REVISED STATUTES

OF THE

STATE OF MAINE

1954

1963 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 3

Discard Previous Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1963

Fees of Public Officers.

Sec. 33. Number of words to a written page.—Two hundred and forty words constitute a written "page", if the writing contains that number, and, where no other rule is provided, public officers shall be allowed for copies which they are required by law to furnish, 12¢ a page; for affixing an official seal to the same, when necessary, 25¢ more. (1963, c. 402, § 163.)

Sec. 34. Fees not provided for.—In cases not expressly provided for, the fees of all public officers for any official service shall be at the same rate as are prescribed by law for like services. (1963, c. 402, § 163.)

Sec. 35. Account of items in writing may be required.—Every officer or other person upon receiving any fees provided for by law, if required by the person paying them, shall make a particular account thereof in writing specifying for what they accrued or he forfeits to such person treble the sum paid, to be recovered in a civil action. (1963, c. 402, § 163.)

Chapter 111.

Miscellaneous Provisions Relating to Courts and Public Officers.

Secs. 1-13. Repealed by Public Laws 1963, c. 402, § 164.

Editor's note.—Sections 1, 2, 4 and 9 had been amended by P. L. 1959, c. 317, §§ 111, 112, 113 and 114, respectively, and section 13 had been amended by P. L. 1961, c. 317, § 334.

Application of repealing act.—Section 280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Chapter 112.

Commencement of Civil Actions.

Forms and Requisites of Writs.

Sec. 1. Repealed by Public Laws 1959, c. 317, § 115.

Effective date and applicability of Public Laws 1959, c. 317. — Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

Sec. 2. Writs or precepts sold, etc., only to attorneys. — Clerks of judicial courts, judges and registers of the probate courts, judges and clerks of the district court shall not sell or deliver any blank writs or precepts bearing the seal of said courts and the signature of said judges and registers to any person except one who has been admitted as an attorney and counselor at law and solicitor and counselor in chancery in accordance with the laws of this state. Said judges and registers of said probate courts shall not receive any paper, petition or other instrument pertaining to the practice of law before said probate courts unless it bears the indorsement of an attorney or counselor at law duly authorized to prac-

tice before said courts. The above provisions shall not apply to a party in interest in the subject matter in said courts. (R. S. c. 99, § 2. 1959, c. 317, § 116. 1963, c. 402, § 165.)

Effect of amendments. — The 1959 amendment repealed the former first paragraph of this section.

The 1963 amendment divided the section into three sentences, substituted "judges and clerks of the district court" for "recorders of the municipal courts and trial justices of the state" and substituted "and registers" for "recorders, registers and trial justices."

Effective date of 1959 amendment.—See note to § 1.

Application of 1963 act.—Section 280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Secs. 3, 4. Repealed by Public Laws 1959, c. 317, § 117.

Effective date and applicability of Public Laws 1959, c. 317. — Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

Sec. 5. Unknown defendant sued by assumed name.—When the name of a defendant is not known to the plaintiff, the summons may issue against him by an assumed name. If duly served, it shall not be dismissed for that reason but may be amended on such terms as the court orders. (R. S. c. 99, § 5. 1959, c. 317, § 118.)

Effect of amendment.—The 1959 amendment divided the section into two sentences, substituted "summons" for "writ" in the first and substituted "dismissed" for "abated" and "reason" for "cause" in the second.

Effective date of 1959 amendment.—See note to § 1.

Indorsement of Writs.

Sec. 6. Indorsement of summons, writ, petition or complaint.—When the plaintiff, petitioner or complainant in any judicial proceeding is not an inhabitant of the state, every original summons, writ, petition or complaint shall, upon motion of an adverse party made within 20 days of service upon him, be indorsed by a sufficient inhabitant of the state, or security for costs furnished by deposit in court in such amount as the court shall direct. If pending such action, the plaintiff, petitioner or complainant removes from the state, such an indorser shall be procured or security for costs furnished on motion; but if one of such plaintiffs, petitioners or complainants is an inhabitant of the state, no indorser or security shall be required except by special order of the court. The name of an attorney of this state upon such summons, writ, petition or complaint will be deemed to have been placed there to meet the requirements of this section in the absence of any words used in connection therewith showing a different purpose. (R S. c. 99, § 6. 1959, c. 317, § 119.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 1.

Sec. 7. Liability of indorser.—In case of avoidance or inability of the plaintiff or petitioner, the indorser is liable, in a civil action brought within one year after the original judgment in the court in which it was rendered, to pay all costs recovered against the plaintiff. A return upon the execution by an officer of the county where the indorser lives, that he has demanded of the indorser payment thereof, and that he has neglected to pay or to show the officer personal property of the plaintiff sufficient to satisfy the execution, or that he

cannot find the indorser within his precinct, is conclusive evidence of his liability in the action. (R. S. c. 99, § 7. 1961, c. 317, § 335.)

Effect of amendment.—The 1961 amendment substituted "a civil action" for "an action on the case" near the beginning of this section and substituted "action" for "suit" at the end of the section.

Sec. 8. Court may require new indorser or additional deposit.—If, pending such action, petition or process, any such indorser or deposit becomes insufficient or such indorser removes from the state, the court may require a new and sufficient indorser or additional deposit, and by consent of the defendant the name of the original indorser may be struck out. Such new indorser shall be liable or such deposit holden for all costs from the beginning of the action. If such new indorser is not provided or security furnished within the time fixed by the court, the action shall be dismissed and the defendant shall recover his costs. (R. S. c. 99, § 8. 1961, c. 317, § 336.)

Effect of amendment.—The 1961 amendment divided this section into three sentences and substituted "action" for "suit" in the present first and second sentences.

Venue.

Sec. 9. Personal and transitory actions; transfer from one county to another.—Personal and transitory actions, except process of foreign attachment and except as provided in sections 10 to 16, shall be brought, when the parties live in this state, in the county where any plaintiff or defendant lives; and when no plaintiff lives in the state, in the county where any defendant lives. Improper venue may be raised by the defendant by motion or by answer, and if it is established that the action was brought in the wrong county, it shall be dismissed and the defendant allowed double costs. When the plaintiff and defendant live in different counties at the commencement of any such action, except process of foreign attachment, and during its pendency one party moves into the same county with the other, it may, on motion of either, be transferred to the county where both then live if the court thinks that justice will thereby be promoted; and be tried as if originally commenced and entered therein. Actions by the assignee of a nonnegotiable chose in action, when brought in the superior court or in the district court, shall be commenced in the county or division when brought in the district court, in which the original creditor might have maintained his action. (R. S. c. 99, § 9. 1959, c. 317, § 120. 1963, c. 402, § 166.)

Effect of amendments. — The 1959 amendment substituted "sections 10 to 16" for "the 7 following sections" in the first sentence and deleted at the end thereof the clause "and when not so brought, they shall on motion or inspection by the court be abated and the defendant allowed double costs." The amendment also added the present second sentence, divided the former last sentence into two sentences and had substituted "summons" for "writ" in the present last sentence.

