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been authorized by the legislature, unless the same is commenced within 3 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 3 years before the commencement of proceedings to recover the same.

See c. 48, § 13, re owners of property entitled to damages; c. 48, § 19, re proceedings when damages remain unpaid; *109 Me. 67.

Sec. 114. Actions barred when no administration for 6 years after death of decedent. R. S. c. 95, § 113. Where no administration is had upon the estate of a deceased person within 6 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.

CHAPTER 100.

PROCEEDINGS IN COURT IN CIVIL ACTIONS.

General Provisions as to Procedure

Sec. 1. Entry of actions; further service; orders of notice. R. S. c. 96, § 1. No action can be entered after the 1st day of the session of the superior court without special permission. When it appears that the defendant has not had sufficient notice, the court may order such further notice as it deems proper. Any justice of the supreme judicial court or of the superior court may order notice concerning any civil proceeding, in or out of term time, directing how it shall be given; and such order, when made in vacation, shall be indorsed on the process. Any order of notice that the court may grant may be ordered by a justice in vacation.

See c. 99, § 23, re want or defect of service cured; c. 110, § 2, re order of notice on petitions for review; *56 Me. 425; 79 Me. 42; 93 Me. 251; 100 Me. 547; *104 Me. 81; *107 Me. 276; 111 Me. 69.

Sec. 2. Appointment of auditor, surveyor, and referee, in vacation. R. S. c. 96, § 2. In all civil cases pending in the supreme judicial court or in the superior court, any justice of either court in vacation may appoint and commission an auditor or surveyor, and upon the written agreement and request of the parties or their attorneys of record such justice may, in vacation, appoint a referee and make any other order or decree, interlocutory or final, in any such case, and the clerk of said court in each county shall enter upon the docket either in term time or vacation, all such appointments and orders in any pending case.

Sec. 3. When default may be recorded; when taken off. R. S. c. 96, § 3. When service of the writ has been made, and the defendant does not appear by himself or attorney within the first 3 days of the term, his default may be recorded and the charge in the declaration taken to be true. If the defendant, before the juries are dismissed for the term, enters his appearance and pays to the plaintiff such costs as the court orders, the default shall be taken off. The court may permit it to be taken off for sufficient cause.

See § 37; c. 99, § 17 et seq., re service of writs; 16 Me. 228; 17 Me. 426; 21 Me. 45; 23 Me. 485; 26 Me. 340; 30 Me. 557; 33 Me. 102, 251; 41 Me. 439; 45 Me. 105.

Sec. 4. Continuance if defendant is out of state. R. S. c. 96, § 4. When the defendant was an inhabitant of the state and absent from it at the time of service, and it does not appear that he has returned or has had actual notice of the suit, the court may continue the action, not exceeding twice unless for special cause, or enter judgment on default. If the defendant was not an inhabitant of the state or within it and had actual notice of the suit, the court may order a continuance if he does not appear at the first term.

63 Me. 360; 72 Me. 337; *81 Me. 475.

Sec. 5. Execution to be stayed 1 year, unless bond is given; continuance of attachment on original writ. R. S. c. 96, § 5. When judgment is rendered on default of an absent defendant in a personal action as provided in the preceding section, execution cannot be issued thereon within 1 year thereafter, unless the plaintiff first gives bond to the defandant, with one or more sureties in double the amount of damages and costs, conditioned to repay the amount to the defendant if the judgment is reversed on review, to which he is entitled of right, if brought within 1 year, or so much of the amount recovered as is recovered back on such review, and any attachment made on the original writ continues for 1 year and 30 days after said judgment is so rendered, when no bond is given; and when a bond is given, it continues for 30 days after said bond is filed with the clerk of said court.

See c. 110, re petitions and actions of review; c. 157, § 51, re redemption of lands of defaulted defendants living out of the state; 5 Me. 386; 57 Me. 599; 59 Me. 567; 63 Me. 360; 66 Me. 166; 72 Me. 337; 128 Me. 328; 133 Me. 77.

Sec. 6. Bond to be left with clerk; petition for review. R. S. c. 96, § 6. The bond shall be deposited with the clerk, who shall decide upon the sufficiency of the sureties, subject to an appeal to a justice of the court, and if the review of right is not so prosecuted, the defendant may, within 1 year after he first has notice of the judgment, petition the court for a review, and the court may grant it on such terms as it deems reasonable.

See c. 110, re review; 72 Me. 338.

Sec. 7. Executions issued upon judgment on default, without deposit of bond, are valid after 1 year. R. S. c. 96, § 7. Whenever, through accident, inadvertence, or mistake an execution has been issued by the clerk, judge, or re-

corder of any court in any county upon a judgment rendered on default of an absent defendant in a personal action, within 1 year after the rendition of such judgment, without deposit of the bond specified in sections 5 and 6, all proceedings upon or by virtue of such execution or judgment shall, after 1 year from the rendition of such judgment, have the same effect and validity as if the bond had been duly given, deposited, and approved, unless a petition for review has been brought within said year; and, in case such judgment is not reversed on review if brought within said year, all such proceedings shall be valid as aforesaid, after final judgment for the defendant in review.

See c. 110, re review; 72 Me. 338.

Sec. 8. Court may allow entry of appeals at another term. R. S. c. 96, § 8. 1933, c. 118, § 1. When an appeal is taken from a judgment of a trial justice or municipal court, and the action by mistake or accident is not entered, and the judgment has not been affirmed, the court may, on petition of either party, allow the action or complaint to be entered at another term of the court, upon reasonable terms, with the same effect as if it had been entered at the proper term.

45 Me. 306; 46 Me. 499; 111 Me. 342.

Sec. 9. Petition to be within 1 year; attachment or bail not revived. R. S. c. 96, § 9. Such petition must be presented to the court or filed in the clerk's office within 1 year after the term at which the action ought to have been entered; and no attachment or bail shall be revived or continued by such proceedings.

Sec. 10. On appeals, original papers sent up, except writ and pleadings. R. S. c. 96, § 10. 1933, c. 118, § 1. In cases carried from a trial justice or municipal court to a higher court, all depositions and original papers, except the process by which the suit was commenced, the return of service thereon, and the pleadings shall be certified by the proper officer, and carried up without leaving copies, unless otherwise ordered by the court having original cognizance.

39 Me. 136.

Sec. 11. Proceedings not abated, etc., for want of form. R. S. c. 96, § 11. No process or proceeding in courts of justice shall be abated, arrested, or reversed for want of form only, or for circumstantial errors or mistakes which by law are amendable, when the person and case can be rightly understood. Such errors and defects may be amended, on motion of either party, on such terms as the court orders.

3 Me. 30; 6 Me. 325; 10 Me. 285; 13 Me. 309; 15 Me. 402, 466; 16 Me. 265, 268, 283; 18 Me. 250; 22 Me. 311; 23 Me. 507; 25 Me. 333; 26 Me. 212, 288; 29 Me. 167; 30 Me. 31, 170; 39 Me. 231; 45 Me. 284; 46 Me. 331; 47 Me. 158, 185; 48 Me. 35, 253; 51 Me. 607; 53 Me. 174; 54 Me. 202, 496; *57 Me. 156; 58 Me. 41; 63 Me. 153; 74 Me. 113, *491; 75 Me. 47, 600; 77 Me. 343; 78 Me. 113; 87 Me. 483; *92 Me. 100; 93 Me. 187; 111 Me. 92; *112 Me. 499; *116 Me. 416; 136 Me. 14.

Amendment of declaration; 2 Me. 49; 3 Me. 249; 4 Me. 480; 11 Me. 500; 13 Me. 89, 249, 419; 14 Me. 50; 15 Me. 138; 16 Me. 173, 234, 283, 449; 17 Me. 225, 411; 18 Me. 174, 413; 19 Me. 358; 20 Me. 148; 23 Me. 77; 24 Me. 17, 247; 25 Me. 252, 311; 26 Me. 28, *212; 54 Me. 496; 65 Me. 320; 66 Me. 94, 388; 67 Me. 490, *553; 69 Me. 30, 126; 71 Me. 28; 74 Me. 142; *95 Me. 131, 203, 258; 99 Me. 409; 103 Me. 265; 108 Me. 356; 109 Me. 331; 110 Me. 535; 111 Me. 189; 132 Me. 435.

Ad damnum; 6 Me. 325; 15 Me. 432; *57 Me. 155; 58 Me. 331; *90 Me. 310.

Seal of writ; 3 Me. 30; 12 Me. 196; 19 Me. 208; 30 Me. 170; 125 Me. 4.

Date of writ; 14 Me. 396; 71 Me. 266.

Of changing a writ of original summons, to a writ of attachment; 15 Me. 401, 466; 51 Me. 607; 71 Me. 28.

Teste of writ; 15 Me. 433.

Return day of writ; *16 Me. 267; 17 Me. 417; 35 Me. 123; 54 Me. 202; 63 Me. 409; 135 Me. 186; 136 Me. 12.

Sec. 12. Writs may be amended. R. S. c. 96, § 12. In all civil actions the writ may be amended by inserting additional plaintiffs, or by striking out one or more plaintiffs when there are two or more, and the court may impose reasonable terms.

67 Me. 500; 69 Me. 85; 77 Me. 578; *103 Me. 137; *112 Me. 496; 114 Me. 125; 116 Me. 416.

Sec. 13. Writ or process lost after service, new one may be filed. R. S. c. 96, § 13. When in an action pending, the loss or destruction of a writ or process after service is proved by affidavit or otherwise, the court may allow a new one to be filed, corresponding thereto as nearly as may be, with the same effect as the one lost or destroyed.

15 Me. 427.

Sec. 14. Names of defendants may be struck out on terms or new ones inserted, and service made. R. S. c. 96, § 14. When there are two or more defendants, the writ may be amended by striking out one or more of them, on payment of costs to him to that time. A writ founded on contract, express or implied, may be amended by inserting additional defendants; and the court may order service to be made on them and their property to be attached as in case of original writs; and on return of due service, they become parties to the suit, but are not liable to costs before service.

See c. 99, § 24 et seq., re attachment; 2 Me. 120; 11 Me. 127; 13 Me. 389; 20 Me. 420; 25 Me. 333; 34 Me. 34; 35 Me. 535; 45 Me. *444; 58 Me. 41; 59 Me. 344; *60 Me. 208, 352; 75 Me. 86; 82 Me. 227; *87 Me. 435; 112 Me. 498; 117 Me. 481; 133 Me. 364.

Sec. 15. In actions of law, court may require parties to plead in equity. R. S. c. 96, § 15. When, in an action at law in the superior court, it appears that the rights of the parties can be better determined and enforced by a judgment and decree in equity, the court may, upon reasonable terms, strike out the pleadings at law and require the parties to plead in equity in the same cause and may hear and determine the cause in equity.

86 Me. 60; 113 Me. 262; 116 Me. 389; 124 Me. 185; 133 Me. 9, 415.

Sec. 16. In equity proceedings, court may require parties to plead at law. R. S. c. 96, § 16. When in any equity proceeding in the supreme judicial court or in the superior court, it appears that the remedy at law is plain, adequate, and complete and that the rights of the parties can be fully determined and enforced by a judgment and execution at law, the court may, upon reasonable terms, strike out the pleadings in equity and require the parties to plead at law in the same cause in the superior court, which court may hear and determine the cause at law.

See c. 95, § 2 et seq., re pleadings in equity; 87 Me. 452; *95 Me. 256; 124 Me. 185; 133 Me. 156, 415, 511.

Sec. 17. In actions at law pending in law court, court may require parties to plead in equity. R. S. c. 96, § 17. When in an action at law commenced in the superior court and pending in the supreme judicial court, sitting as a law court, it appears that the rights of the parties can be better determined and enforced by a judgment and decree in equity, the supreme judicial court may, upon reasonable terms, strike out the pleadings at law and require the parties to plead in equity in the same cause; and thereupon the action shall be transferred to the equity docket for the same county and be heard and determined in equity.

102 Me. 32; *106 Me. 190; 116 Me. 389; 117 Me. 211; 124 Me. 185; 132 Me. 378; 133 Me. 408.

Sec. 18. Defendant in action at law may plead equitable defense; plaintiff may reply with equitable relief. R. S. c. 96, § 18. Any defendant may plead, in defense to any action at law in the superior court, any matter which would be ground for relief in equity, and shall receive such relief as he would be entitled to receive in equity, against the claims of the plaintiff; such matter of defense shall be pleaded in the form of a brief statement under the general issue. By counter brief statement, any plaintiff may plead any matter which would be ground for relief in equity against any defense set up by any defendant in an action at law in said court, and shall receive such relief as he would be entitled to receive in equity against such claim of the defendant.

See c. 95, § 1 et seq., re relief in equity; *88 Me. 611, 615; 94 Me. 306; 100 Me. 564; 101 Me. *277, 589; *102 Me. 31; 104 Me. 207; *106 Me. 190; 113 Me. 74, 262; *117 Me. 211, 495; 120 Me. 494; 124 Me. 185; 126 Me. 193; 127 Me. 383; 133 Me. 415.

