

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

REVISED STATUTES

OF THE

STATE OF MAINE

1954

1961 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 4

Discard Previous Pocket Part Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1961

REVISED STATUTES OF MAINE

1961 Cumulative Supplement

VOLUME 4

Chapter 120.

Relief of Poor Debtors. Disclosure Commissioners.

Exemption from Arrest.

Sec. 1. Repealed by Public Laws 1959, c. 317, § 255.

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."

Arrests and Disclosures on Leaving the State.

Sec. 2. Debtor about to leave state arrested. — Any person, whether a resident of the state or not, may be arrested and held to bail or committed to prison on mesne process in any action, if the sum demanded amounts to \$10, when he is about to depart and reside beyond the limits of the state with property or means of his own exceeding the amount required for his immediate support, if the creditor, his agent or attorney makes oath before a justice of the peace, to be certified by such justice on said process, that he has reason to believe and does believe that such debtor is about so to depart, reside and take with him property or means, and that the demand or principal part thereof, amounting to at least \$10, is due to him. (R. S. c. 107, § 2, 1959, c. 317, § 256.)

Effect of amendment.—The 1959 amendment substituted "in any action" for "on a contract express or implied" and deleted "or on a judgment on contract if the debt originally recovered and remaining due is \$10 or more, exclusive of interest" follow-

ing "\$10," near the beginning of the section, and deleted "as aforesaid" following "property or means" near the end of the section.

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

Disclosures on Mesne Process before Judgment.

Sec. 8. Disclosure before judgment; notice.—When a person is served with a summons or other mesne process in any action, in any other manner than by arrest of the body, he may, at any time before final judgment, appear before the court or justice before whom such process is pending or a disinterested commissioner or commissioners appointed by said court or justice and submit himself to examination. Such court, justice or commissioner shall give notice and proceed to take his disclosure as provided in sections 4, 5 and 6 and with like effect. The court may continue the cause to permit such disclosure to be taken. (R. S. c. 107, § 8, 1959, c. 317, § 257.)

Effect of amendment.—The 1959 amendment divided the section into three sentences, substituted "a summons" for "an

original writ" and "in any action" for "founded on such contract or judgment" near the beginning of the first sentence and

deleted "writ or" preceding "process is pending" in that sentence.

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

Sec. 9. Effect; lien on property disclosed.—On such examination, the court, justice or commissioner, except as provided in section 14, may determine that the defendant shall forever thereafter be exempt from arrest on any execution issued on the judgment recovered in the action, and that such execution shall run against the property only of the defendant, or otherwise, as justice requires, on the facts so disclosed or proved. All attachable property so disclosed, from the time of the disclosure, shall be held attached as provided in section 7, subject to sections 10 and 11. (R. S. c. 107, § 9. 1961, c. 317, § 419.)

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

"sections 10 and 11" for "the provisions of the 2 following sections" at the end of the present second sentence.

Sec. 10. Certificate of real estate disclosed filed in registry of deeds.—If the disclosed property is real estate, the court, justice or commissioner shall deliver to the plaintiff a certificate thereof, stating the names of the parties and the amount of the claim in the complaint, which the plaintiff shall file with the register of deeds for the county or district where the estate lies within 5 days after its date. The register shall enter and file it as returns of officers making attachments of real estate and shall be entitled to the same fees from the plaintiff. (R. S. c. 107, § 10. 1961, c. 317, § 420.)

Effect of amendment.—The 1961 amendment divided this section into two sen-

tences and substituted "complaint" for "writ" in the present first sentence.

Sec. 11. Lien on personal estate preserved.—If personal estate liable to attachment is disclosed, and the plaintiff states that he is apprehensive that it may be removed or concealed so that it cannot be taken on execution, the court or the trial justice before whom the action is pending may issue an order signed and sealed, directing any officer authorized to serve processes in the action to take such property into his custody and hold it as if originally attached; and he shall execute the order accordingly. (R. S. c. 107, § 11. 1961, c. 317, § 421.)