The 1963 amendment substituted "the district" for "a municipal" in the last sentence, added "or division when brought in the district court" and deleted at the end of that sentence "and when brought before a trial justice, the summons shall be made returnable before a magistrate who would have had jurisdiction had the chose in action not been assigned."

Effective date of 1959 amendment.—See note to § 1.

Application of 1963 act.—See note to § 2.

Sec. 11. Civil actions on judgment.—Civil actions founded on judgment rendered by any court of record in the state may be brought in the county where it was rendered or in the county in which either party thereto or his executor or administrator resides at the time of bringing the action. (R. S. c. 99, § 11. 1961, c. 317, § 337.)

Effect of amendment.—The 1961 amendment substituted "Civil actions" for "Action of debt" at the beginning of this section.

Sec. 12. Jurisdiction obtained by attachment. — In all actions commenced in any court proper to try them, jurisdiction shall be sustained if goods,

estate, effects or credits of any defendant are found within the state and attached. (R. S. c. 99, § 12. 1959, c. 317, § 121.)

Effect of amendment.—The 1959 amendment deleted "on the original writ; and service shall be made as provided in section 21" formerly appearing at the end of the section.

Effective date of 1959 amendment.—See note to § 1.

Sec. 15. Certain actions in behalf of state.—An action in behalf of the state to enforce the collection of state taxes upon any corporation or to recover of any person or corporation moneys due the state, public funds or property belonging to the state, or the value thereof, may be brought in any county. On motion of the defendant, any justice of the superior court may, for sufficient reasons shown, remove the same to the docket of said court in any other county for trial and may, upon such removal, award costs to the defendant for one term, to be paid by the treasurer of state on presentation of the certificate of the amount thereof from the clerk of courts of the county from which said action is transferred. (R. S. c. 99, § 15. 1959, c. 317, § 122.)

Effect of amendment.—The 1959 amendment divided this section into two sentences and deleted the words "holding the term at which such action is returnable," formerly appearing after "superior court" in the present second sentence.

Effective date of 1959 amendment.—See note to § 1.

Sec. 16. District court actions, service.—An action against 2 or more defendants residing in different divisions, to be tried before the district court, may be brought in the division where either resides. The process shall be served and the execution levied by the proper officers in each of such divisions. If there is only one defendant, such action shall be commenced in the division where he resides. (R. S. c. 99, § 16. 1959, c. 317, § 123. 1963, c. 402, § 167.)

Effect of amendments. — The 1959 amendment divided the section into three sentences and substituted at the beginning of the present second sentence "The process shall be served and the execution levied" for "and the writ and execution shall be directed to and executed."

The 1963 amendment substituted "division" for "county" and "divisions" for "counties" throughout the section and substituted "the district court" for "a trial justice or municipal court."

Effective date of 1959 amendment.—See note to § 1.

Application of 1963 act.—See note to § 2.

Service on Residents.

Secs. 17-20. Repealed by Public Laws 1959, c. 317, § 124.

Effective date and applicability of Public Laws 1959, c. 317. — Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

Service on Nonresidents.

Sec. 21. Service of process.—

I. Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts hereinafter enumerated in this section, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:

A. The transaction of any business within this state;

B. The commission of a tortious act within the state resulting in physical injury to person or property;

C. The ownership, use or possession of any real estate situated in this state;

D. Contracting to insure any person, property or risk located within this state at the time of contracting.

II. Service of process upon any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may be made by personally serving the summons upon the defendant outside this state, with the same force and effect as though summons had been personally served within this state.

III. Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.

IV. Nothing contained in this section limits or affects the right to serve any process in any other manner now or hereafter provided by law. (R. S. c. 99, § 21. 1959, c. 317, § 125.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 22.

Sec. 22. Repealed by Public Laws 1959, c. 317, § 126.

Effective date and applicability of Public Laws 1959, c. 317. — Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

Want or Defect of Service Cured.

Sec. 23. Repealed by Public Laws 1959, c. 317, § 126.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 22.

Attachment of Personal Property.

Sec. 24. Personal property subject to attachment. — All goods and chattels may be attached and held as security to satisfy the judgment for damages and costs which the plaintiff may recover, except such as, from their nature and situation, have been considered as exempt from attachment according to the principles of the common law as adopted and practiced in the state, and such as are hereinafter mentioned. Such personal property may be attached on writs issued by the district court in any division, when directed to the proper officer. (R. S. c. 99, § 24. 1963, c. 402, § 168.)

Effect of amendment.—The 1963 amendment substituted "the district court" for "a trial justice or judge of a municipal court" in the last sentence and substituted "division" for "county" therein.

Application of amending act.—See note to § 2.

Sec. 27. Attachment of bulky personal property recorded. — When any personal property is attached which by reason of its bulk or other special cause cannot be immediately removed, the officer may within 5 days thereafter file in the office of the municipal clerk or the secretary of state or in the registry of deeds, as the case may be, where filing is required to perfect a security interest in such goods under chapter 190, section 9-401, an attested copy of so much of his return on the writ of attachment as relates to the attachment, with the value of the defendant's property which he is thereby commanded to attach, the names of the parties, the date of the writ of attachment and the court to which it is returnable, and such attachment is as effectual and valid as if the property had remained

in his possession and custody. The municipal clerk, secretary of state or register of deeds, as the case may be, shall receive the copy, noting thereon the time, enter it in a suitable book or file and keep it on file for the inspection of those interested therein. (R. S. c. 99, § 27. 1959, c. 317, § 127. 1963, c. 362, § 25.)

Effect of amendments. — The 1959 amendment added the words "of attachment" after the word "writ" in two places in the first sentence of this section.

The 1963 amendment, effective December 31, 1964, substituted "municipal clerk or the secretary of state or in the registry of deeds, as the case may be, where filing is required to perfect a security interest in such goods under chapter 190, section 9-401" for "clerk of the town in which the attachment is made" in the first sentence, substituted "municipal clerk, secretary of state or register of deeds, as the case may be" for "clerk" near the beginning of the second sentence, added "or file" following "book" in that sentence and deleted the former last sentence, relating to an attachment made in an unincorporated place.

Effective date of 1959 amendment.—See note to § 22.

Sec. 28. Attachment of shares in a corporation.—When the share or interest of any person in an incorporated company is attached on mesne process, an attested copy of the writ of attachment with a notice thereon of the attachment, signed by the officer, shall be left with the clerk, cashier or treasurer of the company. Such attachment is a lien on such share or interest and on all accruing dividends. If the officer having the writ of attachment exhibits it to the official of the company having custody of the account of shares or interest of the stockholders, and requests a certificate of the number held by the defendant, and such official unreasonably refuses to give it or willfully gives him a false certificate thereof, he shall pay double the damages occasioned by such refusal or neglect, to be recovered against him in an action by the creditor. (R. S. c. 99, § 28. 1959, c. 317, § 128.)

