suit in six months. R. S. c. 86, § 94. When a writ fails of sufficient service or return by unavoidable accident, or default, or negligence of the officer to whom it was delivered or directed, or is abated, or the action is otherwise defeated for any matter of form, or by the death of either party; or if a judgment for the plaintiff is reversed on a writ of error, the plaintiff may commence a new action on the same demand within six months after the abatement or determination of the original suit, or reversal of the judgment; and if he dies and the cause of action survives, his executor or administrator may commence such new action within said six months.

8 Me. 450; 10 Me. 402; 38 Me. 218; *67 Me. 204; 109 Me. 440.

Sec. 99. Provisions in case of death of either party before suit is commenced. R. S. c. 86, § 95. 1917, c. 133, § 6. If a person entitled to bring, or liable to any action before mentioned, dies before or within thirty days after the expiration of the time herein limited therefor, and the cause of action survives, the action may be commenced by the executor or administrator at any time within eighteen months after his appointment, and not afterwards, if barred by the other provisions hereof; actions on such claims may be commenced against the executor or administrator, after one year, or within one year subject to continuance without costs, and within eighteen months after he has qualified as such executor or administrator, and not afterwards if barred by the other provisions hereof, except as provided in section seventeen of chapter one hundred one.

68 Me. 30, 418; 118 Me. 437.

Sec. 100. Saving of rights of alien enemies in time of war. R. S. c. 86, § 96. If a person is disabled from prosecuting an action in this state by reason of being an alien subject or citizen of a country at war with the United States, the time during which such war continues shall not be a part of the period herein limited for the commencement of any of said actions.

Sec. 101. Limitation of suits for penalties. R. S. c. 86, § 97. Actions and suits for any penalty or forfeiture on a penal statute, brought by a person to whom the penalty or forfeiture is given in whole or in part, shall be commenced within one year after the commission of the offense; and if no person so prosecutes, it may be recovered by suit, indictment or information, in the name and for the use of the state, at any time within two years after the commission of the offense, and not afterwards.

5 Me. 495; 31 Me. 532; *39 Me. 214, 353; *57 Me. 147, 338; *59 Me. 209; 63 Me. 11; 69 Me. 121; 70 Me. 496; *84 Me. 432; 112 Me. 235.

Sec. 102. Making writ begins suit. R. S. c. 86, § 98. A suit is commenced when the writ is actually made, with intention of service.

38 Me. 585; 69 Me. 338; 77 Me. 140; 79 Me. 245; 85 Me. 123; 95 Me. 387; *109 Me. 443.

Sec. 103. Limitation extended in cases of fraud. R. S. c. 86, § 99. If a person liable to any action mentioned herein, fraudulently conceals the cause thereof from the person entitled thereto, or if a fraud is committed which entitles any person to an action, the action may be commenced at any time within six years after the person entitled thereto discovers that he has just cause of action.

3 Me. 407; 7 Me. 374; 9 Me. 132; 31 Me. 450; 37 Me. 319; 39 Me. 406; 40 Me. 203; *57 Me. 338; 58 Me. 439; 65 Me. 568; 67 Me. 473; 73 Me. 375; 76 Me. 74; *80 Me. 56; *121 Me. 300.

Sec. 104. Renewal of promise must be in writing. R. S. c. 86, § 100. In actions of debt or on the case founded on any contract, no acknowledgment or promise takes the case out of the operation hereof, unless the acknowledgment

CHAP. 95

or promise is express, in writing, and signed by the party chargeable thereby. No such acknowledgment or promise made by one joint contractor affects the liability of the others.

*15 Me. 362, 445; 17 Me. 146, 186; 21 Me. 434; 22 Me. 103; 23 Me. 457; 24 Me. 535; 29 Me. 49; 35 Me. 367; *38 Me. 351; 60 Me. 440; *71 Me. 314; 73 Me. 120; *74 Me. 519; 77 Me. 396; 81 Me. 325; *84 Me. 381; *89 Me. 494; 92 Me. 97; *97 Me. 405; *98 Me. 136; 108 Me. 20, 382; *109 Me. 496; *119 Me. 83.

Sec. 105. Judgment if action is barred against some and not others. R. S. c. 86, § 101. In actions against two or more joint contractors, if it appears on trial or otherwise, that the plaintiff is barred by the provisions hereof as to one or more of the defendants, but is entitled to recover against any other by virtue of a new acknowledgment, promise or otherwise, judgment shall be rendered for the plaintiff against such other, and for the other defendants against the plaintiff.