Effect of amendment.—The 1961 amendment deleted "in term time or any justice thereof in vacation" following "the court"

near the middle of the section and substituted "action" for "suit" in two places below the middle of the section.

Sec. 12. Disclosure on mesne process by consent of parties.—At any time the parties to the action, by a written agreement, may appear before a justice of the peace in the county where the action is pending. The defendant shall make the disclosures and submit to the examinations and proceedings required in section 8, and the record thereof shall, before final judgment, be returned to the court or justice before which the action is pending, where the proceedings shall be the same as if the disclosure had been before a commissioner appointed for the purpose. (R. S. c. 107, § 12. 1959, c. 317, § 258.)

Effect of amendment.—The 1959 amendment divided the section into two sentences, deleted "before or after the return day of such writ or process" following "At any time" at the beginning of the section

and substituted "action" for "suit" twice in the first sentence and once in the last.

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

Sec. 14. Property which cannot be attached delivered up or assigned by debtor.—If, on any disclosure and examination before judgment, it appears that the debtor possesses, has in his power, or with intent to protect the same from his creditors, has assigned, secreted or otherwise disposed of any bank bills, notes, accounts, bonds or other contracts or property not exempt from attachment, but which cannot be reached to be attached from its nature or otherwise, the debtor, if under arrest, shall not be released nor shall he be exempted

from arrest on execution on judgment in such action, unless he assigns and delivers to such person, as the examining magistrate, court or commissioner appoints, all such property, or so much of it as they adjudge sufficient security for the creditor, to be held by him, under the direction of the court or justice before whom the action is pending, in trust for the parties that it may be applied and appropriated as provided in sections 57 and 58. (R. S. c. 107, § 14. 1961, c. 317, § 422.)

Effect of amendment.—The 1961 amendment substituted “action” for “suit” in two places in this section.

Bonds on Mesne Process and Disclosures after Judgment.

Sec. 15. Debtor arrested, may give bond to disclose after judgment.

—When a person is arrested or imprisoned on mesne process in a civil action, he may disclose as provided in sections 3 to 7 or he may be released by giving bond to the plaintiff in a sum not exceeding the amount prayed for in the complaint upon which he is arrested or imprisoned, with surety or sureties, said bond to be approved by him or by 2 or 3 justices of the peace of the county where the arrest or imprisonment is made, and selected and proceeding as prescribed in section 68, conditioned that within 15 days after a judgment for the plaintiff has become final by expiration of the time for appeal, by dismissal of an appeal, or certificate of decision from the law court, he will notify the creditor, his agent or attorney to attend at a certain place in the county at a time not less than 15 days nor more than 30 days after such notice, for the purpose of disclosure and examination; that he will then and there submit himself to examination; make true disclosure of his business affairs and property on oath, and abide the order of the justices thereon; and if the officer serving the writ takes such bond, he shall return it to the court or justice where the action is pending. (R. S. c. 107, § 15. 1959, c. 317, § 259.)

Effect of amendment.—The 1959 amendment substituted “3 to 7” for “3, 4, 5, 6, and 7,” substituted “amount prayed for in the complaint” for “ad damnum of the writ” and substituted “a judgment for the plaintiff has become final by expiration of the time for appeal, by dismissal of an ap-

peal, or certificate of decision from the law court” for “rendition of judgment or after the adjournment of the court in which it is rendered” and substituted “action” for “suit” near the end of the section.

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

Sec. 16. Proceedings, if debtor has given bond on mesne process.—

After such final judgment, the debtor may apply in writing to a justice of the peace of the county where he was arrested, who shall issue a citation to the creditor, his agent or attorney. An examination and disclosure may be had before 2 justices of the peace within the time specified in the bond. The same proceedings shall be had and the same results shall follow as in disclosures on bonds given on execution, except as provided in section 17. (R. S. c. 107, § 16. 1959, c. 317, § 260.)

Effect of amendment.—The 1959 amendment divided the section into three sentences and substituted the words “section 17” for the words “the following section”

at the end of the section.