Effect of amendment.—The 1959 amendment divided the section into three sentences, added "of attachment" following "writ" in the present first and third sentences and, near the end of the section, corrected the spelling of "neglect" and deleted "on the case" following "action."

Effective date of 1959 amendment.—See note to § 22.

Sec. 29. Attachment of franchise and other property of corporation.—The franchise and all right to demand and take toll and all other property of a corporation may be attached on mesne process, and the attaching officer shall serve an attested copy of the writ of attachment upon the corporation in the same manner as other process. (R. S. c. 99, § 29. 1959, c. 317, § 129.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 22.

Sec. 30. Successive attachment on same writ or property.—Successive attachments in one or more counties may be made upon the same writ of attachment by the same or different officers before service of the summons upon the person whose property is attached; but none after such service except on order of the court on motion without notice and for cause shown. Personal property attached on process may be subsequently attached by a different officer, who shall furnish the last preceding attaching officer with a copy of the precept within a reasonable time. (R. S. c. 99, § 30. 1959, c. 317, § 130.)

Effect of amendment.—The 1959 amendment added "of attachment" following "writ" near the beginning of the first sentence and added "except on order of the court on motion without notice and for cause shown" at the end thereof.

Effective date of 1959 amendment.—See note to § 22.

Personal Property Attached Sold on Writ.

Sec. 31. Sale on writ of personal property attached.—When personal property is attached, the officer, by consent of the debtor and creditor, may sell

it on the writ of attachment before or after filing in court, observing the directions for selling on execution. If it is attached by different officers, it may be so sold by the first attaching officer; or in case of his death, if he was a deputy sheriff, by the sheriff or another deputy by written consent of the debtor and all attaching creditors. The proceeds, after deducting necessary expenses, shall be held by the officer making the sale, subject to the successive attachments as if sold on execution. (R. S. c. 99, § 31. 1961, c. 317, § 338.)

Effect of amendment.—The 1961 amendment divided this section into three sentences and substituted "writ of attachment before or after filing in court" for "writ before or after entry" in the present first sentence.

Sec. 32. Perishable goods sold without consent. — When personal property liable to perish, be wasted, greatly reduced in value by keeping or be kept at great expense is attached, and the parties do not consent to a sale thereof, the same may be ordered sold either before or after entry of the action, in accordance with sections 33 to 41. (R. S. c. 99, § 32. 1961, c. 193, § 1.)

Effect of amendment.—The 1961 amendment substituted "ordered sold either" for "examined and appraised" and substituted "in accordance with" for "as provided in".

Sec. 33. Procedure in certain cases.—Either party may, on motion to the court setting forth the reasons therefor, petition the court to order the expeditious sale of the attached property. After such notice as the court may order and hearing on the motion, the court may, in its discretion, order the attached property to be sold and the proceeds held as security for the claim involved. As a part of its order, the court may impose such restrictions and conditions as it deems necessary for the conduct of such sale, the protection of lienors, the furnishing of bonds for the protection of the interests of any party, and to protect the interest of the attaching creditor and debtor. (R. S. c. 99, § 33. 1961, c. 193, § 2.)

Effect of amendment.—The 1961 amendment rewrote this section.

Secs. 34-38. Repealed by Public Laws 1961, c. 193, § 3.

Sec. 39. Proceeds attached in hands of the officer.—The proceeds of such property sold by order of court may be further attached by the officer as property of the defendant while remaining in his hands; and held and disposed of as if the property itself had been attached; but after retaining enough to satisfy all attachments existing thereon at any time, nothing herein shall prevent his paying the surplus to the debtor. (R. S. c. 99, § 39. 1961, c. 193, § 4.)

Effect of amendment.—The 1961 amendment substituted "order of court" for "consent or after an appraisal".

Sec. 40. Right by priority in case of sale preserved.—When goods which are sold by order of court in the manner provided have been attached by several creditors, any one of them may demand and receive satisfaction of his judgment, notwithstanding any prior attachments, if he is otherwise entitled to demand the money and a sufficient sum is left of the proceeds of the goods or of their appraised value to satisfy all prior attachments. (R. S. c. 99, § 40. 1961, c. 193, § 5.)

Effect of amendment.—The 1961 amendment substituted "by order of court" for "or appraised and delivered to the debtor" and deleted "before" preceding "provided".

Sec. 41. Replevin of property attached and claimed by one not a party to action; sale.—When personal property, attached on mesne process, is claimed by a person not a party to the action, he may replevy it within 10 days after notice given him therefor by the attaching creditor, and not afterwards. After that, the attaching officer, without impairing the rights of such person,

at the request and on the responsibility of the plaintiff and with consent of other attaching creditors, if any, may sell it at auction as on execution, unless the debtor claims it as his and forbids the sale. (R. S. c. 99, § 41. 1961, c. 317, § 339.)

Effect of amendment.—The 1961 amendment divided this section into two sentences and substituted "action" for "suit" in the present first sentence.

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

Sec. 42. Property of part owner attached, appraised and delivered to another owner on giving bond; bond returned with writ of attachment.—When personal property is attached in a civil action against one or more part owners thereof, at the request of another part owner, it shall be appraised as provided, one appraiser to be chosen by the creditor, one by the officer and the other by the requesting part owner. Thereupon it shall be delivered to such part owner on his giving bond to the officer with 2 sufficient sureties, conditioned to restore it in like good, pay the appraised value of the defendant's share therein or satisfy all judgments recovered in the attaching actions, if demanded within the time during which it would be held by the attachments. Such bond shall be returned with the writ of attachment with the doings of the officer thereon. (R. S. c. 99, § 42. 1961, c. 317, § 340; c. 417, § 181.)

Effect of amendments.—The first 1961 amendment divided the former first sentence of this section into two sentences, substituted "civil action" for "suit" near the beginning of the present first sentence, substituted "actions" for "suits" in the present second sentence, and inserted "of attachment" following "writ" in the present third sentence.

The second 1961 amendment deleted "and, if forfeited, like proceedings may be had as are provided in section 36" at the end of the section.

Attachment of Property Mortgaged or Pledged.

Sec. 45. When officer attaching mortgaged property is exempt from suit.

Such summons may be in substantially the following form;

Summons to Claimant

State of Maine Superior Court
....., ss. Civil Action, File Number ....

A.B., Plaintiff
v.
C.D., Defendant } Summons
E.F., Claimant

You are hereby summoned and required to appear at our ..... Court, to be held at ....., on the ..... day of ..... in an action between ....., plaintiff, and ....., defendant, in which the following described property, claimed by you as mortgagee, was attached as the property of said defendant; viz., ..., and there to answer in such action, such questions as may be put to you relative to the consideration, validity and amount justly due secured by such mortgage, and abide the judgment of the court thereon.