Sec. 19. Court may make necessary decrees to preserve equitable rights. R. S. c. 96, § 19. Whenever in any action at law any matter which would be ground for relief in equity is so pleaded by any party, the court may make such decrees and restraining orders as may be necessary to protect and preserve such equitable rights, and may issue injunctions according to the usual practice of courts of equity.

See c. 95, § 34, re issue of injunctions; 100 Me. 564; *101 Me. 277; 113 Me. 262; 124 Me. 185; 133 Me. 415.

Sec. 20. Attachments not affected; order for attachment of property. R. S. c. 96, § 20. No attachments shall be affected by proceedings under the 5 preceding sections. Either party to a cause may, upon petition, obtain from the court an order for the attachment of property of a party to the suit to secure any judgment which may be obtained, to be made on such precept as the court may order and to be recorded as in case of other attachments.

See c. 99, § 24 et seq., re attachments; 100 Me. 564; *101 Me. 277; 124 Me. 185; 133 Me. 415.

Sec. 21. Rules and principles of equity to prevail in all proceedings. R. S. c. 96, § 21. In all proceedings under the 6 preceding sections, when there appears to be any conflict or variance between the principles of law and those of equity as to the same subject matter, the rules and principles of equity shall prevail. At the hearing of all equity causes, oral testimony shall be received as in trials at common law.

87 Me. 275; 94 Me. 307; 98 Me. 442; 100 Me. 564; *101 Me. 277; 104 Me. 53; 113 Me. 262; 124 Me. 185; 133 Me. 415.

Sec. 22. Either party may file any document material to issue, and give notice to other party; no denial, genuineness admitted. R. S. c. 96, § 22. A party to any action in the supreme judicial court or the superior court may file, in the clerk's office of the court in the county where such action is pending, any document which he may deem material to the issue, and give to the adverse party notice of such filing and that he desires the execution of said document to be admitted. If within 7 days after such notice, unless the time is enlarged by the court or a justice thereof, the adverse party shall not file in said clerk's office a denial of the genuineness of the execution of said document, he shall be held to have admitted the same.

104 Me. 81.

Sec. 23. Court may order production of books, papers, or written instruments. R. S. c. 96, § 23. Where books, papers, or written instruments material to the issue in any action at law pending in the superior court are in

the possession of the opposite party and access thereto refused, the court upon motion, notice, and hearing may require their production for inspection. In case of unreasonable delay or refusal in complying with such requirement, the court may order a nonsuit or default as the case may require.

102 Me. 151.

Sec. 24. Change of venue. R. S. c. 96, § 24. Any justice of the superior court, while holding a nisi prius term, on motion of either party, shall, for cause shown, order the transfer of any civil action or criminal case pending in said court to the docket thereof in any other county for trial, preserving all attachments.

75 Me. 368; 80 Me. 22; 107 Me. 276; 126 Me. 505; 138 Me. 251.

Sec. 25. Minors may be excluded from court-room. R. S. c. 96, § 25. Any court or trial justice may exclude minors as spectators from the court-room during the trial of any cause, civil or criminal, when their presence is not necessary as witnesses or parties.

Sec. 26. Trespass and case. R. S. c. 96, § 26. The distinction between actions of trespass and trespass on the case is abolished. A declaration in either form is good.

*70 Me. 220; *77 Me. 342; 80 Me. 33.

Sec. 27. Action of assumpsit; plea of non-assumpsit. R. S. c. 96, § 27. The action of assumpsit shall lie in any case in which either an action of debt or an action of covenant is now maintainable; under the plea of non-assumpsit, the defenses available under the plea of general issue in either of said actions shall be available.

132 Me. 177; 135 Me. 43.

Sec. 28. Declarations upon a contract in writing. R. S. c. 96, § 28. 1937, c. 81. No declaration in an action at law upon any contract in writing shall be adjudged insufficient if it sets forth the making of said contract, the full contract relied upon with an allegation that the plaintiff has complied with all the terms and conditions thereof, and the further allegation of the specific breach or breaches upon which the plaintiff relies, and that the plaintiff is thereby damaged.

No declaration in an action at law founded upon negligence shall be adjudged insufficient or defective solely by reason of the plaintiff's setting forth or alleging in a single count thereof more than one act of negligence of a defendant.

Sec. 29. Treasurers may sue in their own names. R. S. c. 96, § 29. Treasurers of state, counties, towns, and corporations may maintain suits in their own names as treasurers on contracts given to them or their predecessors and prosecute suits pending in the names of their predecessors.

74 Me. 219.

Sec. 30. Actions by unincorporated societies. R. S. c. 96, § 30. Any organized unincorporated society or association may sue in the name of its trustees for the time being, and may maintain an action at law, though the defendant or defendants or some of them are members of the same society or association.

92 Me. 212; 99 Me. 433; 123 Me. 227.

Sec. 31. Penalties. R. S. c. 96, § 31. Penalties may be recovered by action of debt when no other mode of recovery is provided.

56 Me. 78; 84 Me. 433; 87 Me. 476.

Sec. 32. When assignee of a grantee may sue on real covenants of first grantor. R. S. c. 96, § 32. The assignee of a grantee, or his executor or administrator, after eviction by an older and better title may maintain an action on a covenant of seizin or freedom from encumbrance contained in absolute deeds of the premises between the parties, and recover such damages as the first grantee might have recovered on eviction, upon filing, at the first term, in court, for the use of his grantor, a release of the covenants of his deed and of all causes of action thereon. The prior grantee cannot, in such case, release the covenants of the first grantor to the prejudice of his grantee.

50 Me. 453; *51 Me. 567; 68 Me. 193; 72 Me. 376; 102 Me. 338.

Sec. 33. Grantee may defend suit. R. S. c. 96, § 33. Grantees may appear and defend in suits against their grantors in which the real estate conveyed is attached.

See §§ 66 to 71; *76 Me. 418; 106 Me. 114; 127 Me. 380.

Sec. 34. Assignment of breaches; pleadings. R. S. c. 96, § 34. In actions on contract in a penal sum for performance of covenants or agreements and in actions of covenant several breaches may be assigned, and in defense, performance generally, both in affirmative and negative covenants, may be alleged.

58 Me. 130; 77 Me. 111; 80 Me. 362.

Sec. 35. In actions of covenant, if encumbrance is a right of dower, it may be assigned and be the measure of damages. R. S. c. 96, § 35. In an action for breach of covenant against encumbrances contained in a deed of real estate, when the encumbrance is a right of dower, if such dower has been assigned and not released, the value thereof shall be the measure of damages; but if it has been demanded and not assigned, the court, on application of the plaintiff, shall cite the claimant of dower to appear and become a party, by personal service made 14 days before the term of court to which it is returnable; if she does not appear, or if she appears and refuses to release such right, the court shall appoint 3 commissioners to assign the same, who shall proceed in the manner provided for commissioners appointed under the provisions of chapter 162 to make partition; and when their report is made and accepted by the court, it is a legal assignment of dower, and the value thereof is the measure of damages in said action.

Sec. 36. General issue to be pleaded with brief statement. R. S. c. 96, § 36. The general issue may be pleaded in all cases, and a brief statement of special matter of defense, or a special plea, or double pleas in bar, may be filed. The plaintiff must join a general issue, and may file a counter brief statement.

10 Me. 260; 11 Me. 166, *215; *13 Me. 38; 16 Me. 86, 425; 29 Me. 472; 47 Me. 350, 489; 49 Me. 333; 53 Me. *134, 429; 55 Me. 150; *65 Me. 496; 71 Me. 401; 78 Me. 295; 87 Me. 26; 108 Me. 140; 112 Me. 175; 125 Me. 113; 128 Me. 433.

Sec. 37. When plea in abatement overruled, defendant may answer over on merits. R. S. c. 96, § 37. When a plea or motion in abatement or to the jurisdiction has been overruled, the defendant shall have the right to answer over on the merits. Nothing herein contained shall be construed as affecting the provisions of existing law relative to the filing of appearances.

See § 3; 131 Me. 499; 132 Me. 56; 136 Me. 371.

Sec. 38. Demurrers, when filed, to be joined, and not be withdrawn; amendments may be made; further proceedings. R. S. c. 96, § 38. A general demurrer to the declaration may be filed; and in any stage of the pleadings either

party may demur, and the demurrer must be joined, and it shall not be withdrawn without leave of court and of the opposite party; but the justice shall rule on it, and his ruling shall be final unless the party aggrieved excepts; and before exceptions are filed and allowed, he has the same power as the full court to allow the plaintiff to amend or the defendant to plead anew. If the law court deems such exceptions frivolous, it shall award treble costs against the party excepting from the time the exceptions were filed. If the declaration is adjudged defective and is amendable, the plaintiff may amend upon payment of costs from the time when the demurrer was filed. If the demurrer is filed at the first term and overruled, the defendant may plead anew on payment of costs from the time when it was filed, unless it is adjudged frivolous and intended for delay, in which case judgment shall be entered. At the next term of the court in the county where the action is pending, after a decision on the demurrer has been certified by the clerk of the law court to the clerk of such county, and not before, judgment shall be entered on the demurrer, unless the costs are paid and the amendment or new pleadings filed on the 2nd day of the term; but by leave of court the time therefor may be enlarged, or further time may be granted by the court within which to pay said costs and to file such amendment or new pleadings.

29 Me. 110; 51 Me. *390, 416; 52 Me. 22; 54 Me. *574; 58 Me. 129; 60 Me. *500; 63 Me. 152; 65 Me. 94; 66 Me. 286, *459; 67 Me. 27, 38, *490, 553; 112 Me. 176; 113 Me. 526; *117 Me. 423; 119 Me. 530; 122 Me. 62; 126 Me. 16; 130 Me. 417; 138 Me. 36, 113.

Sec. 39. Hearings and judgments in vacation. R. S. c. 96, § 39. 1933, c. 14. Any justice of the superior court, on application of either party and on notice, may in vacation hear and determine a demurrer or any interlocutory motion in any cause pending, and may make any order therein which the court could make if in session; and by agreement of parties, he may, at any time or place, try and determine issues of fact and of law submitted to him and render any judgment therein which the court could render if in session. Any such justice may in vacation render judgment in any case heard by him in term time. Parties shall have the right of exception to such orders and judgments, and to other rulings on questions of law, as if judgment had been rendered in term time. Bills of exceptions in such cases shall be filed within 30 days from the rendition of judgment, unless the time is further extended by any justice of such court. When a judgment for the plaintiff is rendered in vacation, all pending attachments of property shall continue in force for 30 days after the next term in that county.

*114 Me. 511; *116 Me. 125; *120 Me. 281; 121 Me. 512; 124 Me. 288, 437; 125 Me. 138, *430; 136 Me. 210, 242.

Sec. 40. Actions on insurance policies. R. S. c. 96, § 40. In all actions at law on insurance policies, a declaration in indebitatus assumpsit on an account annexed, with an allegation that the plaintiff has complied with all conditions of the policy of insurance mentioned in the account annexed, shall be deemed sufficient. The account annexed shall state the number of the policy and the amount claimed as due, both as principal sum, and interest, if any. The fact that the amount claimed in the account annexed varies from the amount found to be due the plaintiff shall not defeat the action, unless there be a fraudulent claim of an excessive amount. If the defendant relies upon the breach of any condition of the policy by the plaintiff as a defense, it shall set the same up by brief statement or special plea at its election; and all conditions, the breach of which is known to the defendant and not so specially pleaded, shall be deemed to have been complied with by the plaintiff. The plaintiff by counter brief state-

ment or replication may set up any matter waiving or legally excusing his noncompliance with conditions as alleged by the defendant. Nothing herein shall be construed as changing in any way the common law burden of proof as to such matters as are so put in issue under the pleadings.

118 Me. 191; 121 Me. 248; *122 Me. 361; *124 Me. 232; 134 Me. 106.

Sec. 41. Tender may be made, or money brought into court, in case of trespass on land. R. S. c. 96, § 41. In actions of trespass on lands, the defendant may file a brief statement disclaiming all title to the land described, and alleging that the trespass was involuntary, or by negligence or mistake, or in the prosecution of a legal right, and that before action brought he tendered sufficient amends therefor, or that he brings money into court to satisfy the damages with costs to that time; and if on trial he establishes the truth of his allegations, he recovers costs.

30 Me. 467; 71 Me. 287; 76 Me. 357.

Sec. 42. Offer to be defaulted, and its effect. R. S. c. 96, § 42. In any personal action the defendant may in writing, entered of record with its date, offer to be defaulted for a specified sum. If accepted, interest may be added from that date to date of judgment. If not accepted within such time as the court orders, it shall not be offered in evidence, or have any effect upon the rights of the parties, or the judgment to be rendered, except as to the costs; but no costs shall be allowed the defendant, if the offer is accepted within the time fixed by the court, or if accepted when no time has been so fixed. If the offer is not so accepted and the plaintiff fails to recover a sum as due at the time of the offer, greater than the sum offered, he recovers such costs only as accrued before the offer, and the defendant recovers costs accrued after that time, and his judgment for costs may be set off against the plaintiff's judgment for debt and costs.

4 Me. 276; 5 Me. 394; 9 Me. 112; 13 Me. 313; 19 Me. 208; 20 Me. 40, 313; 21 Me. 531; 30 Me. 458; 31 Me. 414; 33 Me. 220; 39 Me. 72, *474; 42 Me. 54, *290; 46 Me. 545; 47 Me. 354; 48 Me. 301; 51 Me. 383; 55 Me. 533; 71 Me. 287; 72 Me. 442.