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

Sec. 18. Creditor's election to arrest on execution or otherwise.—If the creditor elects so to arrest him and the officer having the execution returns that the debtor is not found, his bonds shall be forfeited. On judgment thereon, execution shall issue for the amount of judgment in the original action, and interest. If the debtor is not arrested within that time and does not avoid arrest, no execution, issued or founded on such judgment, shall run against his body, but against his property only. (R. S. c. 107, § 18. 1961, c. 317, § 423.)

Effect of amendment.—The 1961 amendment divided the former first sentence of this section into two sentences and substi-

tuted “action” for “suit” in the present second sentence.

Disclosure Commissioners.

Sec. 22. Owner of judgment may have disclosure any time. — The owner of any judgment remaining unsatisfied in any part may have a disclosure of the business and property affairs of any judgment debtor, including corporations, at any time, by proceedings as provided, but married women, and officers of judgment debtor corporations, and judgment debtors not liable to arrest by virtue of proceedings under sections 6 or 8, thus cited, shall not be arrested except for contempt or upon *capias* issued to bring them before the magistrate as provided by section 34. (R. S. c. 107, § 22. 1957, c. 397, § 54.)

Effect of amendment. — The 1957 section 146 of chapter 92 or" which for amendment deleted the word "herein-merly appeared near the middle of this section after" and also the words "as provided in section.

Sec. 32. Lien on personal estate disclosed; if debtor or other person conceals.—If the debtor or the officer of the debtor corporation discloses personal estate liable to be seized on execution, the petitioner shall have a lien on it, or so much of it as the magistrate in his record judges necessary, for 30 days. If the debtor or the officer of the debtor corporation transfers, conceals or otherwise disposes of it within said time, or suffers it to be done, or refuses to surrender it on demand to any proper officer having an execution on the same judgment, the debtor shall have no benefit from the certificate described in section 38. The petitioner may recover, in a civil action against him or any person fraudulently aiding in such transfer, concealment or disposal, double the amount due on said execution. Any execution on a judgment in such action shall run against the bodies of the debtor and other persons so aiding, but the payment thereof is a satisfaction of the original debt. (R. S. c. 107, § 32. 1961, c. 317, § 424.)

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

Sec. 33. Persons holding property in trust or in fraud of creditors compelled to appear and testify; lien.—If said magistrate finds reasonable cause to believe that any other person holds any property or credits of the debtor in trust for him or in fraud of his creditors, or if the petitioner shall make oath that he believes that such other person so holds property of the debtor, the magistrate shall issue a similar subpoena to such person to appear and testify in relation thereto, the same to be served as subpoenas in civil actions. The testimony of such witness may be reduced to writing and signed by him, and if it shall satisfactorily appear to the magistrate from all the evidence in the case that such person so holds property or credits of the debtor, he shall so certify upon the execution. The petitioner shall have a lien upon said property or credits for 30 days succeeding such disclosure, to be enforced by complaint seeking equitable relief or trustee process, and if upon such complaint or trustee process the court finds such property or credits to be so held as aforesaid, it may order the same, or so much of them as may be necessary to satisfy the judgment and all costs, to be conveyed, transferred or assigned to the petitioner. If the parties cannot agree upon the value of such property or credits, they shall be assigned to the petitioner, if he shall give such trustee a bond with sufficient surety, accepted by the court, to account for and pay over to said trustee the surplus of the proceeds of such property or credits, after satisfying said judgment and costs. (R. S. c. 107, § 33. 1961, c. 317, § 425.)

Effect of amendment.—The 1961 amendment substituted "actions" for "suits" at the end of the first sentence, divided the former second sentence into three sentences, and substituted "complaint seeking equitable relief" for "bill in equity" and "complaint" for "bill in equity" in the present third sentence.