If you fail to appear and answer, you will thereby waive the right to hold said property under the claimed mortgage.

(Signed) .....
Clerk of said Superior Court

[Seal of the Court]
Dated .....

Such summons, when property is attached on the writ, shall be returnable to the court to which the writ is returnable not less than 10 days nor more than 60 days after service thereof, and when property is seized on execution such sum-

mons shall be made returnable to the court issuing such execution on any day fixed by the court not less than 10 days nor more than 60 days thereafter. Service in either case shall be by copy of such summons. If in either case the mortgagee or claimant fails to appear and answer, or after hearing fails to establish his claim under such mortgage, pledge or lien, he thereby waives the right to hold the property thereon. (R. S. c. 99, § 45. 1949, c. 349, § 128. 1959, c. 317, §§ 131, 132. 1961, c. 317, § 341.)

Effect of amendments.—This section was amended twice by P. L. 1959, c. 317. Section 131 of P. L. 1959, c. 317, rewrote the next to last paragraph. Section 132 deleted the words "attested by the officer serving the same," formerly appearing at the end of the next to last sentence of the last paragraph.

The 1961 amendment deleted "or to any justice thereof in vacation" following "is returnable", deleted "any justice or judge of" preceding "the court issuing" and substituted "the court" for "such justice or judge" in the first sentence of the last paragraph of this section.

As the rest of the section was not affected by the amendments, only the last two paragraphs are set out.

Effective date of 1959 amendment.—See note to § 22.

Sec. 46. Mortgagee must account within 10 days after notice; false account.—The officer may give the claimant written notice of his attachment. If he does not within 10 days thereafter deliver to the officer a true account of the amount due on his claim, he thereby waives the right to hold the property thereon. If his account is false, he forfeits to the creditor double the amount of the excess, to be recovered in a civil action. (R. S. c. 99, § 46. 1961, c. 317, § 342.)

Effect of amendment.—The 1961 amendment divided this section into three sentences and substituted "a civil action" for "an action on the case" at the end of the present third sentence.

Sec. 47. Validity of mortgage established.—If, upon examination held under section 45 or upon the verdict of a jury as provided, it appears that the mortgage is valid, the court, having first ascertained the amount justly due upon it, may direct the attaching creditor to pay the same to the mortgagee or his assigns within such time as it orders. If he does not pay or tender the amount within the time prescribed, the attachment shall be vacated and the property shall be restored. If the attaching creditor pays or tenders the amount directed to be paid within such time and the mortgagee or his assigns fail to immediately assign such mortgage to the attaching creditor, the mortgagee or his assigns shall be estopped from claiming any interest in such attached goods by virtue of his mortgage. (R. S. c. 99, § 47. 1963, c. 414, § 119.)

Effect of amendment.—The 1963 amendment divided the former first sentence into two sentences, deleted "or such justice or judge thereof" following "court" in the present first sentence and made two other minor changes therein.

Attaching Officer Dies or Is Removed, or Property Replevied.

Sec. 52. If replevied, liable to further attachments. — The property described in section 51 replevied from the officer is liable to further attachments as if in his possession. If there is judgment for a return in the replevin action, the plaintiff and his sureties are liable for the whole property or its value, although some attachments were made after the replevin. (R. S. c. 99, § 52. 1961, c. 317, § 343.)

Effect of amendment.—The 1961 amendment divided this section into two sentences and substituted "action" for "suit" in the present second sentence.

Sec. 53. If officer dies or is removed, further attachments.—If an attaching officer dies or is removed from office while the attachment is in force, whether the property was in his possession or not, it and its proceeds may be further attached by any other officer the same as it may have been by the first

officer. Such further attachments shall be made by a return setting forth an attachment in common form and by whom the property was previously attached; and if the goods have not been replevied, by leaving a certified copy of the writ of attachment, omitting the declaration and of the return of that attachment, with the former officer if living, or if dead, with his executor or administrator, or if none has been appointed, with the person having possession of the goods; or if the goods have been replevied and the officer who made the original attachment is dead, such copy shall be left with his executors or administrators or with the plaintiff in replevin. The attachment shall be considered as made when such copy is delivered in either of the modes described. (R. S. c. 99, § 53. 1961, c. 317, § 344.)

Effect of amendment.—The 1961 amendment divided the former second sentence of this section into two sentences, inserted "of attachment" following "writ" in the present second sentence and deleted "before" preceding "described" at the end of the present third sentence.

Effect of Death of Party.

Sec. 56. Liability if property sold before demand; setoff not allowed.—If, after such decree and before such demand, the officer has sold the property on execution, he is liable to the executor or administrator in a civil action, for the proceeds, if in his hands; but if paid over to the judgment creditor, such creditor is so liable, and he shall not set off any demand which he has against the executor or the administrator or against the estate of the deceased. (R. S. c. 99, § 56. 1961, c. 317, § 345.)

Effect of amendment.—The 1961 amendment substituted "a civil action" for "an action, not of trespass but for money had and received" near the middle of this section.

Sec. 57. Appraisal of property under attachment.—After the death of a defendant and before a decree of insolvency on his estate, the executor or administrator may demand of the attaching officer a certified copy of his return on the writ of attachment, with a description of the property attached, so that it may be described in the inventory of the estate subject to the attachment, and the appraisers may demand a view thereof so as to appraise it. If the officer fails to comply with either demand, he forfeits to the executor or administrator not less than $10 nor more than $30. (R. S. c. 99, § 57. 1961, c. 317, § 346.)

Effect of amendment.—The 1961 amendment divided this section into two sentences and inserted "of attachment" following "writ" in the present first sentence.

Sec. 59. If officer dies pending action and no administrator appointed, party in interest may carry on action.—If an officer authorized to serve precepts dies pending an action for or against him for official neglect or misconduct and no administration is granted on his estate within 3 months thereafter, the party for whose benefit the action is so prosecuted or defended may carry it on in his own name by entering his appearance and giving security for costs, as the court directs. (R. S. c. 99, § 59. 1961, c. 317, § 347.)

Effect of amendment.—The 1961 amendment substituted "an action" for "a suit" near the beginning of this section and substituted "action" for "suit" near the middle of the section.

Attachment of Real Estate.

Sec. 61. Real estate attached on writs of attachment from certain district courts. — If a district court has jurisdiction in any action, real estate and interests in real estate attachable on writs of attachment from the superior court may be attached on writs of attachment or taken on executions from such court. (R. S. c. 99, § 61. 1959, c. 22. 1961, c. 317, § 348. 1963, c. 402, § 169.)

Effect of amendments.—The 1959 amendment deleted the words "and a recorder," near the beginning of the section.

The 1961 amendment inserted "of attachment" following "writs" in two places in this section.