Sec. 43. Offer of judgment against plaintiff; proceedings and effect. R. S. c. 96, § 43. In any personal action the plaintiff may, in like manner, offer to have judgment rendered against him for a specified sum, and the proceedings thereon and the effect of such offer upon his rights and liabilities shall be the same as is provided in respect to the defendant in the preceding section.

Sec. 44. Tender before entry; town may tender, or offer to be defaulted. R. S. c. 96, § 44. A tender, with the costs then accrued, may be made after action brought and before its entry, to the plaintiff or his attorney, with the same effect as if made before action brought. In actions against towns for injury to the person or damage to property from defect in ways, a town may make a tender before commencement or entry of the action, or offer to be defaulted for a specified sum, with the same effect as in actions on contract.

9 Me. 112; 39 Me. 435.

Sec. 45. Partial failure of consideration of note. R. S. c. 96, § 45. In any proceeding at law or in equity in which the amount due on a promissory note given for the price of land conveyed is in question, and a total failure of consideration would be a defense, a partial failure of consideration may be shown in reduction of damages.

24 Me. 120; 34 Me. 146; 43 Me. 490; 75 Me. 293; 88 Me. 460; 98 Me. 321; *99 Me. 353.

Sec. 46. Property of deceased debtor on joint contract liable. R. S. c. 96, § 46. The goods and estate of a deceased debtor in a joint contract, express or implied, or in a judgment on contract are liable in the same manner, and the creditor has the same remedy as in case of a joint and several contract.

*60 Me. 353.

Sec. 47. Truth justifies in libel, save in case of malice. R. S. c. 96, § 47. In an action for writing and publishing a libel, evidence shall be received to establish the truth of the matter charged as libelous. If its truth is established, it is a justification, unless the publication is found to have originated in corrupt or malicious motives.

30 Me. 467; *95 Me. 348; 96 Me. 24; 118 Me. 360.

Sec. 48. Mitigation of damages in action for libel. R. S. c. 96, § 48. The defendant in an action for libel may prove under the general issue, in mitigation of damages, that the charge was made by mistake or through error or by inadvertence, and that he has in writing, within a reasonable time after the publication of the charge, retracted the charge and denied its truth as publicly and as fully as he made the charge; and he may also prove in mitigation of damages that the plaintiff has already recovered or has brought action for damages for, or has received or has agreed to receive compensation for, substantially the same libel as that for which said action was brought.

138 Me. 344.

Sec. 49. Unproved allegations; effect. R. S. c. 96, § 49. In actions for libel or slander, an unproved allegation in the pleadings that the matter charged is true shall not be deemed proof of malice unless the jury on the whole case find that such allegation or the defense thereunder is made with malicious intent.

138 Me. 231, 344.

Sec. 50. Burden of proof on defendant in certain cases of negligence; contributory negligence to be pleaded. R. S. c. 96, § 50. In actions to recover damages for negligently causing the death of a person, or for injury to a person who is deceased at the time of trial of such action, the person for whose death or injury the action is brought shall be presumed to have been in the exercise of due care at the time of all acts in any way related to his death or injury, and if contributory negligence be relied upon as a defense, it shall be pleaded and proved by the defendant.

*112 Me. 96; *115 Me. 361; 116 Me. 191, 447; 117 Me. 262; 119 Me. 597; 120 Me. 371; 123 Me. 305; 124 Me. 158, 410; 125 Me. 161; 126 Me. 558; 127 Me. 316; 129 Me. 434; 132 Me. 234, 242; 134 Me. 433, 485; 136 Me. 386; 139 Me. 63, 72.

Sec. 51. No reversal for wrong joinder. R. S. c. 96, § 51. When in a civil action the declaration contains a good count and bad ones or a wrong joinder of counts, and no written objection is made until after the cause is committed to the jury, and a general verdict has been recorded, the judgment cannot for such cause be reversed on writ of error.

55 Me. 417.

Sec. 52. No motion in arrest. R. S. c. 96, § 52. No motion in arrest of judgment in a civil action can be entertained.

*44 Me. 42; 53 Me. 109; *54 Me. 357; 69 Me. 456; 70 Me. 253.

Sec. 53. On certain bonds and recognizances, jury to assess damages. R. S. c. 96, § 53. In actions on bond or contract in a penal sum for the performance

of covenants or agreements or on a recognizance to prosecute an appeal, when the jury finds the condition broken, they shall estimate the plaintiff's damages, and judgment shall be entered for the penal sum, and execution shall issue for such damages and costs.

17 Me. 452; *21 Me. 209; 22 Me. 486, 487; 24 Me. 168; 39 Me. 414; 49 Me. 325; *52 Me. 275; 77 Me. 111; 80 Me. 362; *83 Me. 32; *123 Me. 119.

Sec. 54. Sureties on official bond may defend. R. S. c. 96, § 54. Sureties upon official bonds may appear and defend in suits against their principal, whenever such sureties may ultimately be liable upon such bonds.

Sec. 55. Interest. R. S. c. 96, § 55. Interest shall be allowed on the amount found due for damages and costs in actions on judgments of a court of record.

19 Me. 460; 22 Me. 120; 60 Me. *256, 257; *63 Me. 62.

Sec. 56. Judge may sit by consent, although his town or county is a party. R. S. c. 96, § 56. A justice or judge may sit in the trial or disposal of an action, in which the county or town where he resides is a party or interested, if the party adverse to such county or town enters on the docket a waiver of all objections.

*105 Me. 418; *110 Me. 199.

Sec. 57. Death of party suggested, executor or administrator may appear, or be summoned; heirs also, in equity. R. S. c. 96, § 57. When a party to a suit dies, and his death is suggested on the record, and the cause of action survives, his executor or administrator may become a party, or at the request of the other party, be summoned to appear and become a party. Service of the summons shall be made on him 14 days before the term to which it is returnable. If he neglects to appear, judgment may be entered by nonsuit or default according to chapter 152. If the suit is in equity, his executor, administrator, or heirs at law may in like manner appear or be summoned without a bill of revivor.

See c. 91, § 17, re proceedings on death of party while action pending before law court; c. 99, § 58, re actions by officers for goods attached and taken by them do not abate by death of either party; c. 152, § 7, re proceedings when the only party to an action who survives, dies; 6 Me. 429; 44 Me. 76; *59 Me. 343; 66 Me. 446; 76 Me. 99; 77 Me. 141; 135 Me. 86.

Sec. 58. Guardian ad litem may be appointed for insane party. R. S. c. 96, § 58. When a party becomes insane, the suit may be prosecuted or defended by his guardian, who, on application of his friend, or of the other party, may be appointed for that purpose by a justice of the court in term time or in vacation. He is entitled to a reasonable compensation and is not liable for costs.

*68 Me. 432.

Sec. 59. Motions to set aside verdicts on report to full court. R. S. c. 96, § 59. When a motion is made in the superior court to have a verdict set aside as against law or evidence, a report of the whole evidence shall be signed by the presiding justice or authenticated by the certificate of the official court stenographer. When the motion is founded on any alleged cause not shown by the evidence presented at the trial, the testimony in support of the allegations of the motion and in rebuttal or impeachment may be taken out and a report of the same, together with that presented at the trial, shall be signed by the justice or authenticated by the certificate of the official court stenographer, and the case shall be marked "Law." When the law court is of the opinion that any

such motion is frivolous or intended for delay it may award double or treble costs.

See § 187; c. 95, § 51, re proceedings when death or disability of presiding justice; 15 Me. 73; 16 Me. 204; 19 Me. 30, 405; 20 Me. 199, 352; 40 Me. 245; 43 Me. 468, 538; 45 Me. 284; 48 Me. *242, 439; 53 Me. 172; 54 Me. 260; 56 Me. 233, 250; 58 Me. 351; 70 Me. 334; *100 Me. 273; 104 Me. *80; *107 Me. 276; 112 Me. 290; *113 Me. 281; *116 Me. 12; 118 Me. 123; 119 Me. 14, 414; *124 Me. 244; 127 Me. 321; 133 Me. 211; 136 Me. 516; 137 Me. 167.

Sec. 60. Verdict may be set aside by presiding justice. R. S. c. 96, § 60. 1939, c. 66. Any justice of the superior court may set aside a verdict and grant a new trial in a civil case tried before him, when in his opinion the evidence demands it; but such verdict shall not be set aside by a single justice when 2 verdicts have been rendered against the applicant.

A motion to so set aside a verdict must be filed at the same term at which such verdict is rendered and shall be heard by the presiding justice either in term time or in vacation at his discretion; if such motion is heard in term time the presiding justice may render his decision in vacation or at a later term.

If such decision is unfavorable to the moving party, no judgment shall be entered in the action until the expiration of 10 days thereafter, during which period such moving party may file another motion to have the verdict set aside as against law or evidence as provided in section 59, without prejudice by reason of the denial of the previous motion by the presiding justice, and all proceedings thereon shall be in accordance with the provisions of said section 59.

*59 Me. 580; 64 Me. 131; *73 Me. 225; 79 Me. 217; 83 Me. 452; *115 Me. 205; 133 Me. 211; 137 Me. 167.

Sec. 61. In trespass, jury to find if it was wilful. R. S. c. 96, § 61. In actions of trespass on property, the court and jury, or magistrate, shall determine whether the trespass was committed wilfully; if so found, a record thereof shall be made and a memorandum thereof minuted on the margin of the execution.

See c. 107, § 81, re wilful trespass.

Sec. 62. Damages on protests of bills. R. S. c. 96, § 62. Damages on protests of bills of exchange of $100 or more, payable by the acceptor, drawer, or indorser of a bill in this state, are, if payable at a place 75 miles distant, 1%; if payable in the state of New York or in any state northerly of it, and not in this state, 3%; if payable in any Atlantic state or territory southerly of New York and northerly of Florida, 6%; and in any other state or territory, 9%.

Sec. 63. Legal day's work. R. S. c. 96, § 63. In all contracts for labor, 10 hours of actual labor are a legal day's work, unless the contract stipulates for a longer time; but this rule does not apply to monthly labor or to agricultural employment.

62 Me. 527; 96 Me. 221.

Sec. 64. Action by a public officer is not abated by his ceasing to act. R. S. c. 96, § 64. No action, commenced in his official capacity by a public officer, is abated by his ceasing to hold the office; but it may be prosecuted by his successors to the same uses; and the necessary amendments may be made and notices given.

Sec. 65. No action on demands discharged by a partial payment. R. S. c. 96, § 65. No action shall be maintained on a demand settled by a creditor or

his attorney entrusted to collect it, in full discharge thereof, by the receipt of money or other valuable consideration, however small.

46 Me. 434; *47 Me. 546; 48 Me. 434; 56 Me. 582; *57 Me. 492; 59 Me. 358; 61 Me. 563; 62 Me. 12; 63 Me. 443; 77 Me. 530; 86 Me. 184; 88 Me. 222; 92 Me. 432; 95 Me. 397; 97 Me. 588; *102 Me. 505; 103 Me. 106; *106 Me. 405; 107 Me. 165; *119 Me. 383; 124 Me. 150; 128 Me. 1; 133 Me. 324.

Defense of Suits by Subsequent Attaching Creditors

Sec. 66. Subsequent attaching creditor may petition to defend prior suits. R. S. c. 96, § 66. When property has been attached, a plaintiff who has caused it to be attached in a subsequent suit, may, by himself or attorney, petition the court for leave to defend the prior suit and set forth therein the facts as he believes them to be, under oath; and the court may grant or refuse such leave.

See § 33; 64 Me. 319; *74 Me. 580; 79 Me. 535.

Sec. 67. If leave is granted, bond must be given. R. S. c. 96, § 67. If leave is granted, the petitioner shall give bond or enter into recognizance with sufficient surety in such sum as the court orders, to pay the plaintiff in the prior suit all damages and costs occasioned by such defense; and an entry of record shall be made that he is admitted to defend such suit.

Sec. 68. Judgment, how to be entered when defense fails. R. S. c. 96, § 68. When the petitioner enters into recognizance and fails in his defense, execution on his recognizance shall be issued against him for the damages found by the court, and costs; and judgment shall be rendered between the original parties as if no such defense had been made.

Sec. 69. How to be entered when defense prevails. R. S. c. 96, § 69. When the petitioner prevails, judgment shall be rendered against the plaintiff and in favor of the petitioner, and execution issued thereon for his costs; and costs may or may not be awarded to the original defendant.

12 Me. 506.

Sec. 70. When judgment in such prior suit is rendered at the first term, creditor may have review; proceedings. R. S. c. 96, § 70. When judgment in such prior suit is rendered at the first term of the court, the plaintiff in such subsequent suit, within 1 year thereafter, first giving bond to each party as provided in section 67, may petition as provided in section 66 for leave to sue out a writ of review of such action; and such leave may or may not be granted. If it is granted, and on final judgment the sum originally recovered is reduced, judgment shall be entered and execution issued for the difference, not exceeding the amount due from the original defendant to the petitioner, with costs for his sole use; which operates as a payment of his debt to the amount of damages recovered.