Sec. 39. If debtor fails to obtain benefit of oath.—If upon such disclosure the debtor fails to obtain the benefit of the oath provided for in section 56, the magistrate shall, under his hand and seal, indorse a certificate of that fact upon the execution in force at the time of said disclosure, and a copy of said certificate shall be indorsed on every subsequent execution issued on said judgment, or on any judgment founded thereon, and such subsequent execution shall run against the body of said debtor, where the original debt exclusive of costs exceeds \$10 and not otherwise. The magistrate shall issue a capias under his hand and seal, and annex the same to said execution in force at the time of said disclosure, and the debtor may be arrested and imprisoned on said capias and execution, where the original debt exclusive of costs exceeds \$10 and not otherwise. No execution shall run against the body of a judgment debtor who is exempt from arrest by the provisions of section 22. (R. S. c. 107, § 39. 1961, c. 317, § 426.)

Effect of amendment.—The 1961 amendment deleted “also” preceding “issue” near the beginning of the second sentence of this section and also deleted “the same as upon

executions issued in actions of tort” preceding “where the original debt” in such second sentence.

Sec. 41. Release of debtor when arrested.—When a debtor is arrested upon said capias and execution or upon any subsequent execution upon which a copy of either of the certificates required by sections 39 and 40 has been indorsed, all subsequent proceedings for his release shall be the same as in case of arrest or imprisonment on executions in civil actions; but if said debtor fails to obtain his discharge at any subsequent examination before justices of the peace, he shall not a second time disclose before such justices, but may thereafter apply to a justice of the superior court and disclose as provided in section 72. (R. S. c. 107, § 41. 1961, c. 317, § 427.)

Effect of amendment.—The 1961 amendment substituted “sections 39 and 40” for “the 2 preceding sections” and substituted

“civil actions” for “actions of tort” in this section.

Arrests and Bonds on Execution and Disclosures Thereon.

Sec. 46. When execution to run against body.—In any civil action, except where express provision is by law made to the contrary, an execution shall run against the body of the judgment debtor. He may be arrested and imprisoned thereon for the purpose of obtaining a discovery of his property wherewith to satisfy it. (R. S. c. 107, § 46. 1961, c. 317, § 428.)

Effect of amendment.—The 1961 amendment divided this section into two sentences, substituted “any civil action” for “actions of tort and in all other cases” at

the beginning of the present first sentence and deleted “as hereinafter stated” at the end of the section.

Sec. 50. Bond given on such arrest.—When a debtor is arrested or imprisoned on execution, he may be released by giving bond to the creditor, in double the sum due thereon, with surety or sureties approved in writing by the creditor or by 2 or 3 justices of the peace in the county where he is arrested or imprisoned, selected and proceeding as provided in section 68, or a justice of the supreme judicial or superior court; conditioned that he will, within 6 months thereafter, cite the creditor before 2 justices of the peace, submit himself to examination and take the oath prescribed in section 56, pay the debt, interest, costs and fees arising in said execution, or deliver himself into the custody of the keeper of the jail to which he is liable to be committed under said execution. (R. S. c. 107, § 50. 1953, c. 49. 1961, c. 317, § 429.)

Effect of amendment.—The 1961 amendment deleted “in term time or vacation”

formerly following “superior court” near the middle of this section.

Sec. 51. Bond, when valid.—The bond described in section 50 is a valid statute bond although the penalty varies not exceeding 5% from the sum aforesaid. Judgment in a civil action thereon shall be rendered according to section 66. (R. S. c. 107, § 51. 1961, c. 317, § 430.)

Effect of amendment.—The 1961 amendment divided this section into two sentences, substituted “section 50” for “the preceding section” in the present first sentence, substituted “civil action” for “suit” in the present second sentence, and deleted “the provisions of” preceding “section 66” at the end of the section.

Sec. 53. Citation; service.—The citation shall be served on the creditor, or one of them if there is more than one, or the attorney of record in the action, or any known authorized agent of the creditor, by any officer qualified to serve civil process between the same parties. Service shall be made in the manner provided for service of other civil process 15 days at least before the time appointed for examination, if the creditor is alive; otherwise, it shall be so served on his executor or administrator, if found in the state, and if not, such copy shall be left in like time with the clerk of the court or magistrate who issued the execution. (R. S. c. 107, § 53. 1959, c. 317, § 261.)