The 1963 amendment substituted "district" for "municipal," deleted "has a regular seal and" following "court," deleted "where the amount of damage claimed exceeds $20" following "any action" and deleted "where the amount of the debt or damage, exclusive of costs, exceeds $20" at the end of the section.

Application of amending act.—See note to § 2.

Sec. 63. Attachment not valid unless recorded and claim specified; seizure on execution; lien.—No attachment of real estate on mesne process creates any lien thereon, unless the nature and amount of plaintiff's demand is set forth in the complaint or specifications therein or account annexed thereto, nor unless the officer making it within 5 days thereafter files in the office of the register of deeds in the county or district in which some part of said estate is situated an attested copy of so much of his return on the writ of attachment as relates to the attachment, with the value of the defendant's property which he is thereby commanded to attach, the names of the parties, the date of the writ of attachment and the court to which it is returnable. If the copy is not so filed within 5 days, the attachment takes effect from the time it is filed, although it is after service on the defendant, if before the time he is required to serve his answer. No seizure of real estate on execution, where there is no subsisting attachment thereof made in the action in which such execution issues, creates any lien thereon, unless the officer making it within 5 days thereafter files in the office of the register of deeds in the county or district in which some part of said estate is situated an attested copy of so much of his return on said execution as relates to the seizure, with the names of the parties, the date of the execution, the amount of the debt and costs named therein and the court by which it was issued. If the copy is not so filed, the seizure takes effect from the time it is filed. Such proceedings shall be had in such office by the register of deeds, as are prescribed in chapter 89, sections 212 to 242. All recorded deeds take precedence over unrecorded attachments. (R. S. c. 99, § 63. 1959, c. 317, § 133.)

Effect of amendment.—The 1959 amendment substituted "in the complaint or specifications therein or account annexed thereto" for "in proper counts or a specification is annexed to the writ" near the beginning of the first sentence, added "of attachment" following "writ" at two places in that sentence, substituted "although it is after service on the defendant, if before the time he is required to serve his answer" for "if before the entry of the action, although it is after service on the defendant" at the end of the second sentence, substituted "action" for "suit" in the third sentence and changed the form of the reference to chapter 89 at the end of the section.

Effective date of 1959 amendment.—See note to § 22.

Sec. 64. Action not effectual against person not party thereto, until attachment or lis pendens recorded.—No action in which the title to real estate is involved is effectual against any person not a party thereto or having actual notice thereof until either:

I. An attachment of such real estate is duly made and recorded in the registry of deeds, in and for the county or district in which such real estate is situated, in the same manner as attachments of real estate in other actions are now recorded; or

II. A certificate setting forth the names of the parties, the date of the complaint and the filing thereof and a description of the real estate in litigation as described in said complaint, duly certified by the clerk of courts in and for the county where said complaint is pending is recorded in the registry of deeds in the county or district in which such real estate is situated. (R. S. c. 99, § 64. 1959, c. 317, § 134.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 22.

Sec. 65. When right of redemption or to a deed by contract attached, the creditor may redeem or pay.—When a right to redeem real estate under mortgage, levy, sale on execution or for taxes or a right to a conveyance by contract is attached, the plaintiff in the action, before or after sale on execution, may pay or tender to the person entitled thereto the amount required to discharge such encumbrance or fulfill such contract. Thereby the title and interest of such person vest in the plaintiff subject to the defendant's right to redeem. Such redemption by the defendant or any person claiming under him by a title subsequent to the attachment shall not affect such attachment, but it shall continue in force and the prior encumbrance as against it shall be deemed discharged. (R. S. c. 99, § 65. 1961, c. 317, § 349.)

Effect of amendment.—The 1961 amendment divided this section into three sentences and substituted "action" for "suit" in the present first sentence.

Sec. 66. Mortgagee or contractor to state, on demand, sum due; on payment, to release his interest in premises.—Such person, on written demand, shall give the plaintiff a true written statement of the amount due him; and on payment or tender thereof shall release all his interest in the premises; and if he refuses, he may be compelled to do so in a civil action seeking equitable relief. Such release shall recite that under authority of this section and section 65, the plaintiff had attached the premises and paid or tendered the amount due the grantor. The plaintiff shall thereupon hold such title in trust for the defendant, and subject to his right of redemption, without power of alienation until after one year from the termination of said action, or from the sale of the equity on any execution recovered therein. (R. S. c. 99, § 66. 1961, c. 317, § 350.)

Effect of amendment.—The 1961 amendment substituted "in a civil action seeking equitable relief" for "by a bill in equity" at the end of the first sentence, divided the former second sentence into two sentences, substituted "section 65" for "the preceding section" in the present second sentence, and substituted "action" for "suit" in the present third sentence.

Dissolution of Attachments.

Sec. 72. Attachment continues during pendency of appeal or for 60 days after judgment; expiration of real estate attachment.—An attachment of real or personal estate continues during the time within which an appeal may be taken from the judgment and during the pendency of any appeal. When a judgment for the plaintiff has become final by expiration of the time for appeal, by dismissal of an appeal, or on certificate of decision from the law court, any such attachment shall continue for 60 days; except attachments of real estate taken on execution; or equities of redemption sold on execution; or an obligee's conditional right to a conveyance of real estate sold on execution; or property attached and replevied; or property attached belonging to a person dying thereafter, or specially provided for in any other case. In the case of attachments of real estate, the aforesaid 60 day period may be extended for a definite period, and thereafter extended for definite periods, with attachment remaining in full force and effect, by an order signed by any judge or justice of the court having jurisdiction over the cause of action upon which the attachment is based, provided said order is signed and recorded in the office of the register of deeds in the county or district where the said real estate or some part of it is situated within the said 60 day period. An attachment of real estate shall expire at the end of 5 years from the date of filing the same in the office of the register of deeds in the county or district where the said real estate or some part of it is situated, unless the said register shall, within said period, at the request of the plaintiff or his attorney bring forward the same upon the book of attachments, and at the expiration of 5 years from the time of such first or any subsequent bringing forward, such attachment shall expire unless within said period it is again brought forward in like manner. The register

shall be entitled to the same fee for bringing forward such attachment upon the said book of attachments as for the original entry thereof, and shall be entitled to a fee of $2 for recording an order for such extension. (R. S. c. 99, § 72. 1959, c. 93, § 1; c. 317, § 135. 1963, c. 326, §§ 1, 2.)

Effect of amendments.—The second 1959 amendment divided the former first sentence into three sentences and substituted, in the present first and second sentences, the language beginning with the words "during the time" and concluding with "60 days" for the words "for 30 days and no longer after final judgment in the original suit, and not in review or error." The first 1959 amendment had divided the former first sentence into two sentences and had substituted "60" for "30" in the phrase eliminated by the second amendment.

The 1963 amendment added the present third sentence and added "and shall be entitled to a fee of $2 for recording an order for such extension" at the end of the section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 22.