82 Me. 97.

Sec. 71. Prior attachment to delay or defraud creditors, is void. R. S. c. 96, § 71. When it appears by the verdict, or otherwise, that such prior attachment was made with intent to delay or defraud creditors, or that there was collusion between the plaintiff and defendant for that purpose, such attachment is void.

*64 Me. 320.

Suits By and Against Bankrupts and Insolvents

Sec. 72. Actions by bankrupts or insolvents. R. S. c. 96, § 72. A person who has been declared a bankrupt or an insolvent may maintain an action respecting his former property in his own name, unless objection is made by plea in abatement, if before final judgment the assent of his trustee or assignee is filed in the office of the clerk of the court in which the action is pending.

Sec. 73. Attachments made 4 months before bankruptcy or insolvency. R. S. c. 96, § 73. Actions in which an actual attachment of property was made 4 months prior to the filing of a petition in bankruptcy or insolvency by any defendant therein shall be disposed of under the ordinary rules of proceedings in court.

56 Me. 561; 67 Me. 19.

Sec. 74. Other actions against bankrupts or insolvents, procedure. R. S. c. 96, § 74. All other actions for recovery of a debt provable in bankruptcy or insolvency, when it appears that any defendant therein has filed his petition in bankruptcy or insolvency, or has been adjudged a bankrupt or an insolvent, on petition of his creditors before or after the commencement of the suit, shall be continued until the bankrupt or insolvent proceedings are closed, unless the plaintiff strikes such defendant's name from the suit, which he may do without costs; but when such defendant does not use diligence in the prosecution of his bankrupt or insolvent proceedings, after 1 term's notice to him, in writing, from the plaintiff, the court may refuse further delay.

67 Me. 19; 85 Me. 198; 109 Me. 563; 137 Me. 52.

Sec. 75. Discharge in bankruptcy, how pleaded. R. S. c. 96, § 75. A discharge in bankruptcy may be pleaded by a simple averment that on the day of its date such discharge was granted to the bankrupt, and a certificate of such discharge under seal of the court granting the same, shall be conclusive evidence in favor of such bankrupt of the fact and regularity of such discharge.

Set-Off

Sec. 76. Defendant must file set-off during the first term, and clerk must enter the same on the docket. R. S. c. 96, § 76. Demands between plaintiffs and defendants may be set off against each other as follows:

The defendant, during the term to which the writ is returnable, must file a brief statement of his demand, in substance as certain as in a declaration, which by leave of court may be amended. The clerk shall enter on it the date of filing and on the docket under the action the date and notice of the filing.

6 Me. 240; 10 Me. 139; 15 Me. 269; 19 Me. 26; 20 Me. 423; 25 Me. 129; 31 Me. 133; 32 Me. 285; 35 Me. 81; *38 Me. 117; 47 Me. 369; 78 Me. 465.
What claims may be set off; 29 Me. 426; 31 Me. 161; 32 Me. 285; 33 Me. 231; 34 Me. 510; 35 Me. 81, 535; *37 Me. 75; 39 Me. 421, *447; 53 Me. 176; 57 Me. 166; 69 Me. 381; 124 Me. 117; 128 Me. 307.
How presented and allowed; 35 Me. 180; 36 Me. 224; 41 Me. 264.
Set-off of judgment and executions; 29 Me. 15; 34 Me. 123.

Sec. 77. What demands may be set off. R. S. c. 96, § 77. 1939, c. 60, § 2. A demand originally payable to the defendant in his own right, founded on a judgment or contract express or implied, for the price of real or personal estate sold, for money paid, or had and received, for services done, for a liquidated sum, or for one ascertainable by calculation, may be set off. A city or town, in an action by a delinquent taxpayer, may set off any unpaid taxes against any

properly authorized payment to which the taxpayer is entitled, provided that prior to trial the amount shall have been paid to the tax collector and a receipt in writing shall have been given to the person taxed, as prescribed in section 87 of chapter 81.

5 Me. 416; 7 Me. 84; 11 Me. 352; 13 Me. 288; 16 Me. 62; 18 Me. 181; 20 Me. 423; 22 Me. 462; 24 Me. 38, 352; 39 Me. 421, *447; 78 Me. 469; *94 Me. 211; *123 Me. 276; 124 Me. 18; 128 Me. 364; 132 Me. 267.

Sec. 78. Demand must be due from all plaintiffs to all defendants. R. S. c. 96, § 78. The demand must be due from all the plaintiffs to all the defendants jointly. When there is a dormant partner, claims due from the ostensible one may be set off as if there were no dormant partner.

15 Me. 269; 85 Me. 445; 90 Me. 121; *97 Me. 26; 135 Me. 198.

Sec. 79. Demands assigned may be set off by agreement. R. S. c. 96, § 79. When a plaintiff had received notice that a demand against him had been assigned to the defendant, and had, before his suit was commenced, agreed to pay it to him, or to receive it as payment towards his demand, it may be set off.

19 Me. 72; 26 Me. 118; 56 Me. 168; 85 Me. 167.

Sec. 80. Demands acquired after notice. R. S. c. 96, § 80. When a defendant had notice of the assignment of a demand, he cannot have any demand set off that accrued or was acquired after such notice.

3 Me. 465; 17 Me. 271.

Sec. 81. Suits by one for another. R. S. c. 96, § 81. When an action is brought by one person for the use of another, a demand against the latter may be set off.

57 Me. 166.

Sec. 82. Equitable dues, set-off. R. S. c. 96, § 82. When the demand to be set off is a bond or contract with a penalty, only the sum equitably due can be set off.

57 Me. 166.

Sec. 83. Demands due from a deceased person, how to be set off. R. S. c. 96, § 83. Demands against a person belonging to a defendant at the time of the death of such person, may be set off against claims prosecuted by his executor or administrator; and if a balance is found due to the defendant, judgment shall be in like form and of like effect as if he had commenced a suit therefor; but if the estate is insolvent, it must be presented to the commissioners or added to the list of claims, like other judgments.

6 Me. 242; 34 Me. 147; 38 Me. 118; 49 Me. 572; 135 Me. 199.

Sec. 84. Set-off in actions against persons in a representative capacity. R. S. c. 96, § 84. In actions against executors, administrators, trustees, or others in a representative capacity, they may set off such demands as those whom they represent might have set off in actions against them; but no demands, due to or from them in their own right, can be set off in such actions.

See c. 144, § 16, re administrator shall file abstract of demands of deceased; 1 Me. 183; 3 Me. 371; 24 Me. 38; *33 Me. 230; 94 Me. 211; 98 Me. 321; 101 Me. 327.

Sec. 85. Set-off in actions brought by executors or administrators of insolvent estates, and proceedings therein. R. S. c. 96, § 85. In joint or several actions by the executor or administrator of an estate represented insolvent, against two or more persons having joint or several demands against such estate,

the demands may be filed in set-off by either of the defendants at the first term of the court or at the first term after such representation of insolvency, if made after the commencement of such actions; and if, on trial, a balance is found due to the defendants jointly, or to either of them, judgment shall be entered for such balance as the jury finds or the court orders, and it shall be treated and disposed of as other judgments against insolvent estates.

See c. 144, § 19, re actions pending on claims not preferred.

Sec. 86. Pleadings and issue in cases of set-off. R. S. c. 96, § 86. The trial may proceed in cases of set-off on issue joined, without a plea of set-off; and if an issue is not otherwise formed, the defendant may, except in actions of assumpsit, plead that he does not owe the sum demanded; and the plaintiff is entitled to every defense against such set-off, that he might have, by any form of pleading, to an action against him on the same demand.

37 Me. 75; 54 Me. 498; 56 Me. 141; 67 Me. 571.

Sec. 87. No discontinuance, but by consent; limitations. R. S. c. 96, § 87. When a demand is filed in set-off, the action cannot be discontinued without consent of the defendant. The statute of limitations applies to demands filed in set-off, as if actions had been commenced on them at the date of the plaintiff's action.

See c. 99, § 110, re application of statutes of limitations to set-offs; 68 Me. 472.

Sec. 88. Costs in set-off. R. S. c. 96, § 88. When no balance is found due to either party, no costs are recoverable. If a balance is found due to the plaintiff, he shall have judgment therefor with costs, and if a balance is found due from the plaintiff, judgment shall be rendered therefor in favor of the defendant, with costs; but no such judgment shall be rendered against the plaintiff when the demand sued had been assigned before the commencement of the action; nor for any balance due from any other person than the plaintiff.

See § 155 et seq.; 30 Me. 28; 68 Me. 132; 73 Me. 169.

Sec. 89. Similar proceedings before inferior tribunals. R. S. c. 96, § 89. 1933, c. 118, § 1. Similar proceedings in set-off may take place before municipal courts and trial justices, the demand in set-off being filed on the return day of the writ; but judgment cannot be rendered for a defendant for an amount in excess of the civil jurisdiction of such court, exclusive of costs.

Auditors

Sec. 90. Auditors may be appointed in certain cases; proceedings before auditor; payment of fees. R. S. c. 96, § 90. When an investigation of accounts or an examination of vouchers is required, the court may appoint one or more auditors to hear the parties and their testimony, state the accounts, and make a report to the court upon such matters therein as may be ordered by the court, and the report is prima facie evidence upon such matters only as are expressly embraced in the order. They shall notify the parties of the time and place of hearing, and have power to adjourn; witnesses may be summoned and compelled to attend, and may be sworn by the auditor. The fees and necessary expenses of auditors so appointed shall be paid by the county on presentation of the proper certificate of the clerk of courts for that county, and the amount thereof shall be fixed by the court upon the coming in of the report.

See § 2, re appointment in vacation; § 123; 40 Me. 340; *57 Me. 61; 64 Me. 154; *65 Me. 328; 66 Me. 26; 69 Me. 568; 72 Me. 60; 75 Me. 279; 77 Me. 396; 80 Me. 364; 87 Me. 195; 88 Me. 486; 116 Me. 316.

Sec. 91. All hearing, a majority may report; proceedings on report. R. S. c. 96, § 91. When there is more than 1 auditor, all must hear, but a majority may report, stating whether all did hear. Their report may be recommitted. They may be discharged and others appointed. They shall be allowed a reasonable compensation, to be fixed by the court and paid as provided in the preceding section.

*57 Me. 61; *65 Me. 328; 75 Me. 279.

Sec. 92. Report as evidence. R. S. c. 96, § 92. The auditors' report may be used as evidence by either party, and may be disproved by other evidence.

57 Me. 61; *65 Me. 328; 78 Me. 458; 116 Me. 316.

Sec. 93. If defendant in action of account neglects to account, proceedings. R. S. c. 96, § 93. When in an action of account, judgment has been entered that the defendant account, and he unreasonably neglects to appear, or appearing, neglects to render an account before auditors appointed to take it, they shall certify the fact, and the court may enter a default and judgment thereon, or cause the damages to be assessed by a jury.

45 Me. 111; *65 Me. 328.

Referees

Sec. 94. Court may appoint referees. R. S. c. 96, § 94. 1941, c. 235. 1943, c. 85. In all cases in the supreme judicial or in the superior court in which the parties agree that the same may be tried by one or more persons as referees, the court may appoint the same, not exceeding 3, whose fees and necessary expenses shall be paid by the county on presentation of the proper certificate of the clerk of courts for that county, and the amount thereof shall be fixed by the court upon the coming in of the report.

No fee or compensation other than his necessary expenses shall be paid any justice of the supreme judicial or of the superior court for his services as referee, but this provision shall not apply to an active retired justice.

See § 2, re appointment in vacation; § 123; 64 Me. 154; *92 Me. 99; 131 Me. 189, 311, 336; 132 Me. 43, 92; 133 Me. 89; 137 Me. 35.

Sec. 95. Amendment of pleadings; allowed; filed. 1941, c. 32, §§ 1, 2. At any time before completion by the referee or referees of the hearing of testimony in any action referred under rule of court, any amendment of the pleadings which would be allowable by the court in the absence of such reference may, on written motion, notwithstanding such reference, be allowed in term time or vacation by any justice of the superior court on such terms as he may impose or with the consent of all parties by the referee or referees. Such motion and any amendment allowed thereon shall be filed with the clerk of the court in which the action is pending.

Juries

Sec. 96. Impaneling of jury; challenges; alternate jurors. R. S. c. 96, § 95. 1939, c. 74. When venires for jurors are returned to court the clerk shall, at the commencement of each term, prepare an alphabetical list of the names of the several persons returned as traverse jurors; and before they are impaneled, the court shall cause it to be ascertained whether all so returned are present, and any juror desiring to be excused shall make application therefor when his name is called and thereupon be heard on said application. The clerk shall then place

separately upon tickets in a box, the names of all jurors legally summoned and in attendance, and not excused, and the names shall be drawn from the box by the clerk, after having been thoroughly mixed, one at a time, and the first 12 persons whose names are drawn from the box shall compose the first jury, and shall be impaneled by the first 2 being sworn, and then the other 10 in succession as they were drawn, and in such divisions as the court directs, or all at the same time; and the next 12 so drawn shall be impaneled and sworn in like manner, and shall compose the second jury; but before proceeding to the trial of any civil or criminal case, other than for an offense punishable by imprisonment for life, the clerk may, under direction of court, at the request of either party, place the names of all jurors legally summoned and in attendance, and not engaged in the trial of any other cause, separately upon tickets in a box, and the names shall be drawn from the box by the clerk, after having been thoroughly mixed, one at a time, for the purpose of constituting a jury; and each party may peremptorily challenge 4 jurors; but in such case all peremptory or other challenges and objections to a juror drawn, if then known, shall be made and determined, and the juror sworn or set aside, before another name is drawn, and so on until the panel is completed; provided that the right to challenge peremptorily any person called or returned to serve as a juror may be exercised after it has been determined that the person so called or returned stands indifferent. A new jury shall be thus drawn for the trial of each cause; and after the panel is thus completed, the presiding justice shall appoint a foreman for the trial of the case.