7 Me. 27; 15 Me. 392.

Sec. 106. When non-joinder of defendants does not abate writ. R. S. c. 86, § 102. In an action on a contract, if the defendant pleads in abatement that another person ought to have been jointly sued, and issue is joined thereon, and it appears on the trial, that the action was barred by the provisions hereof against such person, the issue shall be found for the plaintiff.

Sec. 107. Effect of partial payment and of indorsement thereof. R. S. c. 86, § 103. Nothing herein contained alters, takes away or lessens the effect of payment of any principal or interest made by any person; but no indorsement or memorandum of such payment made on a promissory note; bill of exchange or other writing, by or on behalf of the party to whom such payment is made or purports to be made, is sufficient proof of payment to take the case out of the statute of limitations; and no such payment made by one joint contractor, or his executor or administrator, affects the liability of another.

20 Me. 347; 21 Me. 178, 435; *22 Me. 499; 23 Me. 163; 28 Me. 423; 30 Me. *255, 427; 32 Me. 169, 268; 33 Me. 185; 35 Me. 184, 367; 38 Me. 182; 51 Me. 35, *202; 53 Me. 392; 54 Me. 22; 65 Me. 172, 513; 66 Me. 444; 78 Me. 494; 80 Me. 314; *82 Me. 280; 83 Me. 129; 84 Me. 381; *97 Me. 287, 405; 108 Me. 20.

Sec. 108. Presumption of payment after twenty years. R. S. c. 86, § 104. Every judgment and decree of any court of record of the United States, or of any state, or of a trial justice or justice of the peace in this state, shall be presumed to be paid and satisfied at the end of twenty years after any duty or obligations accrued by virtue of such judgment or decree.

*28 Me. 83; *55 Me. 134; *66 Me. 444; 115 Me. 295.

Sec. 109. Application of the statutes of limitation to set-offs. R. S. c. 86, § 105. All the provisions hereof respecting limitations, apply to any debt or contract filed in set-off by the defendant; and the time of such limitation of such debt or contract shall be computed, as if an action had been commenced therefor at the time when the plaintiff's action was commenced, unless the defendant is deprived of the benefit of the set-off by the nonsuit or other act of the plaintiff; and when he is thus defeated of a judgment on the merits of such debt or contract, he may commence an action thereon within six months after the final determination of the suit aforesaid.

Sec. 110. If defendant is out of the state, when action may be commenced; insolvency. R. S. c. 86, § 106. If a person is out of the state when a cause of action accrues against him, the action may be commenced within the time limited therefor, after he comes into the state; and, if a person is absent from and resides out of the state, after a cause of action has accrued against him, the time of his absence from the state, shall not be taken as a part of the time limited for the commencement of the action; or, if a person is adjudged an

insolvent debtor after a cause of action has accrued against him, and such cause of action is one provable in insolvency, the time of the pendency of his insolvency proceedings shall not be taken as a part of the time limited for the commencement of the action. But no action shall be brought by any person whose cause of action has been barred by the laws of any state, territory or country while all the parties have resided therein.

20 Me. 273; 23 Me. 164, *415; 37 Me. 307, *392; *38 Me. 172; 48 Me. 320; 54 Me. 400; 55 Me. 234; 57 Me. 551; 65 Me. 513; *75 Me. 407; *80 Me. 508; *83 Me. 90; *84 Me. 254; 113 Me. 326.

Sec. 111. Foreign corporations entitled to benefit of law relating to limitation of actions. R. S. c. 86, § 107. Any foreign corporation doing business continuously in this state, and having constantly an officer or agent resident herein, on whom service of any process may be made, shall be entitled to the benefit of all provisions of law relating to limitation of actions the same as domestic corporations.

Sec. 112. When actions to recover damages for land taken for public purposes, to be commenced. R. S. c. 86, § 108. No action or proceeding shall be brought or maintained to recover damages caused by the taking of any land, rights or other property, to be used for a public purpose, when such taking has been authorized by the legislature, unless the same is commenced within three years after the cause first accrued for which the same, or like proceedings might have been commenced. Nor shall any compensation be awarded for damages sustained for more than three years before the commencement of proceedings to recover the same.

See c. 69, §§ 13, 19; *109 Me. 67.

Sec. 113. Actions barred when no administration for six years after death of decedent. 1917, c. 133, § 13. Where no administration is had upon the estate of a deceased person within six years from the date of death of said decedent, and no petition for administration is pending, all actions upon any claim against said decedent shall be barred.

*118 Me. 431.