Sec. 73. Attachments dissolved.—An attachment of real or personal property is dissolved when a judgment for the defendant has become final by expiration of the time for appeal, by dismissal of an appeal, or on certificate of decision from the law court; by a decree of insolvency on his estate before a levy or sale on execution; by insolvency proceedings commenced within 4 months as provided in the insolvency law; by a reference of the action and all demands between the parties thereto by a rule of court and judgment on the report of the referees; and by an amendment of the complaint, by consent of parties, so as to embrace a larger demand than it originally did, and judgment for the plaintiff thereon, unless the record shows that no claims were allowed the plaintiff not originally stated in the complaint. (R. S. c. 99, § 73. 1959, c. 317, § 136.)

Effect of amendment.—The 1959 amendment substituted the language preceding the first semicolon for "All attachments of real or personal estate are dissolved by final judgment for the defendant," substituted "action" for "suit" in the third clause, "complaint" for "declaration" in the fourth clause and "complaint" for "writ" at the end of the section.

Effective date of 1959 amendment.—See note to § 22.

Sec. 74. Certificate of dissolution of attachment.—When an attachment is dissolved by judgment for the defendant, or if the complaint in the action in which an attachment is made is not filed with the court within 30 days after the first attachment therein, the clerk of the court shall give any person applying therefor a certificate of that fact, which the register of deeds shall note on the margin of the record of the attachment. The said clerk of courts may charge a fee of 50¢ for such certificate. Before or after the filing of said complaint in said court, or before or after judgment thereon, or if said complaint is not filed in court, the plaintiff or his attorney in such action may discharge the attachment in writing on the margin of the record thereof, or said plaintiff or said attorney may give a certificate, signed, sealed and acknowledged by him that said attachment is in whole or in part discharged, which the register of deeds shall record with a reference thereto on the margin of the records of attachments. The register of deeds shall note the record of said discharge on the margin of the records of attachments within an hour of the delivery to him of either of the aforesaid certificates. Such attachments may be discharged on the record thereof in the registry of deeds by an attorney at law authorized in writing by the plaintiff in said action, provided said writing is first recorded or filed in said registry of deeds with a reference thereto made by said register of deeds on the margin of the record of the attachment. (R. S. c. 99, § 74. 1959, c. 317, § 137. 1961, c. 317, § 351.)

Effect of amendments.—The 1959 amendment rewrote the first sentence of this section.

The 1961 amendment substituted "filing" for "entry", "complaint" for "writ" in two places, "filed" for "entered", and "action"

for "suit" in the third sentence of this section. It also substituted "action" for "suit" and deleted "however, that" following "provided" in the fifth sentence.

Effective date of 1959 amendment.—See note to § 22.

Sec. 75. Real estate attachment discharged of record when dissolved.—When an attachment of real estate is made in any action and the complaint is not filed in court, or when any attachment of real estate is dissolved by lapse of time or failure to levy upon the judgment debt within the time prescribed by law to preserve said attachment and the said attachment then remains undischarged upon the records of the registry of deeds, the plaintiff upon the demand of the defendant shall either cause the said attachment to be discharged upon the records of the registry of deeds or give a certificate, signed, sealed and acknowledged by him that said attachment is discharged, when said certificate is prepared and presented to the plaintiff by the defendant, which said certificate the register of deeds shall record with reference thereto on the margin of the record of said attachment. (R. S. c. 99, § 75. 1961, c. 317, § 352.)

Effect of amendment.—The 1961 amendment substituted "complaint is not filed" for "writ is not entered" near the beginning of this section.

Sec. 76. Plaintiff fails or refuses to discharge attachment.—If the plaintiff shall upon demand unreasonably delay or refuse to discharge the said attachment as prescribed in section 75, then the defendant by action filed in the county in which the attachment of said real estate was made shall be entitled on proof thereof to have the attachment discharged by a decree of the court duly filed in the registry of deeds, which the register of deeds shall record with reference thereto on the margin of the record of said attachment. (R. S. c. 99, § 76. 1959, c. 317, § 138.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 22.

Sec. 77. Debtor may petition for a valuation and release.—Any defendant, whose interest in real estate is attached on mesne process, may petition the superior court, sitting forth the names of the parties to the action, the court and county in which it is returnable or pending, the fact of the attachment, the particular real estate and his interest therein, its value and his desire to have it released from the attachment. Such court shall issue a written notice which shall be served on all parties to the action living in the state, including trustees mentioned in section 82, and on the plaintiff's attorney, 10 days at least before the time fixed therein for a hearing. (R. S. c. 99, § 77. 1959, c. 317, § 139. 1963, c. 414, § 120.)

Effect of amendments.—The 1959 amendment deleted "in term time or vacation" following "superior court" in the first sentence and substituted "action" for "suit" in both sentences.

The 1963 amendment deleted "a justice of" preceding "the superior court" in the first sentence and substituted "court" for "justice" near the beginning of the last sentence.

Effective date of 1959 amendment.—See note to § 22.

Sec. 78. Valuation and release on bond of debtor.—If, at the hearing, such court finds that such interest is worth as much as the amount ordered in the writ to be attached, it shall order such defendant to give bond to the plaintiff, with sufficient sureties, conditioned that within 30 days after judgment for the plaintiff has become final by expiration of the time for appeal, by dismissal of an appeal or on certificate of decision from the law court, he will pay the judgment recovered by the plaintiff, with his costs on the petition, such bond, except as otherwise provided, to be in an amount equal to the amount ordered in the writ to be attached; but, if it finds that such interest is worth less than the amount ordered in the writ to be attached, such bond, except as otherwise

provided, shall be in an amount equal to the value of such interest. If, in either event the court shall find that the value of the interest attached is in excess of the amount of any judgment which the plaintiff may reasonably be expected to recover, with his costs on the petition, it may fix the amount of such bond at such sum, not exceeding the amount ordered to be attached and not exceeding the value of the interest attached, as it may deem adequate to protect the plaintiff in the collection of any judgment recovered by him, with his cost on the petition. (R. S. c. 99, § 78. 1959, c. 317, § 140. 1963, c. 414, § 121.)

Effect of amendments.—The 1959 amendment divided the section into two sentences, rewrote the conditions of the bond and substituted "otherwise" for "hereinafter" at two places in the first sentence.

The 1963 amendment substituted "court" for "justice" and "it" for "he" throughout the section.

Effective date of 1959 amendment.—See note to § 22.

Sec. 82. Foreign attachments vacated by same proceedings.—In cases of foreign attachment, the same proceedings originated by any principal defendant may be had, except that the bond to the plaintiff shall be conditioned to pay the amount, if any, which he may finally recover against the trustees, with costs on the petition, within 30 days after judgment, not exceeding the amount of the judgment against the principal defendant. The court shall require the petitioner to give bond to each trustee named in the petition, with sureties, in a sum sufficient to protect him against any judgment recovered by the plaintiff and paid by him, and his legal costs in the action, and the costs allowed him by the court at the hearing on the petition, if he appears. Such bonds, when approved by the court, shall be filed in the clerk's office for the use of the trustees. The delivery of the copy and certificate hereinbefore mentioned to the trustees vacates the attachment of any goods, effects or credits in their hands belonging to the petitioner. (R. S. c. 99, § 82. 1961, c. 317, § 353. 1963, c. 414, § 122.)