Whenever by reason of the prospective length of a trial or other cause the court in its discretion shall deem it advisable, it may direct that not more than 2 jurors in addition to the regular panel be called and impaneled to sit as alternate jurors. Such alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Such alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges and be subject to the same obligations and penalties as jurors on the regular panel. An alternate juror who does not replace a juror on the regular panel shall be discharged when the jury retires to consider its verdict. If one or more alternate jurors are called, each party shall be entitled to 1 peremptory challenge in addition to those otherwise allowed by law.

See c. 135, § 13, re impaneling of jury in life imprisonment cases; 5 Me. 334; 49 Me. 575, 592; 60 Me. 304; 75 Me. 106; 74 Me. 153, *511; 80 Me. 416; 136 Me. 283.

Sec. 97. Supernumeraries, transfers, and excuses. R. S. c. 96, § 96. Supernumerary jurors may be excused, from time to time, until wanted, and they may be placed on either jury as occasion requires; jurors may be transferred from one jury to the other when convenience requires it; and for good reason, any juror may be excused.

See § 101; 75 Me. 105.

Sec. 98. Form of jurors' oath. R. S. c. 96, § 97. The following shall be the form of oath, administered to traverse jurors in civil causes:

"You, and each of you swear, that in all causes betwixt party and party, committed to you, you will give a true verdict therein according to the law and the evidence given you. So help you God."

When a juror is conscientiously scrupulous of taking an oath, the word "affirm," shall be used instead of "swear," and the words "this you do under the pains and penalties of perjury," instead of the words "so help you God."

62 Me. 304.

Sec. 99. Foreman, how chosen. R. S. c. 96, § 98. Each jury, after being thus impaneled and sworn, shall retire and choose their foreman by ballot, or make the choice upon retiring with the first cause with which they are charged; and when a foreman is absent or excused from service, a new foreman shall be chosen as aforesaid; subject in each case to appointment by the court, as provided in section 96.

Sec. 100. Talesman, when and how to be returned. R. S. c. 96, § 99. When, by reason of challenge or other cause, a sufficient number of jurors duly drawn and summoned cannot be obtained for the trial of a cause, the court shall cause jurors to be returned from the bystanders, or from the county at large, to complete the panel; if there are on the jury not less than 7 jurors drawn and returned as before provided. Such jurors shall be returned by the sheriff or his deputy, or such other disinterested person as the court appoints.

3 Me. 216; 48 Me. 438; 51 Me. 396.

Sec. 101. New jurors, or new juries, may be summoned during term. R. S. c. 96, § 100. The court may, in term time, issue venires for as many jurors as are wanted; to be drawn, notified, and returned forthwith, or on a day appointed; and when in any county, the business requires a protracted session, the court may, during the term, excuse all or any of the jurors originally returned, and issue venires for new jurors to supply their places; who shall be drawn and notified to attend at such time as the court directs.

See § 97; 48 Me. 439.

Sec. 102. Challenge of jurors, how determined. R. S. c. 96, § 101. The court, on motion of either party in a suit, may examine, on oath, any person called as a juror therein, whether he is related to either party, has given or formed an opinion, or is sensible of any bias, prejudice, or particular interest in the cause; and if it appears from his answers or from any competent evidence that he does not stand indifferent in the cause, another juror shall be called and placed in his stead.

6 Me. 329; 30 Me. 485; 32 Me. 311; 38 Me. 45; 43 Me. 109; 75 Me. 207; 84 Me. 305; *120 Me. 426.

Sec. 103. Challenge from the panel; court may regulate right by general rules. R. S. c. 96, § 102. In addition to challenges otherwise provided, either party may, before the trial commences, peremptorily challenge 1 juror from the panel unless the right of challenge provided in section 96 has been exercised; and the court may, by rules, prescribe the manner in which such right shall be exercised.

*70 Me. 338; 74 Me. 153; 119 Me. 472.

Sec. 104. Judge may order a view. R. S. c. 96, § 103. In any jury trial the presiding justice may order a view by the jury.

Sec. 105. Judge to charge jury on matters of law, but not to express opinion on issues of fact. R. S. c. 96, § 104. During a jury trial the presiding justice shall rule and charge the jury, orally or in writing, upon all matters of law arising in the case, but shall not, during the trial, including the charge, express an

opinion upon issues of fact arising in the case, and such expression of opinion is sufficient cause for a new trial, if either party aggrieved thereby and interested desires it; and the same shall be ordered accordingly by the law court upon exceptions.

64 Me. 290; 65 Me. 269, *324; 66 Me. 550; 67 Me. 76; 69 Me. 416; 70 Me. 286, 472; 73 Me. 317; 78 Me. 306, 501; 79 Me. 124; 80 Me. 208, 394; 85 Me. 252; 87 Me. 315; 93 Me. 356; 95 Me. 367; 104 Me. 396; *115 Me. 84; *120 Me. 468; 121 Me. 116; *125 Me. 44; 132 Me. 109; 133 Me. 169; 137 Me. 137.

Sec. 106. Separate verdicts as to defendants. R. S. c. 96, § 105. In actions of contract against more than 1 defendant, the jury may return a separate verdict as to each defendant, or as to two or more defendants jointly, and judgments shall be entered accordingly. In case of separate judgment against defendants in the same action, the court shall apportion the costs to be taxed against each defendant.

65 Me. 499; 72 Me. 55; 93 Me. 549; 108 Me. 242; 127 Me. 188; 130 Me. 212; 136 Me. 278.

Sec. 107. Juries may find special verdicts for cases of law. R. S. c. 96, § 106. The traverse jury may, in all cases, find a special or general verdict, subject to the opinion of the court on a case agreed on by the parties and reserved, or on the facts as reported by the justice presiding at the trial.

Sec. 108. When jurors do not agree, proceedings. R. S. c. 96, § 107. When a jury, not having agreed, return into court stating the fact, the justice may, in his discretion, explain any questions of law, if proposed to him, or restate any particular testimony, and send them out again for further consideration; but they shall not be sent out a 3rd time in consequence of their disagreement, unless on account of difficulties not stated when they first came into court.

22 Me. 458; 24 Me. 509; 31 Me. 157; 33 Me. 492; 36 Me. 476; 73 Me. 465; 77 Me. 383; 81 Me. 563; 91 Me. 31.

Sec. 109. When juror not disqualified by residence. R. S. c. 96, § 108. In prosecutions for recovery of money or other forfeiture, it is not a cause of challenge to a juror that he is liable to pay taxes in a county, town, or plantation, which may be benefited by the recovery.

48 Me. 439; 52 Me. 413; 98 Me. 130; 110 Me. 199.

Sec. 110. Objections not stated before trial are waived. R. S. c. 96, § 109. If a party knows any objection to a juror in season to propose it before trial, and omits to do so, he shall not afterwards make it; unless by leave of court for special reasons.

6 Me. 329; 47 Me. 594; 52 Me. 413, 501; 53 Me. 536; 71 Me. 90; *81 Me. 161; 84 Me. 305.

Sec. 111. Verdict is not affected by irregularities. R. S. c. 96, § 110. No irregularity in the venires, or drawing, summoning, returning, or impaneling jurors, is sufficient to set aside a verdict, unless the party objecting was injured by the irregularity; or unless the objection was made before the return of the verdict.

3 Me. 216; 8 Me. 50; 46 Me. 413; 48 Me. 439; 65 Me. 469.

Sec. 112. Verdict may be set aside for improper practices with jurors. R. S. c. 96, § 111. If either party, in a cause in which a verdict is returned, during the same term of the court, before or after the trial, gives to any of the jurors who try the cause, any treat or gratuity, or purposely introduces among the papers delivered to the jury when they retire with the cause, any papers which

have any connection with it, but were not offered in evidence, the court, on motion of the adverse party, may set aside the verdict and order a new trial.

Setting aside verdict for misconduct, or errors of any juror; 2 Me. 38; 3 Me. 204; 6 Me. 140, 380; 11 Me. 499; 17 Me. 306; 20 Me. 97; 22 Me. 200; 25 Me. 487; 38 Me. 139; 41 Me. 551; 53 Me. 470; 55 Me. 565; 57 Me. 493; 64 Me. 213; 70 Me. 96; 101 Me. 596; 115 Me. 353; 117 Me. 147; 125 Me. 263; 128 Me. 379; 129 Me. 169.
For excessive damages; 3 Me. 282, 312; 12 Me. 311; 16 Me. 191; 42 Me. 248; 50 Me. 223; 86 Me. 552; 92 Me. 454; 93 Me. 201; 95 Me. 103, 149; 136 Me. 92; 137 Me. 167.

Witnesses and Evidence. Uniform Judicial Notice of Foreign Law Act

Sec. 113. Subpoenas for witnesses. R. S. c. 96, § 112. The clerks of the several courts, trial justices, and justices of the peace may issue subpoenas for witnesses to attend before any court or before persons authorized to examine witnesses, to give evidence concerning any pending matter.

Sec. 114. Religious belief affects credibility only; atheists may testify. R. S. c. 96, § 113. No person is an incompetent witness on account of his religious belief, but he is subject to the test of credibility; and a person who does not believe in the existence of a Supreme Being may testify under solemn affirmation and is subject to the pains and penalties of perjury.

18 Me. 159.

Sec. 115. Parties, husbands, wives, and others interested, as witnesses. R. S. c. 96, § 114. No person is excused or excluded from testifying in any civil suit or proceeding at law, or in equity, by reason of his interest in the event thereof as party or otherwise, except as hereinafter provided, but such interest may be shown to affect his credibility; and the husband or wife of either party may be a witness.

See § 117; 44 Me. 19, *348; 46 Me. *237, 248, 325, 379, 471; 47 Me. 252, 478; 50 Me. 592; 55 Me. 490; 59 Me. 180, 260; 63 Me. 211; 64 Me. 573; 77 Me. 75, 93; 90 Me. 548; 97 Me. 86; 114 Me. 105; 117 Me. 427; 120 Me. 345; *124 Me. 401; 125 Me. 56; 126 Me. 16; 130 Me. 278; 135 Me. 147.

Sec. 116. Exemption, when the action implies an offense. R. S. c. 96, § 115. No defendant shall be compelled to testify in any suit when the cause of action implies an offense against the criminal law on his part. If he offers himself as a witness, he waives his privilege of not criminating himself, but his testimony shall not be used in evidence against him in any criminal prosecution involving the same subject matter.

46 Me. 326; 48 Me. 425; 55 Me. 490.

Sec. 117. Attestation of wills and instruments, not affected. R. S. c. 96, § 116. Nothing in section 115 affects the law relating to the attestation of the execution of last wills and testaments or of any other instrument which the law requires to be attested.

See c. 155, § 1, re attestation of wills; 48 Me. 194; *114 Me. 105.

Sec. 118. Testimony of a party out of the state, how to be taken. R. S. c. 96, § 117. When a party to a suit resides without the state, or is absent therefrom during the pendency of the suit, and the opposite party desires his testimony, a commission, under the rules of court, may issue to take his deposition; and such non-resident or absent party, upon such notice to him or his attorney of record in the suit of the time and place appointed for taking his deposition, as the court orders, shall appear and give his deposition. If he refuses or unreasonably delays to do so, he may be nonsuited or defaulted by order of court, unless his attorney admits the affidavit of the party desiring his testimony as

to what the absent party would say, if present, to be used as testimony in the case.

Sec. 119. When testimony of a party may be contradicted by coplaintiffs or codefendants. R. S. c. 96, § 118. 1937, c. 173. When a party, either nominal or real, or the husband or wife of a party is used as a witness by an adverse party, testimony may be introduced by such adverse party to contradict or discredit him.

126 Me. 16.

Sec. 120. Not applicable to executors, administrators, or heirs, save in special cases. R. S. c. 96, § 119. The 5 preceding sections do not apply to cases, where, at the time of taking testimony or at the time of trial, the party prosecuting, or the party defending, or any one of them, is an executor or an administrator, or is made a party as heir of a deceased party; except in the following cases:

45 Me. 166; 46 Me. 173, *236, 249, 474; 47 Me. 468; 48 Me. 36; 52 Me. 577; 59 Me. 180, 195, 196, 260; 64 Me. 25, *26, 573; 65 Me. 534; 67 Me. 197; 69 Me. 290, 292; 71 Me. 75, 504; 72 Me. 325; 73 Me. 342; 74 Me. 192; 77 Me. 75; 78 Me. 523; 79 Me. 323, 484; 80 Me. 113; 83 Me. 177; 90 Me. 548; 95 Me. 262, 526; 101 Me. 323; 110 Me. 345; 113 Me. 325, 510; 117 Me. 428, 445; 118 Me. 468; *120 Me. 336; *124 Me. 401; 129 Me. 142, 428; 130 Me. 58, 278; 132 Me. 489.