Effect of amendment.—The 1959 amendment divided the section into two sentences, substituted “action” for “suit” in the present first sentence, deleted at the end of that sentence “by reading it to him, or leaving an attested copy thereof at his place of last and usual abode, or by giving an attested copy of it thereof to him in hand” and added “Service shall be made in the manner provided for service of other civil process” at the beginning of the second sentence.

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

Sec. 64. Lien on personal estate disclosed; if debtor or other person conceals.—If an execution debtor discloses personal estate liable to be seized on execution, the creditor shall have a lien on it for 30 days, or so much of it as the justices, in their record, judge necessary. If the debtor transfers, conceals or otherwise disposes of it within said time, or suffers it to be done, or refuses to surrender it on demand to any proper officer having an execution on the same judgment, the debtor shall have no benefit from the certificate described in section 59. The creditor may recover, in a civil action against him or any person fraudulently aiding in such transfer, concealment or disposal, double the amount due on said execution. Any execution on a judgment in such action shall run against the bodies of the debtor and other persons so aiding, but the payment thereof is a satisfaction of the original debt. (R. S. c. 107, § 64. 1961, c. 317, § 431.)

Effect of amendment.—The 1961 amendment divided this section into four sentences and substituted “a civil action” for “an action on the case” in the present third sentence.

General Provisions.

Sec. 72. When debtor twice refused discharge.—A debtor who has been twice refused a discharge shall not again disclose before such justices; but may by motion apply to the superior court, which, after notice to the creditor or his attorney and a hearing of the parties, may appoint a commissioner to take his examination and disclosure; and shall then fix his compensation, which shall be paid by the debtor before commencing his disclosure. The commissioner shall give to the creditor or his attorney 7 days’ notice of the time and place appointed by him for such hearing. All proceedings relating to such disclosure, oath, discharge and disposal of the property disclosed shall be the same as in disclosures before such justices, and shall have like effect. (R. S. c. 107, § 72. 1961, c. 317, § 432.)

Effect of amendment.—The 1961 amendment substituted “by motion apply to the superior court, which” for “apply to a justice of the superior court, who in term time or vacation” in the first sentence of this section and divided the former second sentence into two sentences.

Sec. 75. Limitation of actions on bonds.—No action on any bond herein authorized shall be sustained unless commenced within one year after the forfeiture; except that chapter 112, sections 99 and 100, are applicable to such actions. (R. S. c. 107, § 75. 1961, c. 317, § 433.)

Effect of amendment.—The 1961 amendment substituted “action” for “suit” near the beginning and “actions” for “suits” at the end of this section. It also substituted

“chapter 112, sections 99 and 100” for “the provisions of sections 99 and 100 of chapter 112.”

False Disclosures and Aiding in Fraudulent Conveyances.

Sec. 77. False disclosures; liability.—When a debtor, herein authorized or required to disclose on oath, willfully discloses falsely or withholds or suppresses the truth, the creditor of record or in interest may bring a civil action against him, whether he is criminally prosecuted or not, particularly alleging the false oath and fraudulent concealment of his estate or property. On oath before a justice of the peace he may declare his belief of the truth of the allegations in the complaint. Such justice shall certify the oath on the complaint. Thereupon the debtor shall be held to bail, or in default thereof be committed to jail to abide the judgment in the action. If the creditor prevails in the action, judgment shall be rendered against the debtor for double the amount of the debt and charges on the former judgment. The debtor may be arrested and committed to jail on any execution issued on the judgment last recovered, without the privilege of release or discharge except by payment or consent of the creditor. (R. S. c. 107, § 77. 1961, c. 317, § 434.)