Effect of amendments.—The 1961 amendment substituted "court shall" for "justice shall also", "action" for "suit", and "the court" for "such justice" in the second sentence of this section.

The 1963 amendment substituted "the court" for "such justice" in the next to the last sentence.

Sec. 83. Costs.—The party finally prevailing in the action shall recover the costs of these proceedings, taxed as costs of court in other cases and certified by the court, and execution shall issue therefor. (R. S. c. 99, § 83. 1961, c. 317, § 354. 1963, c. 414, § 123.)

Effect of amendments.—The 1961 amendment substituted "action" for "suit" near the beginning of this section.

The 1963 amendment substituted "the court" for "such justice."

Sec. 84. Attachment vacated on bond.—When real estate or personal property is attached on mesne process, and in all cases of attachment on trustee process, the attachment shall be vacated upon the defendant or someone in his behalf delivering to the officer who made such attachment, or to the plaintiff or his attorney, a bond to the plaintiff in a penal sum not exceeding the amount of the attachment, such bond to be approved as to penal sum and sureties by the plaintiff or his attorney, or by any justice or clerk of the superior court, conditioned that within 30 days after the rendition of the judgment, or after the adjournment of the court in which it is rendered or after the certificate of decision of the law court shall be received in the county where the cause is pending, he will pay to the plaintiff or his attorney of record the amount of said judgment including costs. The bond shall be returned by the officer with the process, for the benefit of the plaintiff, and thereupon all liability of the officer to the plaintiff by reason of such attachment shall cease. Upon request, the plaintiff or his attorney shall give to the defendant a certificate acknowledging the discharge of such attachment, which may be recorded in the registry of deeds or town clerk's office, as the case may be, in which the return of the attachment is filed. If stock in any corporation is at-

tached, such certificate shall be filed with the officer of the corporation with whom the return of such attachment is filed and he shall record the same. In trustee process the alleged trustee shall not be liable to the principal defendant for the goods, effects and credits in his hands or possession until such certificate shall be delivered to him, and upon receiving such certificate, he shall be discharged from further liability in said trustee action and need not disclose and shall not recover costs. (R. S. c. 99, § 84. 1961, c. 317, § 355.)

Effect of amendment.—The 1961 amendment divided the first sentence of this section into two sentences and substituted "amount of the attachment" for "ad damnum of the writ" in the present first sentence.

Attachment in Counterclaim, Cross-Claim or Third-Party Complaint.

Sec. 84-A. Attachment made by party bringing counterclaim, cross-claim or third-party complaint. — Attachment of real estate, goods and chattels, or other property may be made by a party bringing a counterclaim, a cross-claim or a third-party complaint in the same manner as upon an original claim. For purposes of applicable statutes, the word "plaintiff" shall refer to the party to the action who makes the attachment and the word "defendant" shall refer to the party to the action whose property is attached. (1959, c. 317, § 141.)

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 22.

Cross Actions against Nonresidents.

Secs. 85, 86. Repealed by Public Laws 1959, c. 317, § 142.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 22.

Days on Which No Arrest Made or Process Served.

Sec. 87. Exemption from arrest on certain holidays. — No person shall be arrested in a civil action, on mesne process, or execution or on a warrant for taxes on the day of annual Thanksgiving; the 19th day of April; the 30th day of May; the 4th of July; the first Monday of September; Veterans day, November 11th; or Christmas. On the day of any military training, inspection, review or election, no officer or soldier required by law to attend the same shall be arrested on any such processes. (R. S. c. 99, § 87. 1957, c. 397, § 52. 1959, c. 230, § 4. 1961, c. 395, § 46.)

Effect of amendments. — The 1957 amendment made this section into two sentences and substituted "Veterans Day" for "Armistice Day"

The 1959 amendment changed the fifth holiday from the first to the 2nd Monday in September.

The 1961 amendment, effective on its approval, June 17, 1961, changed the fifth holiday back to the first Monday of September.

Effective date. — P. L. 1959, c. 230, amending this section, provided in section 5 thereof as follows: "This act shall take effect on January 1, 1961, provided that on or before said date the majority of the following states, Massachusetts, New Hampshire, Vermont, Rhode Island, Connecticut, New York, New Jersey and Pennsylvania shall have provided by legislation or otherwise for the observance of Labor Day on the same day as provided in this act and provided further that on or before January 1, 1961 the Governor, after determining that a majority of the above-named states has provided for the observance of Labor Day on the same day as provided in this act, shall by proclamation proclaim that this act is effective."

Limitations of Personal Actions.

Sec. 90. General limitation of 6 years.—All civil actions shall be commenced within 6 years after the cause of action accrues and not afterwards, except actions on a judgment or decree of any court of record of the United States,

or of any state, or of a justice of the peace in this state, and except as otherwise specially provided. (R. S. c. 99, § 90. 1959, c. 317, § 143. 1963, c. 402, § 170.)

Effect of amendments.—The 1959 amendment rewrote this section.

The 1963 amendment deleted "municipal court, trial justice or" preceding "justice of the peace."

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 22.

Application of 1963 act.—See note to § 2.

Statutory actions on insurance policies.—The usual six-year statute of limitation is not applicable to statutory actions upon insurance policies where other applicable law applies. Hubert v. National Casualty Co., 154 Me. 94, 144 A. (2d) 119.

Sec. 91. Actions for breach of promise to marry prohibited.—No action or proceedings to recover damages for breach of promise to marry shall be maintained. (R. S. c. 99, § 91. 1961, c. 317, § 356.)

Effect of amendment.—The 1961 amendment deleted "suit" following "No action" at the beginning of this section.

Sec. 92. Suits against sheriff for escape; for misconduct.—Actions for escape of prisoners committed on execution shall be commenced within one year after the cause of action accrues; but actions against a sheriff, for negligence or misconduct of himself or his deputies, shall be commenced within 4 years after the cause of action accrues. (R. S. c. 99, § 92. 1959, c. 317, § 144.)

Effect of amendment.—The 1959 amendment deleted the words "be actions on the case and," formerly appearing before the words "be commenced" in the first clause.

Effective date of 1959 amendment.—See note to § 22.

Stated in Tantish v. Szendey, 158 Me. 228, 182 A. (2d) 660.

Sec. 93. Assault, libel, etc., in 2 years.

The word "false" is synonymous with "unlawful." Jedzierowski v. Jordan, 157 Me. 352, 172 A. (2d) 636.

False arrest is but one means of committing false imprisonment. Jedzierowski v. Jordan, 157 Me. 352, 172 A. (2d) 636.

Accrual of action for false imprisonment.—The cause of action for false imprisonment accrues, for purposes of the statutory period of limitations, when the plaintiff regains his liberty by release upon recognizance. Thus action, stemming from alleged false arrest, brought more than two years after plaintiff had regained his liberty by release upon recognizance was barred by this section, notwithstanding the criminal prosecution in which the arrest took place continued within the limitations period. Jedzierowski v. Jordan, 157 Me. 352, 172 A. (2d) 636.

And for malpractice.—A malpractice action accrues when a wrongful act is committed and not as of the date damage was discovered. Tantish v. Szendey, 158 Me. 228, 182 A. (2d) 660.

Sec. 94. Actions against bail, sureties in criminal recognizances and trustees, in one year.—No action shall be commenced against bail unless within one year after judgment was rendered against the principal; nor against sureties in recognizances in criminal cases unless within one year after default of the principal; nor against any person adjudged trustee, unless within one year from the expiration of the first execution against the principal and his goods, effects and credits in the hands of the trustee. No action in behalf of the state against sureties and recognizances in criminal cases shall be brought unless within one year after default of principal. (R. S. c. 99, § 94. 1959, c. 317, § 145.)

Effect of amendment.—The 1959 amendment substituted "action shall be commenced against bail" for "scire facias shall be served on bail" near the beginning of the section, substituted "nor against" for "nor on" following the first semicolon and deleted "of debt" following "action" near the beginning of the last sentence.

Effective date of 1959 amendment.—See note to § 22.

Sec. 95. Repealed by Public Laws 1959, c. 317, § 146.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 22.

Sec. 96. Mutual and open accounts current.—In contract actions to recover the balance due, where there have been mutual dealings between the parties, the items of which are unsettled, whether kept or proved by one party or both, the cause of action shall be deemed to accrue at the time of the last item proved in such account. (R. S. c. 99, § 96. 1959, c. 317, § 147.)

Effect of amendment.—The 1959 amendment substituted "contract actions" for "actions of debt or assumpsit" near the beginning of this section.

Effective date of 1959 amendment.—See note to § 22.

Sec. 97. Minors, etc., may sue after disability removed.—If a person entitled to bring any of the actions under sections 90 to 96 is a minor, insane, imprisoned or without the limits of the United States when the cause of action accrues, the action may be brought within the times limited herein after the disability is removed. (R. S. c. 99, § 97. 1959, c. 317, § 148.)

Effect of amendment.—The 1959 amendment deleted "aforesaid" formerly appearing before "actions," added "under sections 90 to 96" following "actions" and deleted "or married woman" following "minor."

Effective date of 1959 amendment.—See note to § 22.

Sec. 98. Actions to be commenced within 20 years.—Personal actions on contracts or liabilities under seal, promissory notes signed in the presence of an attesting witness, or on the bills, notes or other evidences of debt issued by a bank shall be commenced within 20 years after the cause of action accrues. (R. S. c. 99, § 98. 1959, c. 317, § 149.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date of 1959 amendment.—See note to § 22.

Sec. 99. When summons fails of service or defeated, new action in 6 months. — When a summons fails of sufficient service or return by unavoidable accident, or default, or negligence of the officer to whom it was delivered or directed, or the action is otherwise defeated for any matter of form, or by the death of either party, the plaintiff may commence a new action on the same demand within 6 months after determination of the original action; and if he dies and the cause of action survives, his executor or administrator may commence such new action within said 6 months. (R. S. c. 99, § 99. 1959, c. 317, § 150.)

Effect of amendment.—The 1959 amendment substituted "summons" for "writ" and "original action" for "original suit" and deleted provisions as to abatement, or reversal of the judgment.

Effective date of 1959 amendment.—See note to § 22.

Sec. 102. Limitation of actions for penalties.—Actions for any penalty or forfeiture on a penal statute, brought by a person to whom the penalty or forfeiture is given in whole or in part, shall be commenced within one year after the commission of the offense. If no person so prosecutes, it may be recovered by civil action, indictment or information in the name and for the use of the state at any time within 2 years after the commission of the offense, and not afterwards. (R. S. c. 99, § 102. 1961, c. 317, § 357.)

Effect of amendment.—The 1961 amendment divided this section into two sentences, deleted "and suits" following "Actions" at the beginning of the present first sentence and substituted "civil action" for "suit" in the present second sentence.

Sec. 103. When action is commenced.—An action is commenced when the complaint is either filed with the clerk, deposited in the mail addressed to

the clerk, delivered to an officer for service or deposited in the mail addressed to such officer. (R. S. c. 99, § 103. 1959, c. 317, § 151.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 22.

Sec. 105. Renewal of promise in writing.—In actions founded on any contract, no acknowledgment or promise takes the case out of the operation hereof, unless the acknowledgment or promise is express, in writing and signed by the party chargeable thereby. No such acknowledgment or promise made by one joint contractor affects the liability of the others. (R. S. c. 99, § 105. 1959, c. 317, § 152.)

Effect of amendment.—The 1959 amendment deleted "of debt or on the case," formerly appearing after the word "actions" in the first sentence.

Effective date of 1959 amendment.—See note to § 22.

Sec. 107. When nonjoinder of defendants is pleaded.—In an action on a contract, if the defendant pleads that another person ought to have been jointly sued and issue is joined thereon, and it appears on the trial that the action was barred by the provisions hereof against such person, the issue shall be found for the plaintiff. (R. S. c. 99, § 107. 1959, c. 317, § 153.)

Effect of amendment.—The 1959 amendment deleted "in abatement," formerly appearing after the word "pleads" near the beginning of this section.

Effective date of 1959 amendment.—See note to § 22.

Sec. 109. Presumption of payment after 20 years.—Every judgment and decree of any court of record of the United States, or of any state, or justice of the peace in this state shall be presumed to be paid and satisfied at the end of 20 years after any duty or obligations accrued by virtue of such judgment or decree. (R. S. c. 99, § 109. 1959, c. 317, § 154. 1963, c. 402, § 171.)

Effect of amendments.—The 1963 amendment deleted "or of a municipal court, trial justice" preceding "or justice of the peace." The words "municipal court" had been added by the 1959 amendment.

Effective date of 1959 amendment.—See note to § 22.

Application of 1963 act.—See note to § 2.

Sec. 110. Application of the statutes of limitation to counterclaims.—All the provisions hereof respecting limitations apply to any counterclaim by the defendant. The time of such limitation shall be computed as if an action had been commenced therefor at the time the plaintiff's action was commenced. (R. S. c. 99, § 110. 1959, c. 317, § 155.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 22.

Sec. 113. Actions to recover damages for land taken for public purposes.

Cited in Williams v. State Highway Comm., 157 Me. 324, 172 A. (2d) 625.