I. The deposition of a party or his testimony given at a former trial may be used at any trial after his death, if the opposite party is then alive, and in that case the latter may also testify.

69 Me. 290.

II. In all cases in which an executor, administrator, or other legal representative of a deceased person is a party, such party may testify to any facts, admissible upon the rules of evidence, happening before the death of such person; and when such person so testifies, the adverse party is neither excluded nor excused from testifying in reference to such facts, and any such representative party or heir of a deceased party may testify to any fact, admissible upon general rules of evidence, happening after the decease of the testator, intestate, or ancestor; and in reference to such matters the adverse party may testify.

59 Me. 260; 64 Me. 25; 65 Me. 424; 67 Me. 197; 68 Me. 417; 69 Me. 290; 74 Me. 195; 77 Me. 125; 79 Me. 484; 118 Me. 468; *119 Me. 111; 125 Me. 192, 292; 131 Me. 215.

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

59 Me. 508; 78 Me. 435; 124 Me. 399; 134 Me. 458.

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

*59 Me. 364; 64 Me. 25; 69 Me. 290; 129 Me. 142; 131 Me. 218.

V. In actions where an executor, administrator, or other legal representative is a party, and the opposite party is an heir of the deceased, said heir may testify

when any other heir of the deceased testifies at the instance of such executor, administrator, or other legal representative.

73 Me. 342; 108 Me. 556.

VI. In all actions brought by the executor, administrator, or other legal representative of a deceased person, such representative party shall not be excused from testifying to any facts admissible upon general rules of evidence, happening before the death of such person, if so requested by the opposite party; but nothing herein shall be so construed as to enable the adverse party to testify against the objection of the plaintiff when the plaintiff does not voluntarily testify.

*119 Me. 111; 132 Me. 488.

Sec. 121. Taking of testimony, regulated. 1933, c. 249. If in the trial of a civil case there is a conflict of oral testimony or the contents of a written statement are denied or controverted by the person involved therein, it is competent to show in testimony the interest or bias of the person testifying orally or the person preparing the written statement.

Sec. 122. Insane party. R. S. c. 96, § 120. The rules of evidence which apply to actions by or against executors or administrators apply in actions where a person shown to the court to be insane is solely interested as a party.

65 Me. 534.

Sec. 123. Rules in special proceedings of civil nature. R. S. c. 96, § 121. The rules of evidence in special proceedings of a civil nature, such as before referees, auditors, county commissioners, and courts of probate, are the same as herein provided for civil actions.

73 Me. 363.

Sec. 124. Witnesses summoned, neglecting to attend, in contempt; liable for damages. R. S. c. 96, § 122. When a person, summoned and obliged to attend before any judicial tribunal, fails to do so without reasonable excuse, he is liable to the party aggrieved for all damages sustained thereby. The judge or justice of such tribunal may issue a capias to apprehend and bring such delinquent before him; and he shall be punished by a fine of not more than $100 and costs of attachment, and committed until the same and costs are paid.

96 Me. 25.

Sec. 125. Penalty for refusal to answer. R. S. c. 96, § 123. When a witness in court refuses to answer such questions as the court allows to be put, he shall be punished by a fine of not more than $100, or by imprisonment for not more than 3 months.

68 Me. 219.

Sec. 126. Oaths, how to be administered to witnesses. R. S. c. 96, § 124. A person to whom an oath is administered shall hold up his hand, unless he believes that an oath administered in that form is not binding, and then it may be administered in a form believed by him to be binding. One believing any other than the Christian religion may be sworn according to the ceremonies of his religion.

Sec. 127. Affirmation. R. S. c. 96, § 125. Persons conscientiously scrupulous of taking an oath, may affirm as follows: "I affirm under the pains and penalties of perjury," which affirmation is of the same force and effect as an oath.

78 Me. 488; 79 Me. 104.

Sec. 128. **Conviction affects credibility only. R. S. c. 96, § 126.** No person is incompetent to testify in any court or legal proceeding in consequence of having been convicted of an offense; but such conviction may be shown to affect his credibility.

47 Me. 108; 48 Me. 328; 51 Me. 112, 125; 55 Me. 215; 63 Me. 136; 65 Me. 79; 102 Me. 315; 131 Me. 342.

Sec. 129. **Fees of witnesses. R. S. c. 126, § 7. 1943, c. 63.** Witnesses in the supreme judicial court or the superior court or in the probate courts and before a trial justice or a municipal court shall receive $2, and before referees, auditors, or commissioners specially appointed to take testimony, or special commissioners on disputed claims appointed by probate courts, $1.50, or before the county commissioners $1, for each day's attendance and 6c a mile for each mile's travel going and returning home; but the court in its discretion, may allow at the trial of any cause, civil or criminal, in said supreme judicial court or the superior court, a sum not exceeding $25 per day for the attendance of any expert witness or witnesses at said trial, in taxing the costs of the prevailing party, except that the expense of all expert witnesses for the state in homicide cases shall be in such amounts as the presiding justice shall allow and shall be paid by the state and charged against the appropriation for the department of the attorney-general; but such party or his attorney of record shall first file an affidavit, during the term at which such trial is held, and before the cause is settled, stating the name, residence, number of days in attendance, and the actual amount paid or to be paid each expert witness in attendance at such trial. No more than $2 per day shall be allowed or taxed by the clerk of courts in the costs of any suit for the per diem attendance of a witness, unless the affidavit herein provided is filed, and the per diem is determined and allowed by the presiding justice.

107 Me. 288; 137 Me. 13, 33.

Sec. 130. **Not obliged to attend court, unless fees are paid or tendered. R. S. c. 96, § 127.** No person is obliged to attend any court as a witness in a civil suit or at any place to have his deposition taken, unless his legal fees for travel to and from the place and for 1 day's attendance are first paid or tendered; and his fees for each subsequent day's attendance must be paid at the close of the preceding day, if he requests it.

Sec. 131. **Signature, how proved. R. S. c. 96, § 128.** The signature to an attested instrument or writing, except a will, may be proved in the same manner as if it were not attested.

Sec. 132. **Affidavit of plaintiff prima facie evidence. R. S. c. 96, § 129. 1935, c. 138.** In all actions brought on an itemized account annexed to the writ, the affidavit of the plaintiff, made before a notary public using a seal, that the account on which the action is brought is a true statement of the indebtedness existing between the parties to the suit with all proper credits given, and that the prices or items charged therein are just and reasonable, shall be prima facie evidence of the truth of the statement made in such affidavit and shall entitle the plaintiff to the judgment unless rebutted by competent and sufficient evidence. When the plaintiff is a corporation, the affidavit may be made by its president, secretary, or treasurer. If the said affidavit be made without the state before a notary public using a seal, a certificate of a clerk of a court of record or by a deputy or assistant clerk of the same with the seal of said court at-

tached thereto stating that said notary public is duly authorized to act as such and to administer oaths shall be prima facie evidence of the authority of said notary public to act and to administer an oath and that the signature of said notary affixed thereto is genuine.

*117 Me. 427; *120 Me. 333; 120 Me. 468; 124 Me. 112, *279; 132 Me. 80; 133 Me. 379, 384; 134 Me. 291.

Sec. 133. Accounts not inadmissible because hearsay or self-serving; court in its discretion may require evidence. 1933, c. 59. An entry in an account kept in a book or by a card system or by any other system of keeping accounts shall not be inadmissible in any civil proceeding as evidence of the facts therein stated because it is transcribed or because it is hearsay or self-serving, if the court finds that the entry was made in good faith in the regular course of business and before the beginning of the civil proceeding aforesaid. The court in its discretion, before admitting such entry in evidence, may, to such extent as it deems practicable or desirable but to no greater extent than the law required before June 30, 1933, require the party offering the same to produce and offer in evidence the original entry, writing, document, or account, from which the entry offered or the facts therein stated were transcribed or taken, and to call as his witness any person who made the entry offered or the original or any other entry, writing, document, or account from which the entry offered or the facts therein stated were transcribed or taken, or who has personal knowledge of the facts stated in the entry offered.

Sec. 134. Records of other courts are evidence. R. S. c. 96, § 130. The records and proceedings of any court of the United States or of any state, authenticated by the attestation of the clerk or officer having charge thereof and by the seal of such court, are evidence.

120 Me. 292.

Sec. 135. Judicial notice. 1939, c. 75, § 1. Every court of this state shall take judicial notice of the common law and statutes of every state, territory, and other jurisdiction of the United States.

Sec. 136. Information of the court. 1939, c. 75, § 2. The court may inform itself of such laws in such manner as it may deem proper, and the court may call upon counsel to aid it in obtaining such information.

Sec. 137. Ruling reviewable. 1939, c. 75, § 3. The determination of such laws shall be made by the court and not by the jury, and shall be reviewable.

Sec. 138. Evidence as to laws of other jurisdictions. 1939, c. 75, § 4. Any party may also present to the trial court any admissible evidence of such laws, but to enable a party to offer evidence of the law in another jurisdiction or to ask that judicial notice be taken thereof, reasonable notice shall be given to the adverse parties, if any, either in the pleadings or otherwise.

Sec. 139. Foreign country. 1939, c. 75, § 5. The law of a jurisdiction other than those referred to in section 135 shall be an issue for the court, but shall not be subject to the provisions of sections 135 to 138, inclusive, concerning judicial notice.

Sec. 140. Interpretation of §§ 135-140; title. 1939, c. 75, §§ 6, 7. The provisions of sections 135 to 140, inclusive, shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which

enact them, and may be cited as the "Uniform Judicial Notice of Foreign Law Act."

Sec. 141. Foreign laws and unwritten laws of the states, how proved. R. S. c. 96, § 132. 1933, c. 57. Foreign laws may be proved by parol evidence, but when such law appears to be existing in a written statute or code, it may be rejected unless accompanied by a copy thereof. The unwritten law of any other state or territory of the United States may be proved by parol evidence and by books of reports of cases adjudged in their courts.

Reference to the citation of such cases shall be deemed to incorporate them in the record. The determination of such law shall be for the court on all the evidence.

120 Me. 293.

Sec. 142. Attested copies of deeds admissible. R. S. c. 96, § 133. In all actions touching the realty, or in which the title to real estate is material to the issue, and where original deeds would be admissible, attested copies of such deeds from the registry may be used in evidence, without proof of their execution, when the party offering such copy is not a grantee in the deed, nor claims as heir, nor justifies as servant of the grantee or his heirs.

*54 Me. 138; 55 Me. 171; *61 Me. 412; 70 Me. 280; 74 Me. 129; 89 Me. 380; 91 Me. 357; 96 Me. 49; 104 Me. *37, 432; 107 Me. 30.

Sec. 143. Certain copied records of deeds admissible in evidence. R. S. c. 96, § 134. Copies made from any portion of either of the volumes of the early records in the York county registry of deeds published by the authority of the legislature and placed in each registry, when attested by any register of deeds having lawful custody of such printed volume; also records duplicated from originals or from copies of originals in any registry of deeds and filed in such registry of deeds or in any other registry of deeds by authority of law and copies made from such records when attested by the register of deeds of the county or district where such records are filed, may be used in evidence like attested copies of the original records.

See c. 79, § 247, re transcripts from certified copies of proprietors' records may be used in evidence.

As to admissibility of certain traced or copied records in the registry of deeds of Somerset county, see special laws of 1893, c. 514.

As to admissibility of copies of plans of towns deposited in the registry of deeds of Kennebec county, see special laws of 1905, c. 86.

Sec. 144. Copies of public records made by photographic process; admissibility. 1935, c. 99. Copies made by photographic process from public records shall be received as evidence in the courts of this state, under existing laws, if duly attested by the officials required by law to keep said records.

Sec. 145. Photostatic, photographic copy of records, etc., authorized. 1941, c. 16, § 1. Whenever any officer or employee of the state or of any county, city, or town is required or authorized by law, or otherwise, to record or copy any document, plat, paper, or instrument in writing, he may do such recording or copying by any photostatic, photographic, or other mechanical process which produces a clear, accurate, and permanent copy or reproduction of the original document, plat, paper, or instrument in writing.

Sec. 146. Photostatic, photographic copies and records admissible in evidence. 1941, c. 16, § 2. 1943, c. 73. Copies and records produced by any photostatic, photographic, microfilm, or other mechanical process which pro-

duces a clear, accurate, and permanent copy or reproduction thereof shall have the same effect as the originals from which they are copies, and copies thereof and therefrom shall be admissible in evidence in any court or at any hearing provided for by law in this state, in like manner, under like conditions, and with like effect as if they were copies from the originals.