Effect of amendment.—The 1961 amendment divided this section into six sentences, substituted “civil action” for “special action on the case” in the present first sentence,

substituted “complaint” for “writ” at the end of the present second and third sentences and substituted “action” for “suit” in the present fourth and fifth sentences.

Sec. 78. Fraudulent concealment or transfer; liability. — Whoever knowingly aids or assists a debtor or prisoner in a fraudulent transfer or concealment of his property, to secure it from creditors and to prevent its attachment or seizure on execution, is liable to any creditor suing therefor in a civil action, in double the amount of property so fraudulently transferred or concealed, not exceeding double the amount of such creditor’s demand. (R. S. c. 107, § 78. 1961, c. 317, § 435.)

Effect of amendment.—The 1961 amendment substituted “a civil action” for “an action on the case” in this section.

Willful Trespass.

Sec. 81. Disability of persons committed for willful trespass. — When, in the trial of a civil action for trespass on property, the court, jury or magistrate determines that such trespass was committed willfully and the fact is recorded and noted on the margin of the execution on such judgment and the debtor is thereon arrested and committed to jail, he shall not be entitled to give any bond for his liberation. If he applies to take the oath described in section 56, no notice shall be issued to the creditor until at least 30 days after his commitment. (R. S. c. 107, § 81. 1961, c. 317, § 436.)

Effect of amendment.—The 1961 amendment divided this section into two sentences and substituted “a civil action for trespass”

for “an action of trespass” in the present first sentence.

Support of Debtors in Jail.

Sec. 83. Adjustment of price of support.—In case of dispute about the

price of such support, the county commissioners may determine it, not exceeding \$1.75 a day. (R. S. c. 107, § 83. 1957, c. 110.)

Effect of amendment. — The 1957 amendment increased the maximum support from 75¢ to \$1.75 a day.

Chapter 121.

Reference of Disputes by Consent of Parties.

Sec. 1. What controversies referred; powers of referees; revocation only by consent.

Cited in *Norridgewock v. Hebron*, 152 Me. 280, 128 A. (2d) 215.

Sec. 5. Action on report; appeal.—The court may accept, reject or recommend the report. If recommended, the referees shall notify the parties of the time and place for a new hearing. When the report is accepted, judgment shall be entered thereon as in case of submissions by rule of court. Either party may appeal from such judgment or from rejection of the report. (R. S. c. 108, § 5. 1959, c. 317, § 262.)

Effect of amendment.—The 1959 amendment deleted “and either party may file exceptions thereto” at the end of the first sentence, deleted “and either party may bring a writ of error to reverse such judgment,” at the end of the third sentence and added the fourth sentence.

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.”

An award of referees may be good in part, etc.

In accord with 1st paragraph in original. See *Norridgewock v. Hebron*, 152 Me. 280, 128 A. (2d) 215.

In accord with 2nd paragraph in original. See *Norridgewock v. Hebron*, 152 Me. 280, 128 A. (2d) 215.

When counsel may request recommitment.—It would seem that after a report of a referee has been filed, and before it has been accepted, if counsel for either side so desires, a request may be addressed to the court for its recommitment. *Yeaton v. Knight*, 157 Me. 133, 170 A. (2d) 398.

And if request is granted the cause may be heard anew on such issues as appear pertinent and appropriate. *Yeaton v. Knight*, 157 Me. 133, 170 A. (2d) 398.

Chapter 122.

Forcible Entry and Detainer. Tenancies.

Sec. 1. Forcible entry and detainer.

Cited in *Sawyer v. Congress Square Hotel Co.*, 157 Me. 111, 170 A. (2d) 645.

Sec. 2. Tenancy at will; applies to building on land of another party.

Cited in *Sawyer v. Congress Square Hotel Co.*, 157 Me. 111, 170 A. (2d) 645.

Sec. 3. Jurisdiction.—Trial justices, judges and recorders of municipal courts have jurisdiction of cases of forcible entry and detainer respecting estates within their counties. Such justices, judges and recorders have exclusive jurisdiction of such cases within their cities or towns unless interested and except in