Sec. 147. Copies of consular and custom-house documents and records are evidence. R. S. c. 96, § 135. Copies of papers and documents belonging to, or filed, or remaining in the office of any consul, vice-consul, or commercial agent of the United States, and of official entries in the books or records of such office, when certified under the hand and official seal of the proper consul, vice-consul, or commercial agent, are evidence. Copies of registers or enrolments of vessels, or of any other custom-house records or documents deposited in the office of the collector of customs, attested by him or his deputy, under seal of office, may be used in evidence, and shall have the same effect as the production of the records in court, verified by the recording officer in person.

Sec. 148. Adjutant-general's certificate as evidence. R. S. c. 96, § 136. The certificate of the adjutant-general relating to the enlistment of any person from this state, in the United States' service, and of all facts pertaining to the situation of such person, to the time of and including his discharge, as found upon the records of his office, are prima facie evidence of the facts so certified, in any suit or proceeding.

60 Me. 252; 70 Me. 395; 77 Me. 333.

Sec. 149. Authentication of copy. 1939, c. 64, § 1. An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office.

Sec. 150. Proof of lack of record. 1939, c. 64, § 2. A written statement signed by an officer having the custody of an official record, or by his deputy, that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as provided in the preceding section, is admissible as evidence that the records of his office contain no such record or entry.

Sec. 151. Other proof. 1939, c. 64, § 3. The provisions of the 2 preceding sections shall not prevent the proof of official records or of entry or lack of entry therein by any method authorized by any applicable statute, or by the rules of evidence at common law.

Sec. 152. Testimony of a deceased subscribing witness, or magistrate may be given in subsequent suit. R. S. c. 96, § 137. When the testimony of a subscribing witness to a deed, or of the magistrate who took the acknowledgment thereof, has been taken in the trial of any civil cause, in relation to the execution, delivery, or registry of such deed, and such witness has since died, proof of such former testimony is admissible in the trial of any other civil cause involving the same question, if the parties are the same, or if one of the parties is the same and the adverse party acted as agent or attorney for the adverse party in the former suit; but such testimony may be impeached like the testimony of a living witness.

Sec. 153. Writings dated on Sunday. R. S. c. 96, § 138. No deed, contract, receipt, or other instrument in writing is void because dated on the Lord's Day, without other proof than the date of its having been made and delivered on that day.

84 Me. 112.

Sec. 154. Defendant must restore consideration; actions for injury received on Lord's Day. R. S. c. 96, § 139. No person who receives a valuable consideration for a contract, express or implied, made on the Lord's Day, shall defend any action upon such contract on the ground that it was so made, until he restores such consideration; nor shall the provisions of chapter 121, relating to the observance of the Lord's Day, affect in any way the rights or remedy of either party in any action for a tort or injury suffered on that day.

See c. 99, § 89, re civil process served on the Lord's Day void; 77 Me. 484; *79 Me. 156; *84 Me. 113, 115; 88 Me. 144; 93 Me. 562; 101 Me. 458; 132 Me. 83.

Costs

Sec. 155. Costs for party prevailing. R. S. c. 96, § 140. In all actions, the party prevailing recovers costs, unless otherwise specially provided. If, after a verdict, the party in whose favor the jury found, carries the case into the law court and the decision there is against him, he recovers no costs after the verdict, but the party prevailing in the law court recovers costs accruing after verdict.

See § 88.

When parties recover costs; 2 Me. 399; 5 Me. 24, 281; 6 Me. 117; 12 Me. 346, 459; 15 Me. 53; 19 Me. 23; 20 Me. 124; 26 Me. 75; 30 Me. 557; *37 Me. 549; *38 Me. 191; 39 Me. 467; 54 Me. 437; 58 Me. 41; *61 Me. 24; 68 Me. 132; 75 Me. 414; 76 Me. 548; 78 Me. 323; 85 Me. 509; *98 Me. 187; 100 Me. 548.

When parties do not recover costs; 13 Me. 51; 19 Me. 210; 35 Me. 19; 38 Me. 256; 43 Me. 286; 78 Me. 324.

Parties liable for costs; 5 Me. 177; 6 Me. 49; 13 Me. 260; 18 Me. 336; 29 Me. 306, *560; 41 Me. 460.

In law court, 81 Me. 379; *115 Me. 165.

Sec. 156. Costs allowed to parties and attorneys. R. S. c. 126, § 8. 1933, c. 118, § 1. Costs allowed to parties and attorneys in civil actions shall be as follows: to parties recovering costs before a trial justice, 33c for each day's attendance, and the same for every 10 miles' travel; to parties recovering costs in the supreme judicial or superior courts, 33c for every 10 miles' travel, and $3.50 for attendance at each term until the action is disposed of, unless the court otherwise directs.

54 Me. 398; 55 Me. 598; 56 Me. 306; 107 Me. 157.

Costs for travel shall be taxed for the prevailing party in civil suits, according to the distance of said party or his attorney who resides nearest to the place of

trial, unless said prevailing party or his attorney who resides farthest from said place of trial actually travels the greater distance for the special purpose of attending court in such cause, in which case costs shall be taxed for the last-named distance, and when the action is in the name of an indorsee, and the plaintiff is the prevailing party, such costs for travel shall be taxed according to the distance of the attorney, payee, or indorsee who is nearest to the place of trial, unless the attorney, payee, or indorsee residing the greater distance from said place of trial actually travels such greater distance for the special purpose of attending court in said cause. No costs for travel shall be allowed for more than 10 miles' distance from any justice or municipal court, nor for more than 40 miles' distance from any other court, unless the plaintiff prevailing actually travels a greater distance, or the adverse party, if he recovers costs, by himself, his agent, or attorney in fact travels a greater distance for the special purpose of attending court in such cause.

For a power of attorney, 50c; and for the plaintiff's declaration, 50c in the superior court, but no fee for a power of attorney shall be taxed before any municipal court or trial justice, unless otherwise specially provided in the act establishing such court. For an issue in law or fact, there shall be allowed for an attorney's fee, $2.50 in the supreme judicial or superior courts. A fee of $5 shall be taxed in the plaintiff's costs for making up a conditional judgment under the provisions of section 10 of chapter 163.

In cases of forcible entry and detainer, parties shall be allowed the same costs as in ordinary civil actions.

A party summoned as trustee and required to attend court and make a disclosure shall be entitled to costs as follows: if the claim sued for does not exceed $20 such trustee shall be entitled to travel and attendance and 25c for the oath; and if the claim sued for exceeds $20 such trustee shall be entitled to $2.50 in addition to the above fee, and when required to attend court for further examination such trustee shall be entitled to travel and attendance.

In all municipal courts the amount of costs allowed in civil actions shall depend upon the amount recovered and not upon the ad damnum in the writ; and the allowance for travel and attendance to parties recovering costs in municipal courts or before any trial justice shall be limited to three terms, except that the court may, for good and sufficient cause, order such allowance for additional terms.

No costs shall accrue, be taxed, or allowed for any precept required in legal proceedings, whether in law or equity, unless the same shall issue from and bear the indorsement of an attorney at law.

The allowance for travel and attendance to parties recovering costs in the superior court shall be limited to 2 terms and every other term at which a trial is had except in addition thereto in case a demurrer, plea in abatement, or motion to dismiss is filed by the defendant, the prevailing party in such 3 last-named proceedings shall be allowed travel and attendance in such action for not exceeding 2 additional terms. The court may for good and sufficient cause order such allowance for additional terms in all actions before it. No referee shall allow costs in any proceedings in excess of the above provisions.

137 Me. 33.

Sec. 157. Costs upon appeal in condemnation proceedings. R. S. c. 96, § 141. In all proceedings for the estimation of damages for the taking of lands or other property under any general or special law, if the owner of the land, after an award made by the county commissioners enters an appeal therefrom and fails to obtain a final judgment for an amount greater than the amount of the

said award with interest thereon to the date of said judgment, he shall be subject to costs accruing after the date of said first award, and the amount thereof may be applied in reduction of the sum required to be paid by said judgment.

Sec. 158. If plaintiff appeals from judgment in his favor. R. S. c. 96, § 142. 1933, c. 118, § 1. When a plaintiff appeals from a judgment of a municipal court or a trial justice in his favor, and does not recover in the appellate court a greater sum as damages, he recovers only a quarter of the sum last recovered for costs.

1 Me. 16, 17; 4 Me. 67; 7 Me. 361; 10 Me. 69; 54 Me. 437.

Sec. 159. Costs in actions of replevin. R. S. c. 96, § 143. In actions of replevin commenced in the superior court, when the jury finds that each party owned a part of the property, they shall find and state in their verdict the value of the part owned by the plaintiff when replevied, without regard to the value as estimated in the replevin bond; and if such value does not exceed $20, the plaintiff recovers for costs only ¼ part of such value.

2 Me. 162; 6 Me. 262; 12 Me. 54; 40 Me. 286; 49 Me. 325.

Sec. 160. If improperly sued in superior court, ¼ costs; on report of referees, full costs may be allowed. R. S. c. 96, § 144. 1933, c. 118, § 1. In actions commenced in the superior court, except those by or against towns for the support of paupers, if it appears on the rendition of judgment that the action should have been commenced before a municipal court or a trial justice, including actions of replevin where the value of the property does not exceed $20, the plaintiff recovers for costs only ¼ part of his debt or damages. On reports of referees, full costs may be allowed, unless the report otherwise provides.

See c. 81, §§ 94, 150; c. 107, § 80; 4 Me. 67; 8 Me. 106, 145; 11 Me. 149; 12 Me. 346; 21 Me. 390; 28 Me. 206; 32 Me. 85, 101; 34 Me. 207; 43 Me. 318; 44 Me. 429; 47 Me. 459; 49 Me. 335; 51 Me. 460; 53 Me. 516; *60 Me. 547; 63 Me. 268; 72 Me. 442; 82 Me. 97; *115 Me. 165.
Report of referees; 1 Me. 66; 14 Me. 398; 78 Me. 427; 82 Me. 184; 137 Me. 33.

Sec. 161. When damages are reduced by set-off, full costs. R. S. c. 96, § 145. When an account is filed in set-off and the plaintiff recovers not exceeding $20, he is entitled to full costs, if the jury certify in their verdict that the damages were reduced to that sum by reason of the amount allowed in set-off.

See § 88, re costs in set-offs; 5 Me. 76; 31 Me. 130; 44 Me. 429; 56 Me. 71; 72 Me. 442; 82 Me. 185.

Sec. 162. Costs of evidence not to be doubled. R. S. c. 96, § 146. When a party recovers double or treble costs, the fees of witnesses, depositions, copies, and other evidence are not doubled or trebled.

Sec. 163. On petitions for review, etc. R. S. c. 96, § 147. On application of a private person for a writ of review, certiorari, mandamus, or quo warranto, or like process, the court may or may not allow costs to a person appearing on notice as respondent.

21 Me. 400; 85 Me. 407.

Sec. 164. Plaintiff nonsuited pays costs; second suit stayed until costs of first are paid. R. S. c. 96, § 148. When a plaintiff becomes nonsuit, or discontinues his suit, the defendant recovers costs against him, and in all actions, as well those of qui tam as others, the party prevailing is entitled to his legal costs. When costs have been allowed against a plaintiff on nonsuit or discontinuance, and a second suit is brought for the same cause before the costs of

the former suit are paid, further proceedings shall be stayed until such costs are paid, and the suit may be dismissed unless they are paid at such time as the court appoints.

32 Me. 36; *48 Me. 162; 60 Me. 546; 65 Me. 58, 331; 79 Me. 538; 88 Me. 555; 98 Me. 187; 118 Me. 447.

Sec. 165. A suitor in name of state is liable for costs. R. S. c. 96, § 149. When a suit is brought in the name of the state for the benefit of a private person, his name and place of residence shall be indorsed on the writ; and if the defendant prevails, judgment for his costs shall be rendered against such person and execution issued, as if he were plaintiff.

55 Me. 455.

Sec. 166. State is liable for costs in a civil suit. R. S. c. 96, § 150. When a defendant prevails against the state in a civil suit, judgment for his costs shall be rendered against it, and the treasurer of the county shall pay the amount on a certified copy of the judgment; and the amount shall be allowed to him in his account with the state.

26 Me. 75.

Sec. 167. No fees for travel taxable for state. R. S. c. 96, § 151. When the state recovers costs in a civil suit no fees shall be taxed for the travel of an attorney.

Sec. 168. In suit in name of assignor, writ to be indorsed; costs. R. S. c. 96, § 152. The name and place of residence of an assignee, if known, shall, at any time during the pendency of the suit, be indorsed by request of the defendant on a writ or process commenced in the name of his assignor or further proceedings thereon shall be stayed; and if the defendant prevails, judgment for his costs shall be rendered against the plaintiff and such assignee, as if both had been originally joined in the action; but if not so indorsed and proceedings are stayed, the defendant may maintain an action on the case against the assignee for his costs.

59 Me. 199; 62 Me. 12; 69 Me. 82; 72 Me. 56; *77 Me. 567; 101 Me. 403.

Sec. 169. If assignee is not known, defendant may recover costs against him and offset judgment. R. S. c. 96, § 153. If the name of such assignee is not known to the defendant until after he has recovered judgment against the plaintiff for costs, he may maintain an action on the case against such assignee for his costs, within 6 years from the time of judgment; and such judgment for costs may be set off between such assignee and the defendant, as if the assignee had been plaintiff in the suit.

*77 Me. 567.

Sec. 170. Assignee of choses not negotiable, may sue in his own name. R. S. c. 96, § 154. Assignees of choses in action, not negotiable, assigned in writing, may bring and maintain actions in their own names, but the assignee shall hold the assignor harmless of costs, and shall file with his writ the assignment or a copy thereof; and all rights of set-off are preserved to the defendant.

See c. 56, § 260, re suit by assignee of insurance policy; c. 99, § 9, re personal and transitory actions; 66 Me. 544; 69 Me. 99, 443; 71 Me. 116; 72 Me. 56, 373; 74 Me. 482; 81 Me. 17; 85 Me. 167; *87 Me. 338; 91 Me. 338; 93 Me. 231; 94 Me. 237; 95 Me. 278; 99 Me. 307, *432; 101 Me. 319; 103 Me. 481; 109 Me. 67; 111 Me. 508; 112 Me. 237, 398; 114 Me. 474; *119 Me. 380; 123 Me. 175; *124 Me. 342; 133 Me. 513.

Sec. 171. In divers actions against same party at same term, or in case of division of an account, only 1 bill of costs allowed plaintiff. R. S. c. 96, § 155.

When a plaintiff at the same term of a court brings divers suits which might have been joined in one, against the same party, or divides an account which might all have been sued for in 1 action, and commences successive suits upon parts of the same, or brings more than 1 suit on a joint and several contract, he recovers costs in only one of them, and on only one of the judgments shall execution run against the body of the same defendant, unless the court, after notice to the defendant, and hearing, certifies that there was good cause for commencing them.

34 Me. 284; 55 Me. 454; 70 Me. 272; 72 Me. 265.

Sec. 172. If execution could issue, no costs in action on judgment. R. S. c. 96, § 156. A plaintiff shall not be allowed costs in an action on a judgment of any tribunal on which an execution could issue when such suit was commenced, except in trustee process.

See c. 101, § 85, re abatement of trustee suit on judgment; 33 Me. 211; 56 Me. 80.

Sec. 173. Travel in actions by a corporation. R. S. c. 96, § 157. In actions of a corporation, its travel is computed from the place where it is situated, if local, otherwise from the place where its business is usually transacted, not exceeding 40 miles, unless its agent actually travels a greater distance to attend court.

Sec. 174. Power of court over costs. R. S. c. 96, § 158. The power of the court to require payment of costs, or to refuse them as the condition of amendment or continuance, is not affected by this chapter.

Sec. 175. When bankrupt recovers no costs. R. S. c. 96, § 159. When a defendant pleads a discharge in bankruptcy or insolvency obtained after the commencement of the suit, he recovers no costs before the time when the certificate was produced in court.

Sec. 176. Hearing on costs; appeal. R. S. c. 96, § 160. When a nonsuit or default is entered, or verdict rendered, or a report of referees is accepted, in an action, either party on application to the court, may have the costs recoverable taxed by the clerk, and passed upon by the court during the term; and any party aggrieved by the decision may file exceptions thereto; but if no such application is made, the clerk, after adjournment, shall determine the costs, and either party dissatisfied with his taxation may appeal to the court, or to a judge in vacation from whose decision no appeal shall be taken, and all attachments shall continue in force for 30 days after such appeal is decided; provided, however, that the costs shall be taxed and the appeal taken within 30 days from the rendition of final judgment or within 30 days from the term following the receipt of a rescript from the law court.

*60 Me. 547; 107 Me. 156; 118 Me. 321; 137 Me. 33.

Action for Damages Arising from Perjury

Sec. 177. Rights of action for damages, when a judgment has been obtained by perjury. R. S. c. 96, § 161. When a judgment has been obtained against a party by the perjury of a witness introduced at the trial by the adverse party, the injured party may bring an action on the case within 3 years after such judgment or after final judgment in any proceedings for a review thereof, against such adverse party, or any perjured witness, or confederate in the perjury, to

recover the damages sustained by him, by reason of such perjury; and the judgment in the former action is no bar thereto.

73 Me. 379; 76 Me. 37; *78 Me. 214; *122 Me. 262; *126 Me. 14.

Executions

Sec. 178. Issue and return. R. S. c. 96, § 162. Executions may be issued on a judgment of the supreme judicial court or superior court after 24 hours from its rendition, returnable within 3 months.

See c. 102, § 5, re executions in actions in which bail is taken; 2 Me. 112; 8 Me. 209; 11 Me. 178; 15 Me. 66; 24 Me. 306; 27 Me. 560; 49 Me. 414; *87 Me. 439; 134 Me. 1.

Sec. 179. Not after 1 year; exception. R. S. c. 96, § 163. No first execution shall be issued after 1 year from the time of judgment, except in cases provided for by section 5 in which the first execution may be issued within not less than 1 year, nor more than 2 years, from the time of judgment.

72 Me. 339.

Sec. 180. May be renewed in 10 years. R. S. c. 96, § 164. An alias or pluries execution may be issued within 10 years after the day of the return of the preceding execution, and not afterwards.

89 Me. 95; 90 Me. 574.

Sec. 181. When execution is not so issued, scire facias on judgment. R. S. c. 96, § 165. When execution is not issued within the times prescribed by the 2 preceding sections, a writ of scire facias against the debtor may be issued to show cause why execution on the judgment should not be issued, and if no sufficient cause is shown, execution may be issued thereon.

69 Me. 88.

Sec. 182. Interest on judgments. R. S. c. 96, § 166. On executions issued on judgments interest shall be collected from the time of judgment.

*60 Me. 258; 101 Me. 228.

Sec. 183. New, may be issued, on proof of loss. R. S. c. 96, § 167. A justice of the court in which the judgment was rendered, upon proof by affidavit or otherwise of the loss or destruction of an execution unsatisfied in whole or in part, may order a new execution to be issued for what remains unsatisfied.

Sec. 184. Execution upon award to creditor by commissioners on a solvent estate. R. S. c. 96, § 168. When the report of commissioners appointed by the probate court to decide upon exorbitant, unjust, or illegal claims against a solvent estate, has been returned and finally accepted in favor of a creditor, and the amount allowed him is not paid within 30 days thereafter, he may file a certified copy of such report in the office of the clerk of courts, and apply in writing to a justice of the superior court for an execution; and such justice shall order a hearing thereon, with or without notice to the adverse party. The application shall be entered on the docket of the court if in session, otherwise on the docket of the preceding term. If no sufficient cause is shown to the contrary, the justice shall direct an execution to be issued for the amount allowed the creditor by such report, with interest from its return to the probate court, and costs allowed by the probate court, if any, $3 for clerk's fees, and travel and attendance, and expense of copies and service of notices, as in suits at law.

61 Me. 239, *243; 67 Me. 117.

Stenographers

Sec. 185. Stenographers, their appointment, duties, salary, and expenses. R. S. c. 96, § 169; c. 125, § 8. 1941, c. 311. The chief justice of the supreme judicial court may appoint not more than 11 stenographers to serve for a term of 7 years, who shall report the proceedings in the supreme judicial court and in the superior court and who shall be officials of the court to which they may from time to time be assigned by the chief justice, and be sworn to the faithful discharge of their duties, and each of whom shall receive from the state a salary of $3,000 per year. They shall take full notes of all oral testimony and other proceedings in the trial of causes, either at law or in equity, including the charge of the justice in all trials before a jury, and all comments and rulings of said justice in the presence of the jury during the progress of the trial, as well as all statements and arguments of counsel addressed to the court, and during the trial furnish for the use of the court or either of the parties a transcript of so much of their notes as the presiding justice may direct. They shall also furnish a transcript of so much of the evidence and other proceedings taken by them as either party to the trial requires, on payment therefor by such party at the rate of 15c for every 100 words. One of said stenographers designated for the purpose shall perform such clerical services as may be required of him by the chief justice who may allow him reasonable compensation for such clerical services for which he shall be reimbursed.

Stenographers appointed by the chief justice of the supreme judicial court shall also receive, from the county in which the court or an equity proceeding is held, their expenses when in attendance upon such court or equity proceeding away from their place of residence, but not otherwise; a detailed statement of such expenses actually and reasonably incurred shall be approved by the presiding or sitting justice.

The chief justice may appoint temporary stenographers to serve at his pleasure, to fulfill the duties of official stenographers whenever it may seem necessary to him in carrying out the functions and duties of the court. While in the performance of their temporary duties, these stenographers shall receive the same compensation as provided by law for, and shall have all the powers and duties of, official court stenographers.

100 Me. 273.

Sec. 186. Appointment for hearings in vacation. R. S. c. 96, § 170. At any hearing in vacation of a cause in law or equity pending in the supreme judicial court or in the superior court, the presiding justice may, when necessary, appoint a stenographer other than his regularly appointed court stenographer to report the proceedings thereof, who shall receive for his services, from the treasury of the county in which the cause is pending, a sum not exceeding $6 a day for attendance in addition to actual traveling expenses; but when at such hearings the presiding justice employs his regularly appointed stenographer, such stenographer shall receive from said treasury only the amount of his actual expenses incurred in attending the same.

Sec. 187. Authentication of evidence, by official stenographer. R. S. c. 96, § 171. In all cases coming before the law court from the supreme judicial court or from the superior court, in which a copy of the evidence is required by statute, rule of court, or order of the presiding justice, a certificate signed by the official court stenographer, stating that the report furnished by him is a

correct transcript of his stenographic notes of the testimony and proceedings at the trial of the cause, shall be a sufficient authentication thereof without the signature of the presiding justice.

*116 Me. 12; 124 Me. 247.

Sec. 188. Upon death or disability of official stenographer, proceedings. R. S. c. 96, § 172. When a verdict has been rendered or a decree made in any cause, in law or equity, in the supreme judicial court or in the superior court, and a certified copy of the evidence taken by the official stenographer cannot be obtained by reason of the death or disability of such stenographer, the justice who presided at the trial of such cause may, if a motion for a new trial has been filed during the term at which the verdict was rendered, on petition therefor, after notice and hearing thereon, set aside such verdict and grant a new trial at any time within 1 year after it was returned, when in his opinion the evidence demands it; and exceptions allowed by such justice, when the evidence or any portion thereof is made a part of the exceptions, or an appeal taken from any decree in equity made by him, may be heard and determined by the law court either upon a statement of facts agreed upon by counsel and certified by such justice, or upon a report signed and certified by him as a true report of all the material facts in the case.

Sec. 189. Testimony may be proved by certified copy of notes of former testimony. R. S. c. 96, § 173. Whenever it becomes necessary, in any court in the state, to prove the testimony of a witness at the trial of any former case in any court in the state, the certified copy of the notes of such testimony, taken by the stenographic reporter at the court where said witness testified, is evidence to prove the same.

69 Me. 402; 110 Me. 338; 127 Me. 236.

Sec. 190. Stenographic reports may be taxed in bill of costs. R. S. c. 96, § 174. Any amount legally chargeable by stenographic court reporters, for writing out their reports for use in law cases, and actually paid by either party whose duty it is to furnish them, may be taxed in the bill of costs and allowed against the losing party, as is now allowed for copies, if furnished by the clerk.

Crier

Sec. 191. Sheriff, deputy, or clerk may act as crier. R. S. c. 96, § 175. The duties of the crier in the courts shall be performed by the sheriff, or any deputy, or by the clerk.

Judicial Council

Sec. 192. Judicial council established. 1935, c. 52. 1937, c. 151. A judicial council, as heretofore established, shall make a continuous study of the organization, rules, and methods of procedure and practice of the judicial system of the state, the work accomplished, and the results produced by that system and its various parts. Said council shall be composed of the attorney-general; 2 justices of the superior court; 2 judges of the municipal courts of the state; 1 judge of a probate court in this state; 1 clerk of the judicial courts of this state; 2 members of the bar; and 3 laymen, all to be appointed by the governor with the advice and consent of the executive council. The appointments by the governor shall be for such periods, not exceeding 4 years, as he shall determine.

Sec. 193. Reports. 1935, c. 52. The judicial council shall report annually on or before the 1st day of December to the governor upon the work of the various branches of the judicial system. Said council may also from time to time submit for the consideration of the justices of the various courts, such suggestions in regard to rules of practice and procedure as it may deem advisable.

Sec. 194. Expenses. 1935, c. 52. No member of said council shall receive any compensation for his services; but said council and the several members thereof shall be allowed, out of any appropriation made for the purpose, such expenses for clerical and other services, travel, and incidentals as the governor and council shall approve. The chief justice shall be ex officio chairman of said council, and said council may appoint one of its members or some other suitable person to act as secretary for said council.

CHAPTER 101.

TRUSTEE PROCESS.

General Provisions as to Procedure

Sec. 1. Actions in which trustee process may be used. R. S. c. 100, § 1. 1933, c. 118, § 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 superior court; or when the amount demanded in damages is not less than $5, nor more than $20, before a municipal court or a trial justice, unless otherwise limited in the act establishing such court.

*57 Me. 408; 70 Me. 242; *120 Me. 379; 128 Me. 174.

Sec. 2. Form of writ. R. S. c. 100, § 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.

81 Me. 475; 98 Me. 334.

Sec. 3. Service of writs. R. S. c. 100, § 3. The officer serving said writ 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: