

of the issue before it, modify, affirm or reserve the order or decision of the commissioner in whole or in part.

Approved November 30, 1973.

Chap. 1114. AN ACT IMPROVING THE PROCEDURE IN CIVIL TRIALS AND APPEALS.

Be it enacted, etc., as follows:

SECTION 1. Chapter 30A of the General Laws is hereby amended by striking out section 7, added by section 1 of chapter 681 of the acts of 1954, and inserting in place thereof the following section: —

Section 7. Unless an exclusive mode of review is provided by law, judicial review of any regulation may be had through an action for declaratory relief in the manner and to the extent provided under chapter two hundred and thirty-one A.

SECTION 2. Section 10A of said chapter 30A, inserted by section 2 of chapter 732 of the acts of 1971, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence: — Notwithstanding the provisions of section ten, not less than ten persons may intervene in any adjudicatory proceeding as defined in section one, in which damage to the environment as defined in section seven A of chapter two hundred and fourteen, is or might be at issue; provided, however, that such intervention shall be limited to the issue of damage to the environment and the elimination or reduction thereof in order that any decision in such proceeding shall include the disposition of such issue.

SECTION 3. Said chapter 30A is hereby further amended by striking out sections 14 and 15 and inserting in place thereof the following two sections: —

Section 14. Except so far as any provision of law expressly precludes judicial review, any person or appointing authority aggrieved by a final decision of any agency in an adjudicatory proceeding, whether such decision is affirmative or negative in form, shall be entitled to a judicial review thereof, as follows: —

Where a statutory form of judicial review or appeal is provided such statutory form shall govern in all respects, except as to standards for review. The standards for review shall be those set forth in paragraph (7) of this section, except so far as statutes provide for review by trial de novo. Insofar as the statutory form of judicial review or appeal is silent as to procedures provided in this section, the provisions of this section shall govern such procedures.

Where no statutory form of judicial review or appeal is provided, judicial review shall be obtained by means of a civil action, as follows:

(1) Proceedings for judicial review of an agency decision shall be instituted in the superior court for the county (a) where the plaintiffs or any of them reside or have their principal place of business within the commonwealth, or (b) where the agency has

its principal office, or (c) of Suffolk. The court may grant a change of venue upon good cause shown. The action shall, except as provided in section thirty-two of chapter six, be filed in the court within thirty days after receipt of notice of the final decision of the agency, or, if a petition for rehearing has been timely filed with the agency, within thirty days after receipt of notice of agency denial of such petition for rehearing. Upon application made within the thirty-day period or any extension thereof, the court may for good cause shown extend the time.

(2) Service shall be made upon the agency or one of its members or upon its secretary or clerk and upon all parties to the agency proceeding in which the decision sought to be reviewed was made. For the purpose of such service the agency upon request shall certify to the plaintiff the names and addresses of all such parties as disclosed by its records, and service upon parties so certified shall be sufficient. All parties to the proceeding before the agency shall have the right to intervene in the proceeding for review. The court may in its discretion permit other interested persons to intervene.

(3) The commencement of an action shall not operate as a stay of enforcement of the agency decision, but the agency may stay enforcement, and the reviewing court may order a stay upon such terms as it considers proper.

(4) The agency shall, by way of answer, file in the court the original or a certified copy of the record of the proceeding under review. The record shall consist of (a) the entire proceedings, or (b) such portions thereof as the agency and the parties may stipulate, or (c) a statement of the case agreed to by the agency and the parties. The expense of preparing the record may be assessed as part of the costs in the case, and the court may, regardless of the outcome of the case, assess any one unreasonably refusing to stipulate to limit the record, for the additional expense of preparation caused by such refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(5) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken in the court.

(6) If application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material to the issues in the case, and that there was good reason for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and decision by reason of such additional evidence and shall file with the reviewing court, to become part of the record, the additional evidence, together with any modified or new findings or decision.

(7) The court may affirm the decision of the agency, or remand the matter for further proceedings before the agency; or the court may set aside or modify the decision, or compel any action unlawfully withheld or unreasonably delayed, if it determines that the substantial rights of any party may have been prejudiced because the agency decision is —

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the agency; or
- (c) Based upon an error of law; or
- (d) Made upon unlawful procedure; or
- (e) Unsupported by substantial evidence; or
- (f) Unwarranted by facts found by the court on the record as submitted or as amplified under paragraph (6) of this section, in those instances where the court is constitutionally required to make independent findings of fact; or
- (g) Arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law.

The court shall make the foregoing determinations upon consideration of the entire record, or such portions of the record as may be cited by the parties. The court shall give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it.

If the court finds that the action of the appointing authority in discharging, removing, suspending, laying off, lowering in rank or compensation or abolishing his position, or the action of the commission confirming the action taken by the appointing authority, was not justified, the employee shall be reinstated in his office or position without loss of compensation and the court shall assess reasonable costs against the employer.

Section 15. The supreme judicial court and the appeals court shall have concurrent jurisdiction to review any proceedings had, determinations made, and orders or judgments entered in the superior court pursuant to section fourteen. The supreme judicial court or the appeals court, subject to the provisions of section thirteen of chapter two hundred and eleven A, may by rule vary the procedure authorized or required for such review upon a finding that the review by the court will thereby be made more simple, speedy and effective.

SECTION 4. Chapter 40A of the General Laws is hereby amended by striking out section 21, as most recently amended by chapter 334 of the acts of 1972, and inserting in place thereof the following section: —

Section 21. Any person aggrieved by a decision of the board of appeals may within twenty-one days after the decision is filed in the office of the city or town clerk bring a petition in the district court within the judicial district of which the land area to be affected is situated, addressed to the justice of the court praying that the action of the board of appeals may be reviewed by the court and after such notice as the court may deem necessary, it

shall hear witnesses, review such action and determine whether or not upon all the evidence the decision exceeds the authority of the board. If the court finds that said decision was proper the action of the board shall be affirmed; otherwise it shall be annulled and the board shall be notified to change its records accordingly and to act in accordance with such decision.

Notwithstanding the provisions of the first paragraph of this section any person aggrieved by the decision of the board of appeals or of the district court, whether or not previously a party to the proceeding, and including any municipal officer, planning board or city council, may appeal to the superior court for the county in which the land is situated, by commencing a civil action within twenty days after the decision has been filed in the office of the city or town clerk or with the clerk of the district court hearing such matter. Written notice of such appeal together with a copy of the complaint shall be given to such city or town clerk within said twenty day appeal period. There shall be attached to the complaint a copy of the decision appealed from, bearing the date of the filing thereof, certified by the city or town clerk with whom the decision was filed.

Where the action is commenced by someone other than the original applicant, appellant or petitioner, such original applicant, appellant or petitioner and all the members of the board of appeals shall be named as parties defendant. To avoid delay in the proceedings the plaintiff shall cause each of the defendants to be served with process within fourteen days after the filing of the complaint, and shall, within twenty-one days after the commencement of the action, file with the clerk of the court an affidavit that such service has been made. If no such affidavit is filed within such time the action shall be dismissed. No answer shall be required but an answer may be filed. Other interested persons may be permitted to intervene, upon motion. The court shall hear all evidence pertinent to the authority of the board and determine the facts, and, upon the facts as so determined, annul such decision if found to exceed the authority of such board, or make such other judgment as justice and equity may require. The foregoing remedy shall be exclusive, but the parties shall have all rights of appeal as in other cases.

A city or town may provide any municipal officer or board with legal counsel for appealing, as provided in this section, a decision of a board of appeals and for taking such other subsequent action as parties in other cases are permitted to take.

Costs shall not be allowed against the board unless it shall appear to the court that the board in making the decision appealed from acted with gross negligence, in bad faith or with malice.

Costs shall not be allowed against the party appealing from the decision of the board unless it shall appear to the court that said appellant or appellants acted in bad faith or with malice in making the appeal to the court.

All issues in any proceeding under this section shall have prece-

dence over all other civil actions and proceedings.

SECTION 5. Chapter 58A of the General Laws is hereby amended by striking out section 13, as most recently amended by chapter 692 of the acts of 1969, and inserting in place thereof the following section: —

Section 13. The board shall make a decision in each case heard by it and may make findings of fact and report thereon in writing; provided, that every decision granting an abatement without findings of fact and report which relates to a tax on land with one or more buildings thereon shall, if so requested by the appellee in writing at the commencement of the hearing, state separately the value of the land and of each building. Except in cases heard under the informal procedure authorized by section seven A, the board shall make such findings and report thereon if so requested by either party within ten days of a decision without findings of fact. Such report may, in the discretion of the board, contain an opinion in writing, in addition to the findings of fact and decision. If no party requests such findings and report, all parties shall be deemed, to have waived all rights of appeal to the supreme judicial court upon questions as to the admission or exclusion of evidence, or as to whether a finding was warranted by the evidence. All reports, findings and opinions of the board and all evidence received by the board, including a transcript of any official report of the proceedings, shall be open to the inspection of the public; except that the originals of books, documents, records, models, diagrams and other exhibits introduced in evidence before the board may be withdrawn from the custody of the board in such manner and upon such terms as the board may in its discretion prescribe. The decision of the board shall be final as to findings of fact. From any decision of the board upon an appeal from a decision or determination of the commission, or of a board of assessors, except decisions of the board under sections twenty-five and twenty-six of chapter sixty-five, an appeal as to matters of law may be taken to the supreme judicial court by either party to the proceedings before the board who has not waived such right of appeal. A claim of appeal shall be filed with the clerk of the board in accordance with the Massachusetts Rules of Appellate Procedure which rules shall govern such appeal. The court shall not consider any issue of law which does not appear to have been raised in the proceedings before the board. If the judgment grants an abatement of a tax assessed by the commissioner or by the board of assessors of a town and the tax has been paid, the amount abated with interest at the rate of six per cent per annum from the time when the tax was paid but, in case of a tax assessed under chapter sixty-two, not from a time earlier than October first of the year in which the return of income subject to said tax was required to be filed, and, if costs are ordered against the commission or against a board of assessors, the amount thereof, shall be paid to the taxpayer by the state treasurer or by the town treasurer, as the case may be, and, if unpaid in the latter case, execution therefor may issue against the town as in actions at law.

If costs are ordered against a taxpayer execution shall issue therefor. The appeal to the supreme judicial court under this section shall be the exclusive method of reviewing any action of the board, except action under sections twenty-five and twenty-six of chapter sixty-five. For want of prosecution of an appeal in accordance with the provisions of this section the board, or, if the appeal has been entered in the supreme judicial court, a justice of that court, may dismiss the appeal. Upon dismissal of an appeal the decision of the board shall thereupon have full force and effect.

SECTION 6. Section 3G of chapter 90 of the General Laws is hereby amended by striking out the first paragraph, as appearing in section 1 of chapter 590 of the acts of 1945, and inserting in place thereof the following paragraph: —

In a civil action against a non-resident for damage to property or for death of or bodily injury to any person resulting from an accident in this commonwealth alleged to have been caused by a motor vehicle owned or operated by such non-resident, the plaintiff may apply by motion in writing filed in court for an order to show cause why the defendant should not be required to furnish forthwith such security in such amount as the court shall find reasonable under the circumstances, after summary hearing, to satisfy any final judgment that may be recovered in such action, not later than sixty days after the entry of such judgment, to the amount or limit of not more than five thousand dollars on account of injury to or death of any one person, and, subject to such limits as respects injury to or death of one person, of not more than ten thousand dollars on account of any one accident resulting in injury to or death of more than one person, or of not more than one thousand dollars for damage to property. If said motion is filed in an action pending in the district court before the return day of the writ, the writ shall be entered with the motion, and the court shall issue an order of notice to the defendant, to be served in like manner as any process against such non-residents, which shall be returnable within a reasonable time, and, if service of the writ has not been made upon the defendant or upon the registrar under section three A, the court shall issue a further order of notice for such service. If said motion is filed in an action pending in the superior court, it shall be served in accordance with the Massachusetts Rules of Civil Procedure. The court shall accept as sufficient security, except for damages to property, a certificate as defined in section thirty-four A, or other satisfactory proof that the liability, if any, for damages resulting from such accident is insured or secured, to the amounts or limits herein set forth, by an insurance company authorized to do business in this commonwealth.

SECTION 7. Section 187 of chapter 111 of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by striking out, in line 3, the words "thirty-four and thirty-five" and inserting in place thereof the words: — eleven and twelve.

SECTION 8. Chapter 139 of the General Laws is hereby amended by striking out section 2, as most recently amended by

section 3 of chapter 649 of the acts of 1970, and inserting in place thereof the following section: —

Section 2. A person aggrieved by such order may appeal to the superior court for the county where such building or other structure is situated, if, within three days after the service of such attested copy upon him, he commences a civil action in such court. Trial by jury shall be had as in other civil causes. The jury may affirm, annul or alter such order, and the court shall render judgment in conformity with said verdict, which shall take effect as an original order. If the order is affirmed, the plaintiff shall pay the costs; if it is annulled, he shall recover from the town his damages, if any, and costs; and if it is altered, the court may render such judgment as to costs as justice shall require. All proceedings hereunder authorized by section ten of chapter one hundred and forty-three, after issue is joined therein, shall be in order for trial and shall have precedence over any case of a different nature pending in said court and then in order for trial.

SECTION 9. Section 6 of said chapter 139, as appearing in the Centenary Edition, is hereby amended by striking out, in line 4, the words "maintain a bill in equity" and inserting in place thereof the words: — bring a civil action.

SECTION 10. Said chapter 139 is hereby further amended by striking out section 7, as so appearing, and inserting in place thereof the following section: —

Section 7. The complaint shall join the owner of record of the premises as a party defendant and shall be filed in the superior court for the county where the nuisance is believed to exist, and shall be verified by oath of the plaintiff unless filed by the attorney general or a district attorney. Such proceeding shall have precedence over all other matters upon the docket except criminal proceedings, election contests and hearings upon actions for other injunctions.

SECTION 11. Said chapter 139 is hereby further amended by striking out section 12, as appearing, and inserting in place thereof the following section: —

Section 12. No action commenced under section six shall be dismissed, except upon a sworn statement made and filed by the plaintiff and by his attorney setting forth the reasons for dismissal thereof and upon approval of such dismissal by the court in open court. If the court is of opinion that the action ought not to be dismissed he may direct the district attorney to prosecute the case to judgment. If the action was brought by a citizen and the court finds that there was no reasonable ground therefor, costs may be awarded against the plaintiff.

SECTION 12. Said chapter 139 is hereby further amended by striking out section 16A, as amended by section 12 of chapter 328 of the acts of 1934, and inserting in place thereof the following section: —

Section 16A. Upon a civil action brought in the name of the commonwealth by the attorney general, or district attorney for the

district, or the chief of police, or the board or officer having control of the police of the state, or of a town or city, or by not less than ten legal voters of a town or city, in their own names, stating that a building, place or tenement situated therein is being used for the illegal keeping, sale or manufacture of alcoholic beverages, as defined in section one of chapter one hundred and thirty-eight, the superior court may abate the same as a common nuisance and may enjoin the person conducting or maintaining the same, and the owner, lessee or agent of the building, place or tenement in or upon which said nuisance exists, and their grantees or assignees, from directly or indirectly maintaining or permitting such nuisance, and, subject to the provisions hereinafter contained, may order the effectual closing of such building, place or tenement, and the prohibition of its use for any purpose for one year thereafter. Proceedings under this section shall be in the manner provided in sections seven to twelve, inclusive, except that the provisions of section nine regulating the closing of a building, place or tenement and the prohibition of its use for any purpose for one year because of the maintenance of such a nuisance shall not apply, and in lieu thereof the court may include in its judgment an order for such closing and prohibition, if it appears that prior thereto and within the preceding three years there shall have been three convictions for the illegal sale, or keeping, or manufacture of alcoholic beverages, as so defined, in or upon the premises on which such building, place or tenement is situated, or three judgments for a permanent injunction enjoining the maintenance of such a nuisance. A judgment for a permanent injunction or abatement shall include an order that a copy thereof shall be posted in a conspicuous place on the building, place or tenement affected thereby, on or near one or more of its principal entrances and that the removal, defacement, erasure or mutilation of a copy so posted shall be contempt of court. In addition to such posting, a copy of the judgment shall be delivered in hand to the person in charge of such building, place or tenement if he may be found upon the premises or to anyone residing therein, and if the judgment includes an order for the effectual closing of said building, place or tenement and the prohibition of its use for any purpose for one year, a copy shall be filed forthwith for record in the registry of deeds for the county and registry district within which such building, place or tenement is situated. The provisions of section thirteen shall apply to all persons found in or upon premises used for the illegal sale, or keeping, or manufacture of alcoholic beverages, as so defined.

SECTION 13. The first sentence of section 20C of chapter 149 of the General Laws is hereby amended by striking out the first five lines, as appearing in section 1 of chapter 452 of the acts of 1950, and inserting in place thereof the following lines: — For the purposes of this and the preceding section, section twenty-four of chapter one hundred and forty-nine, sections one and six of chapter two hundred and fourteen, and sections thirteen A and thirteen B of chapter two hundred and twenty, —.

SECTION 14. Subsection (e) of said section 20C of said chapter 149, as appearing in section 2 of said chapter 452, is hereby amended by striking out clause (5) and inserting in place thereof the following clause: —

(5) Made by any party to a jurisdictional dispute as defined in section six A of chapter two hundred and fourteen who has failed to abide by any voluntary arbitration procedure applicable to such dispute or to comply with the terms of the arbitration award.

SECTION 15. Section 6 of chapter 150A of the General Laws is hereby amended by striking out subsections (e) and (f), as amended by sections 10 and 11 of chapter 681 of the acts of 1954, and inserting in place thereof the following two subsections: —

(e) The commission shall have power to bring a civil action in the superior court in any county wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order. The commission shall file with the complaint a certified transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the commission. In the trial of such action no objection that has not been urged before the commission, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The order or decision of the commission shall be reviewed in accordance with the standards for review provided in paragraph (7) of section fourteen of chapter thirty A. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the commission, its member, agent or agency, the court may order such additional evidence to be taken before the commission, its member, agent or agency, and to be made a part of the transcript. The commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment shall be final, except that the same shall be subject to review by the supreme judicial court for the commonwealth.

(f) Any person aggrieved by a final order of the commission granting or denying in whole or in part the relief sought may obtain a review of such order in the superior court for the county wherein the unfair labor practice in question was alleged to have been engaged in, or wherein such person resides or transacts business, by bringing a civil action in such court to have the order of the commission modified or set aside. Such action shall be filed in said court within thirty days after receipt of notice of said final order or, if a petition for rehearing has been timely filed with the com-

mission, within thirty days after receipt of notice of a denial by the commission of such petition for rehearing. The court may for good cause shown extend the time for filing the action upon application made within the thirty day period or any extension thereof. The plaintiff shall file in the court a transcript of the entire record in the proceeding, certified by the commission, including the pleading and testimony upon which the order complained of was entered and the findings and order of the commission. Upon such filing, the court shall proceed in the same manner as in the case of an application by the commission under subsection (e) of this section, and shall have the same exclusive jurisdiction to grant to the commission such temporary relief or restraining order as the court deems just and proper, and in like manner to make and enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the commission.

SECTION 16. Said section 6 of said chapter 150A is hereby further amended by striking out subsections (h) and (i) and inserting in place thereof the following two subsections: —

(h) When granting appropriate temporary relief or a restraining order, or making and enforcing as so modified, or setting aside in whole or in part an order of the commission, as provided in this section, the jurisdiction of courts shall not be limited by section twenty C of chapter one hundred and forty-nine; sections one and six of chapter two hundred and fourteen; and sections thirteen A and thirteen B of chapter two hundred and twenty. When making and entering a judgment or order enforcing, modifying and enforcing as so modified, or setting aside in whole or in part an order of the commission or remanding the cause for further proceedings before the commission, the court shall state, in the usual form of an opinion issued by an appellate court, its reasons for making and entering such judgment or order.

(i) Actions filed under this chapter shall be heard expeditiously, and if possible within ten days after they have been docketed.

SECTION 17. Section 5 of chapter 150B of the General Laws, as appearing in chapter 596 of the acts of 1947, is hereby amended by striking out subsection (b) and inserting in place thereof the following subsection: —

(b) The superior court in an action by the commonwealth shall have jurisdiction to restrain and enjoin violations of this chapter and such jurisdiction shall not be limited by the provisions concerning labor disputes contained in section twenty C of chapter one hundred and forty-nine, sections one and six of chapter two hundred and fourteen, and sections thirteen A and thirteen B of chapter two hundred and twenty; provided that such actions shall be brought by direction of the governor and not otherwise.

SECTION 18. Chapter 151A of the General Laws is hereby amended by striking out section 42, as most recently amended by section 3 of chapter 957 of the acts of 1971, and inserting in place thereof the following section: —

Section 42. The director or any interested person aggrieved by any decision in any proceeding before the board of review may obtain judicial review of such decision by filing, within twenty days of the date of mailing of such decision, a petition for review thereof in the district court within the judicial district in which he lives, or is or was last employed, or has his usual place of business, and in such proceeding every other party to the proceeding before the board shall be made a party respondent. The petition for review need not be verified but shall state the grounds upon which such review is sought. The director shall be deemed to be a party to any such proceeding. It shall not be necessary as a condition precedent to the judicial review of any decision of the board of review to enter exceptions to the rulings of such board. Upon the filing of a petition for review by an aggrieved party other than the director, the clerk of the district court within seven days thereafter shall issue an order of notice. Said order of notice and a copy of the petition shall be served by the petitioner upon the director by registered mail within seven days of the date of the order, fourteen days at least before the return day, and shall be returnable at the election of the petitioner at any return day which occurs after the expiration of twenty-eight days from and within sixty days after the date of the filing of the petition. At the time of service on the director there shall be delivered to him as many copies of the order of notice and the petition as there are parties respondent. With his answer or petition the director shall file with the court a certified copy of the decision of the board of review, including all documents and papers and a transcript of all testimony taken at the hearing before said board. Upon the filing of a petition for review by the director or upon the service of a petition on him, the director shall forthwith send by registered mail to each other party to the proceeding a copy of such notice and petition, and such mailing shall be deemed to be completed service upon all such parties. The findings and decisions of the board shall be reviewed in accordance with the standards for review provided in paragraph (7) of section fourteen of chapter thirty A. Any proceeding under this section shall be heard in a summary manner and shall be given precedence over all other civil cases. An appeal may be taken from the decision of the single justice of the district court directly to the supreme judicial court. Claim of appeal shall be filed in the office of the clerk of the district court within thirty days after notice of such decision. If an appeal is claimed the appellant shall within five days of the filing of the claim of appeal file a draft report in conformity to the pertinent provisions of the rules hereinafter referred to. The chief justice of the municipal court of the city of Boston and the appellate divisions of the district courts, acting jointly, shall by rule provide for the form of such reports and shall make provision for the establishment of reports where the claim of report has been disallowed by the single justice or he has failed to make a report. The appeal shall not remove the proceeding, but only the question or questions to be determined. The completion of such appeal shall be in accor-

dance with the Massachusetts Rules of Appellate Procedure. Benefits shall be paid or denied in accordance with the decision of such single justice during the pendency of such appeal. Upon the final determination of such judicial proceeding the director shall enter an order in accordance with the terms of the decision terminating such proceeding.

SECTION 19. Section 113 of chapter 175 of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by striking out, in line 6, the word "tenth" and inserting in place thereof the word: — ninth.

SECTION 20. Provision (5) of section 113A of said chapter 175, as so appearing, is hereby amended by striking out, in line 66, the figures "10" and inserting in place thereof the figure: — 9.

SECTION 21. Section 8 of chapter 181 of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence: — The service of the writ shall be made in the manner provided in chapters two hundred and twenty-three, two hundred and twenty-seven and the Massachusetts Rules of Civil Procedure, with such further service as the court to which the writ is returnable orders.

SECTION 22. Section 1 of chapter 185 of the General Laws is hereby amended by striking out clause (c), as amended by section 4 of chapter 318 of the acts of 1935, and inserting in place thereof the following clause: —

(c) Actions to recover freehold estates under chapter two hundred and thirty-seven. In such an action brought in accordance with section forty-seven of chapter two hundred and thirty-six, where the tenant is entitled under clause (2) of section nine of chapter one hundred and nine A to retain the real estate as security for repayment of the consideration paid therefor by him, said court may determine the amount of such consideration and may order a judgment for possession upon being satisfied that such amount, with lawful interest, has been paid or tendered by the plaintiff to the defendant.

SECTION 23. Said section 1 of said chapter 185 is hereby further amended by striking out clause (k), as amended by section 1 of chapter 67 of the acts of 1934, and inserting in place thereof the following clause: —

(k) All cases and matters cognizable under the general principles of equity jurisprudence where any right, title or interest in land is involved, except actions for specific performance of contracts.

SECTION 24. Said section 1 of said chapter 185 is hereby further amended by striking out clauses (l) and (m), added by section 5 of chapter 318 of the acts of 1935, and inserting in place thereof the following two clauses: —

(l) Actions under clauses (4) and (10) of section three of chapter two hundred and fourteen, where any right, title or interest in real estate is involved.

(m) Actions under clause (8) of section three of chapter two hundred and fourteen or under section nine of chapter one hundred and nine A, where the property claimed to have been fraudulently conveyed or encumbered consists of rights, titles or interest in real estate only.

SECTION 25. Said chapter 185 is hereby further amended by striking out section 15, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 15. Except as provided in section sixteen, all cases in the land court shall be tried and all questions of fact finally determined by the court, unless a timely demand for jury trial is made. In actions which are governed by the Massachusetts Rules of Civil Procedure such demand shall be made in accordance with said Rules. In all other actions the respondent or tenant with his answer, or a petitioner or demandant within ten days after the time limited by law for filing an appearance and answer, or within ten days after the time allowed by the court for filing an answer, may claim a trial by jury. If trial by jury is claimed, issues therefor upon any material question of fact shall be framed in the land court, and within thirty days after the expiration of the time for claiming a trial by jury, except as otherwise provided in section sixteen and in chapter two hundred and thirty-seven, copies thereof and of all other material papers in the case, certified by the recorder, shall be entered by the moving party in the superior court for the county where the land lies for a jury trial thereon. Failure to enter the copies and papers required by this section or section sixteen or by section twenty-three of chapter two hundred and thirty-seven within the times limited by said sections, respectively, shall constitute a waiver of the claim to a trial by jury, and thereafter the superior court shall have no further jurisdiction of the case. Upon the motion of either party in the superior court the cause shall be advanced for speedy hearing, but no matters shall be tried in the superior court except those specified in the issues. Questions of law arising in the superior court may be appealed by any party aggrieved by any opinion, direction, or judgment of the court to the appeals court or, subject to the provisions of section ten of chapter two hundred and eleven A, to the supreme judicial court. Questions of law arising in the land court on any decision, judgment, or decree may be appealed by any party aggrieved thereby to the appeals court or, subject to the provisions of section ten of chapter two hundred and eleven A, to the supreme judicial court. The land court, after any decision or decree dependent upon questions of law, may report such decision or decree, with so much of the case as is necessary for understanding such questions of law, for the determination of the appeals court.

SECTION 26. Section fifteen A of said chapter one hundred and eighty-five is hereby repealed.

SECTION 27. Sections eighteen and nineteen of said chapter one hundred and eighty-five are hereby repealed.

SECTION 28. Said chapter 185 is hereby further amended by

striking out section 21, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 21. Costs shall be taxed and the collection enforced as in the superior court unless a different provision is made.

SECTION 29. Said chapter 185 is hereby further amended by striking out section 23, as so appearing, and inserting in place thereof the following section: —

Section 23. The recorder shall transmit copies of all final judgments or decrees and executions in proceedings mentioned in section twenty-two to the register of deeds for the district where the land or any part thereof lies, who shall file and index the same in the manner provided in said section.

SECTION 30. Said chapter 185 is hereby further amended by striking out section 25, as so appearing, and inserting in place thereof the following section: —

Section 25. In all matters within its jurisdiction, the court shall have all the powers which the superior court has including power to grant injunctions and restraining orders in accordance with the Massachusetts Rules of Civil Procedure as justice and equity may require, except that it shall hold no trials by jury.

SECTION 31. Section 25A of said chapter 185 is hereby amended by striking out the first sentence, as appearing in chapter 55 of the acts of 1933, and inserting in place thereof the following sentence: — The court shall have like power and authority for enforcing orders, sentences, judgments and decrees made or pronounced in the exercise of any jurisdiction vested in it, and for punishing contempts of such orders, sentences, judgments or decrees and other contempts of its authority, as are vested for such or similar purposes in the supreme judicial court in relation to any civil action pending therein.

SECTION 32. Section 86 of said chapter 185, as appearing in the Tercentenary Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence: — No civil action to recover a freehold estate, petition for partition, or other proceeding affecting the title to land or the use and occupation thereof or the buildings thereon, and no judgment or decree or any proceeding to vacate or reverse any judgment or decree shall have any effect upon registered land as against persons other than the parties thereto, unless a memorandum like that described in section fifteen of chapter one hundred and eighty-four, containing also a reference to the number of the certificate of title of the land affected and the volume and page of the registration book in which it is entered, is filed and registered.

SECTION 33. Said chapter 185 is hereby further amended by striking out section 89, as so appearing, and inserting in place thereof the following section: —

Section 89. If an execution or writ of seisin has been issued in an action under chapter two hundred and thirty-seven affecting registered land and served by the officer, he shall cause an attested copy of the execution, with a return of his doings thereon, to be

filed and registered within three months after the service and before the return of the execution into the clerk's office, and the plaintiff, if the judgment was that he was entitled to an estate in fee simple in the demanded premises, or in any part thereof, and for which execution issued, shall thereupon be entitled to the entry of a new certificate of title; but in actions under chapter two hundred and forty-five the commonwealth shall be entitled to have the certificate of the registered owner cancelled by the land court as soon as judgment is rendered in its favor.

SECTION 34. Said chapter 185 is hereby further amended by striking out section 97, as so appearing, and inserting in place thereof the following section: —

Section 97. Upon the death of a registered owner, his heirs at law or devisees, after thirty days from the granting of letters testamentary or of administration, or in case of an appeal, at any time after the entry of judgment pursuant to the rescript of the supreme judicial court or appeals court, may file a certified copy of the final decree of the probate court and of the will, if any, with the assistant recorder, and make application for the entry of a new certificate. The court shall issue notice to the executor or administrator and to all other persons in interest, and may also give notice by publication in such newspaper or newspapers as it may consider proper, to all whom it may concern, and, after a hearing, may direct the entry of a new certificate or certificates to the persons entitled as heirs or devisees. Any new certificate so entered before the final settlement of the estate of the deceased owner in the probate court shall state expressly that it is entered by transfer from the last certificate by descent or devise, and that the estate is in process of settlement. After the final settlement of the estate, or after the time allowed for bringing an action against an executor or administrator by creditors of the deceased, the heirs at law or devisees may petition the court for an order to cancel the memorandum upon their certificate, stating that the estate is in course of settlement, and the court, after such notice, if any, as it may order and a hearing, may grant the motion, but the liability of heirs or devisees of registered land for claims against the estate of the deceased shall not in any way be diminished or changed.

SECTION 35. Section 3 of chapter 185A of the General Laws, as appearing in section 1 of chapter 843 of the acts of 1971, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph: —

In all matters within its jurisdiction, the housing court shall have all the powers of the superior court, including the power to grant temporary restraining orders and preliminary injunctions as justice and equity may require. The housing court shall have like power and authority for enforcing orders, sentences and judgments made or pronounced in the exercise of any jurisdiction vested in it, and for punishing contempts of such orders, sentences and judgments and other contempts of its authority, as are vested for such or similar purposes in the supreme judicial or superior court.

SECTION 36. Said chapter 185A is hereby further amended by striking out section 20, as so appearing, and inserting in place thereof the following section: —

Section 20. Proceedings shall be commenced in the housing court as follows: — a criminal case, by complaint in like manner as in the district court; a civil action, including an action for summary process, in accordance with the Massachusetts Rules of Civil Procedure. The clerk of the housing court shall charge a fee of two dollars for the entry of an action, which shall be paid by the party entering the same; and no other fee shall be charged for taxing costs, for issuing any subpoena or execution or for issuing any order of notice or other mesne, interlocutory or final order, rule, decree or process authorized by law, except a temporary restraining order or preliminary injunction for the issuance of which the clerk shall charge five dollars; provided, however, that no fee for the entry of an action or for the issuance of a temporary restraining order or preliminary injunction shall be charged the commonwealth or the city or any board or officer of either. If the housing court finds that the party entering the action or obtaining the restraining order or preliminary injunction is destitute and unable to pay, it may order the payment of the fee or fees prescribed by this paragraph to be waived.

Notwithstanding that a proceeding under this chapter is commenced by complaint, if the housing court finds that the offense charged was not wilful, intentional, reckless or repeated, the proceeding shall not be deemed criminal and no record of the case shall be entered in the probation records.

Actions in which equitable relief is sought shall be entered upon a separate docket.

SECTION 37. Section twenty-one of said chapter one hundred and eighty-five A is hereby repealed.

SECTION 38. The first paragraph of section 22 of said chapter 185A, as appearing in section 1 of chapter 843 of the acts of 1971, is hereby amended by striking out, in lines 1 and 4, the words "action at law or suit in equity" and inserting in place thereof, in each instance, the words: — civil action.

SECTION 39. Said chapter 185A is hereby further amended by striking out sections 23 and 24, as so appearing, and inserting in place thereof the following two sections: —

Section 23. All cases in the housing court, including motions and the like, whether interlocutory or final, shall be heard and determined by the housing court sitting without a jury, except that in all cases where a jury trial is required by the constitution of the commonwealth or of the United States and the defendant has not waived his rights to a trial by jury, the cause shall be forthwith tried in the housing court before a jury selected in accordance with chapter two hundred and thirty-four. In the trial of any complaint or action in the housing court, the report of any inspector serving in the housing inspection department of the city shall be prima facie evidence of the facts stated therein.

Section 24. Every judgment or order entered by the housing court shall bear as its date the day when actually entered by the clerk, and at the time of the entry he shall note such date upon the judgment or order and upon the docket.

SECTION 40. Section twenty-five of said chapter one hundred and eighty-five A is hereby repealed.

SECTION 41. Said chapter 185A is hereby further amended by striking out section 26, as so appearing, and inserting in place thereof the following section: —

Section 26. A party aggrieved by a judgment of the housing court may, within thirty days from the entry thereof, appeal therefrom to the appeals court or, subject to the provisions of section ten of chapter two hundred and eleven A, to the full court of the supreme judicial court; provided that simultaneously with filing such appeal or within such further time as the judge or clerk for cause shown allows, he shall file a bond executed by him or by his attorney of record on his behalf payable to the appellee in such reasonable sum and with such surety or sureties as may be approved by the appellee or by the judge or clerk, conditioned to enter and prosecute his appeal with effect, and to satisfy any judgment for costs which may be entered against him upon said appeal within thirty days after the entry thereof, except that no such bond shall be required if the appellant is the commonwealth or the city or any board or officer of either or if the judge is satisfied that the appeal is not frivolous and that the appellant is destitute and unable to pay for such bond. Instead of filing a bond as aforesaid, the appellant or any person in his behalf may deposit with the clerk, within the time required for filing a bond, a reasonable amount, to be fixed by the judge or clerk, as security for the prosecution of the appeal and the payment of costs. A certificate of such deposit shall be issued to the depositor by the clerk, who shall hold such deposit until the final disposition of the case, when he shall pay it or any part thereof, to the appellee for his costs, or the depositor thereof, as the housing court may order. The housing court may give directions as to the manner of keeping such deposit.

The completion of an appeal hereunder shall be governed by the Massachusetts Rules of Appellate Procedure. When the appeal has been entered in accordance with said Rules, all proceedings under such judgment shall be stayed, and the cause shall thereupon be pending before the appellate court, which shall hear and determine the same, and affirm, reverse or modify the judgment appealed from. Upon the reversal of a judgment, the appellate court may remand the cause to the housing court with necessary and proper directions for further proceeding therein.

When an appeal has been taken, the housing court before the entry of the appeal in the appeals court or, subject to the provisions of section ten of chapter two hundred and eleven A, the supreme judicial court may in its discretion stay, pending the appeal, all temporary orders, judgments, injunctions or other orders of the housing court, and may make such orders for the appointment of a

receiver, and of injunction or prohibition, or for continuing the same in force, as are needful for the protection of the rights of the parties pending the determination of the appeal.

SECTION 42. Section twenty-seven of said chapter one hundred and eighty-five A is hereby repealed.

SECTION 43. Said chapter 185A is hereby further amended by striking out sections 28 and 29, as so appearing, and inserting in place thereof the following two sections: —

Section 28. The housing court may issue execution in common form; provided, however, that no process for the execution of a final judgment of the housing court shall issue until the expiration of the time to appeal therefrom, unless all parties against whom such judgment is made waive an appeal by a writing filed with the clerk or by causing an entry thereof to be made on the docket, except that if the judge by whom the judgment was rendered is of opinion that the appeal from such judgment is groundless and intended merely for delay; process for the execution of the judgment may be awarded notwithstanding the appeal.

Section 29. If upon making an interlocutory order the judge is of the opinion that it so affects the merits of the controversy that the matter ought, before further proceedings, to be determined by the appeals court, he may report the question for that purpose, and stay all further proceedings except those necessary to preserve the rights of the parties.

SECTION 44. Section 3 of chapter 211 of the General Laws is hereby amended by striking out the first paragraph, as appearing in the Tercentenary Edition, and inserting in place thereof the following paragraph: —

The supreme judicial court shall have general superintendence of all courts of inferior jurisdiction to correct and prevent errors and abuses therein if no other remedy is expressly provided; and it may issue all writs and processes to such courts and to corporations and individuals which may be necessary to the furtherance of justice and to the regular execution of the laws.

SECTION 45. Section 4 of said chapter 211, as amended by chapter 465 of the acts of 1945, is hereby further amended by striking out, in line 5, the words "bill, petition, or other process" and inserting in place thereof the word: — complaint.

SECTION 46. Section 4A of said chapter 211 is hereby further amended by striking out the first paragraph, as appearing in section 2 of chapter 740 of the acts of 1972, and inserting in place thereof the following paragraph: —

The supreme judicial court or a justice thereof may transfer for partial or final disposition in any appropriate lower court any cause or matter which might otherwise be disposed of by a single justice, and said lower court shall thereupon have jurisdiction thereof, subject to appeal, and shall have such assistance from other departments or from the use of writs and process as the law provides shall be available to it or any other court with respect to like causes or matters; provided, however, that no transfer shall be made of

the following: —

(1) Motions for relief from judgment rendered by the supreme judicial court.

(2) Civil actions under section five of chapter two hundred and forty-nine against the supreme judicial court or the appeals court or a judicial officer thereof, or the superintendence of insolvency cases under chapter two hundred and sixteen.

(3) Dismissal under section thirteen of chapter fifty-eight A of appeals from the appellate tax board or stays of execution of sentence after exceptions or appeal under section forty-nine A of chapter two hundred and seventy-nine.

(4) Any matter incidental to the exclusive appellate jurisdiction of the full court for which provision may hereafter be made; and further provided, that no transfer shall be made to any court other than the court of appeals of the following: —

(1) Civil actions under section five of chapter two hundred and forty-nine against any court other than the supreme judicial court or the appeals court or a judicial officer thereof;

(2) Stays of execution of sentence after the filing or allowance of exceptions or the entry of an appeal under section four of chapter two hundred and seventy-nine; reductions of bail under section fifty-eight of chapter two hundred and seventy-six; summary review of questions of law pertaining to issuance or denial of preliminary injunctions in labor dispute cases under subsection (6) of section six of chapter two hundred and fourteen; summary review of workmen's compensation orders pending appeal under section sixty A of chapter one hundred and fifty-two; suspension, modification or annulment of orders or judgments under section one hundred and seventeen of chapter two hundred and thirty-one pending an appeal; and stays of orders or decrees in equity and other certain matters in the probate court under sections twenty-three and twenty-four of chapter two hundred and fifteen.

SECTION 47. Said chapter 211 is hereby further amended by striking out section 5, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 5. Questions of law arising upon exceptions, report, or appeal shall be heard and determined by the full court.

SECTION 48. Said chapter 211 is hereby further amended by striking out section 8, as so appearing, and inserting in place thereof the following section: —

Section 8. The full court shall, as soon as may be after the decision of the questions submitted to it, make and enter a proper order, direction or judgment for the further disposition of the case, or cause a rescript, containing a brief statement of the grounds and reasons of the decision, to be filed therein; it may remand the record to the trial court to carry such judgment into effect, or instead thereof, the full court may order a new trial or further proceedings at the bar of the supreme judicial court, or order sentence to be awarded or execution issued in said court.

SECTION 49. Said chapter 211 is hereby further amended by

striking out section 10, as so appearing, and inserting in place thereof the following section: —

Section 10. If, upon the hearing of an appeal in any proceeding, it appears that the appeal is frivolous, immaterial or intended for delay, the court may, either upon motion of a party or of its own motion, award against the appellant double costs from the time when the appeal was taken and also interest from the same time at the rate of twelve per cent a year on any amount which has been found due for debt and damages, or which he has been ordered to pay, or for which judgment has been recovered against him, or may award any part of such additional costs and interest.

SECTION 50. Section eleven of said chapter two hundred and eleven is hereby repealed.

SECTION 51. Section 3 of chapter 212 of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by striking out, in line 2, the words "writs of entry" and inserting in place thereof the words: — civil actions.

SECTION 52. Said chapter 212 is hereby further amended by striking out section 8, as so appearing, and inserting in place thereof the following section: —

Section 8. If an appeal or a bill of exceptions in a case, civil or criminal, has been duly entered in the appeals court or supreme judicial court, any security taken in the case, by bond, attachment or otherwise, shall stand as if no judgment had been entered or exception taken in the superior court until entry of judgment pursuant to the rescript of the appellate court.

SECTION 53. Section ten of chapter two hundred and twelve of the General Laws is hereby repealed.

SECTION 54. The first sentence of section 14A of said chapter 212, as appearing in section 2 of chapter 144 of the acts of 1932, is hereby amended by striking out, in line 2, the word "thirty-seven" and inserting in place thereof the word: — fourteen.

SECTION 55. Section 14B of said chapter 212 is hereby amended by striking out the third paragraph, as appearing in section 1 of chapter 695 of the acts of 1966, and inserting in place thereof the following paragraph: —

In the event that by reason of his physical or mental disability, death, resignation, retirement or removal any justice presiding at a trial pursuant to this section shall fail to sign or return exceptions taken at the trial of a criminal case, to make a report after he has reserved the case for report to the appeals court, or to set aside the verdict in a civil action and order a new trial, for a cause for which a new trial may by law be granted, or otherwise to exercise any of the powers and duties granted to him by this section in the disposition of such case, the chief justice of the superior court may assign any other justice authorized to sit in the superior court pursuant to this section, or any justice of the superior court, to have and exercise such powers and duties.

SECTION 56. Section fourteen C of said chapter two hundred and twelve is hereby repealed.

SECTION 57. Said chapter 212 is hereby further amended by striking out section 26A, inserted by section 1 of chapter 229 of the acts of 1935, and inserting in place thereof the following section: —

Section 26A. The superior court may, upon the application of either party, order a jury waived civil action where any right, title or interest in land is involved, except actions for specific performance of contracts, removed to the land court for trial and disposition. Upon the entry of such an order, the clerk of the court shall forthwith transmit all the papers in the case to the recorder of the land court who shall forthwith enter them on the land court docket, which court thereafter shall have jurisdiction of the action so removed.

SECTION 58. Said chapter 212 is hereby further amended by striking out section 30, added by chapter 600 of the acts of 1959, and inserting in place thereof the following section: —

Section 30. In any action or proceeding involving or arising under section twenty B, twenty C or twenty-four of chapter one hundred and forty-nine, or section six or six A of chapter two hundred and fourteen or chapter one hundred and fifty A, the chief justice shall designate three associate justices to hear and determine the action or proceeding. The decision of said court shall be subject to review in accordance with the provision of subsection (6) of section six of chapter two hundred and fourteen.

SECTION 59. Chapter 213 of the General Laws is hereby amended by striking out section 1B, as amended by section 4 of chapter 722 of the acts of 1962, and inserting in place thereof the following section: —

Section 1B. Questions of law arising in any proceeding of which jurisdiction is vested in the superior court by section one A may be reserved and reported to the appeals court for the consideration of that court in the manner provided in section one hundred and eleven of chapter two hundred and thirty-one.

SECTION 60. Sections one C and one D of said chapter two hundred and thirteen are hereby repealed.

SECTION 61. Section 3 of said chapter 213 is hereby amended by striking out clause Tenth B, added by section 3 of chapter 374 of the acts of 1943.

SECTION 62. The General Laws are hereby amended by striking out chapter 214 and inserting in place thereof the following chapter: —

CHAPTER 214.

EQUITY JURISDICTION.

Section 1. The supreme judicial and superior courts shall have original and concurrent jurisdiction of all cases and matters of equity cognizable under the general principles of equity jurisprudence and, with reference thereto, shall be courts of general equity jurisdiction, except that the superior court shall have exclusive original jurisdiction of all actions in which injunctive relief

is sought in any matter involving or growing out of a labor dispute as defined in section twenty C of chapter one hundred and forty-nine.

Section 1A. The fact that the plaintiff has a remedy in damages shall not bar an action for specific performance of a contract, other than one for purely personal services, if the court finds that no other existing remedy, or the damages recoverable thereby is in fact the equivalent of the performance promised by the contract relied on by the plaintiff, and the court may order specific performance if it finds such remedy to be practicable. If performance is not ordered, damages may be determined in the proceeding, and if the defendant claims a jury on that issue, the issue shall be framed and referred for jury trial.

Section 2. The supreme judicial court shall have original and exclusive jurisdiction of all civil actions in which equitable relief is sought cognizable under any statute and not within the jurisdiction conferred by section one, unless a different provision is made; and the superior court shall have like original and exclusive, or like original and concurrent, jurisdiction only if the statute so provides.

Section 3. The supreme judicial and superior courts shall have original and concurrent jurisdiction of the following cases:

(1) Actions to compel the redelivery of goods or chattels taken or detained from the owner.

(2) Actions for contribution by or between devisees, legatees or heirs liable for the debts of a deceased testator or intestate, and by or between other persons respectively liable for the same debt or demand, if there are two or more such persons liable at the same time to make such contribution.

(3) Actions between joint owners of personal property, and their legal representatives, relative to such property, with authority to determine their respective rights and interests therein, to order a division or sale thereof and make and order a proper distribution of the proceeds of a sale, and to do all other things relative to a determination of the ownership, division and distribution of such property or the proceeds thereof.

(4) Actions between joint trustees, co-executors and co-administrators, and their legal representatives.

(5) Actions upon accounts of such a nature that they cannot be conveniently and properly adjusted and settled in an action in the district court.

(6) Actions by creditors to reach and apply, in payment of a debt, any property, right, title or interest, legal or equitable, of a debtor, within or without the commonwealth, which cannot be reached to be attached or taken on execution although the property sought to be reached and applied is in the possession or control of the debtor independently of any other person or cannot be reached and applied until a future time or is of uncertain value, if the value can be ascertained by sale, appraisal or by any means within the ordinary procedure of the court. In such action, the interest

of the defendant in partnership property may be reached and applied in payment of the plaintiff's debt; but unless it is a judgment debt, the business of the partnership shall not be enjoined or otherwise interrupted further than to restrain the withdrawal of any portion of the debtor's share or interest therein until the plaintiff's debt is established, and if either partner gives to the plaintiff a sufficient bond with sureties approved by the clerk, conditioned to pay to the plaintiff the amount of his debt and costs within thirty days after it is established, the court shall proceed no further therein than to establish the debt; and upon the filing of such bond, any injunction previously issued in such action shall be dissolved.

(7) Actions to reach and apply shares or interests in corporations organized under the laws of the commonwealth or of the United States, and located or having a general office in the commonwealth, whether the plaintiff is a creditor or not, and whether the action is founded upon a debt or not.

(8) Actions to reach and apply in payment of a debt any property, right, title or interest, real or personal, of a debtor, liable to be attached or taken on execution in a civil action against him and fraudulently conveyed by him with intent to defeat, delay or defraud his creditors, or purchased, or directly or indirectly paid for, by him, the record or other title to which is retained in the vendor or is conveyed to a third person with intent to defeat, delay or defraud the creditors of the debtor.

(9) Actions to reach and apply the obligation of an insurance company to a judgment debtor under a motor vehicle liability policy, as defined in section thirty-four A of chapter ninety, or under any other policy insuring a judgment debtor against liability for loss or damage on account of bodily injury or death or for loss or damage resulting therefrom, or on account of damage to property, in satisfaction of a judgment covered by such policy, which has not been satisfied within thirty days after the date when it was rendered.

(10) Actions to enforce the purpose or purposes of any gift or conveyance which has been or shall have been made to and accepted by any county, city, town or other subdivision of the commonwealth for a specific purpose or purposes in trust or otherwise, or the terms of such trust, or, if it shall have become impracticable to observe or carry out such purpose or purposes, or such terms, or, if the occasion therefor shall have terminated, to determine the purposes or uses to which the property involved shall be devoted and enforce the same. Such action shall be commenced only by the attorney general or, with leave of court, by ten taxpayers of such county, city, town or other subdivision. The defendant in any such action may set up such impracticability or termination and request the judgment of the court as to such other use of said property in its answer. In the case of an action by ten taxpayers as aforesaid, the attorney general shall be served with notice of the preliminary petition for leave, and may in-

tervene as a party at any stage of the proceedings; and the plaintiffs shall be liable for costs, including reasonable counsel fees in the discretion of the court, which may, also in its discretion, award to the plaintiffs costs, including reasonable counsel fees, to be paid by the defendant or out of the fund involved, if any.

(11) Actions to determine the purposes or uses to which the property, whether held in trust or otherwise, of any church or religious society which shall have failed for two consecutive years next prior to the commencement of the action to hold religious services or shall have failed for such period to hold a meeting for the election of officers or shall otherwise have become inactive, or of any auxiliary organization affiliated with such a church or religious society, shall be applied, and to enforce the application thereof in accordance with such determination. Such action may be commenced by the governing body of the religious denomination having jurisdiction over such church or religious society according to the usages of the denomination to which such church or religious society belongs, or by the state organization of such denomination, if there is any, otherwise the national organization thereof; and in any action so commenced the attorney general shall be joined as a defendant.

Section 3A. Any person whose name, portrait or picture is used within the commonwealth for advertising purposes or for the purposes of trade without his written consent may bring a civil action in the superior court against the person so using his name, portrait or picture, to prevent and restrain the use thereof; and may recover damages for any injuries sustained by reason of such use. If the defendant shall have knowingly used such person's name, portrait or picture in such manner as is prohibited or unlawful, the court, in its discretion, may award the plaintiff treble the amount of the damages sustained by him. Nothing in this section shall be so construed as to prevent any person practicing the profession of photography from exhibiting in or about his or its establishment specimens of the work of such person or establishment, unless the exhibiting of any such specimen is continued after written notice objecting thereto has been given by the person portrayed; and nothing in this section shall be so construed as to prevent any person from using the name, portrait or picture of any manufacturer or dealer in connection with the goods, wares and merchandise manufactured, produced or dealt in by such manufacturer or dealer which such person has sold or disposed of with such name, portrait or picture used in connection therewith; or from using the name, portrait or picture of any author, composer or artist in connection with any literary, musical or artistic production of such author, composer or artist which such person has sold or disposed of with such name, portrait or picture used in connection therewith.

Section 4. Each court may, if necessary to secure justice and equity, issue to courts of inferior jurisdiction, corporations and persons all general and special writs and processes required in a

civil action.

Section 5. Civil actions in which equitable relief is sought may be brought in any county in which a transitory action between the same parties might be brought, as well as in counties in which it is elsewhere provided that such actions may be brought.

Section 6. (1) No court shall have jurisdiction to issue a preliminary or permanent injunction in any case involving or growing out of a labor dispute, as defined in section twenty C of chapter one hundred and forty-nine, except after hearing the testimony of witnesses in open court, with opportunity for cross-examination, in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect: —

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to the plaintiff's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon the plaintiff by the denial of relief than will be inflicted upon the defendants by the granting of relief;

(d) That the plaintiff has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect the plaintiff's property are unable or unwilling to furnish adequate protection.

(2) Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the city or town within which the unlawful acts have been threatened or committed charged with the duty to protect the plaintiff's property; provided, however, that if a complaint shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to the plaintiff's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a preliminary injunction upon a hearing after notice, and a statement of the grounds justifying the issuance of such order shall be made a matter of record by the court; provided, further, that no such temporary restraining order shall be issued except upon its also being made to appear to the satisfaction of the court, either from the testimony of witnesses or from written assurance filed by counsel in regard to his personal conduct: —

(A) That a principal representative or attorney of the employees or labor organizations participating in such dispute was informed of the time and place at which the application for a

temporary restraining order would be presented sufficiently in advance to appear in opposition thereto; or

(B) That the plaintiff made every reasonable effort to comply with clause (A) but was unable so to do; provided, however, that notification by mail alone shall not be deemed compliance with this section without proof of receipt.

Such testimony or written assurances shall set forth in detail the manner in which the plaintiff complied with clause (A) or (B) and shall be made part of the record in the case. If the defendants appear in opposition to the application for a temporary restraining order they shall be afforded an opportunity to cross-examine the plaintiff's witnesses at such length as is reasonable under the circumstances and a like opportunity to introduce evidence in opposition thereto. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days and shall not be subject to renewal. No temporary restraining order or preliminary injunction shall be issued except on condition that the plaintiff shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient in its opinion to recompense those enjoined for any loss, expense or damage caused by the improvident or erroneous issuance of such order of injunction, including all reasonable costs, together with a reasonable attorney's fee, and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

(3) The undertaking herein mentioned shall be understood to signify an agreement entered into by the plaintiff and the surety upon which a judgment may be rendered in the same action or proceeding against said plaintiff and surety, upon a hearing to assess damages of which hearing the plaintiff and surety shall have reasonable notice, the said plaintiff and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by a separate civil action.

(4) No restraining order or injunctive relief shall be granted to any plaintiff who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

(5) No restraining order, other than a temporary restraining order issued without notice as provided in subdivision (2) of this section, and no preliminary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include

only a prohibition of such specific act or acts as may be expressly complained of in the complaint filed in such case and as shall be expressly included in said statement of grounds or findings of fact made and filed by the court as provided herein.

(6) Whenever the court shall issue or deny a preliminary injunction in a case involving or growing out of a labor dispute, the court, upon the request of any party to the proceeding, shall forthwith report any questions of law involved in such issue or denial to the supreme judicial court and stay further proceedings except those necessary to preserve the rights of the parties. Upon the filing of such report, the questions reported shall be heard in a summary manner by a justice of the supreme judicial court, who shall with the greatest possible expedition affirm, reverse or modify the order of the superior court. The decision of such justice of the supreme judicial court upon the questions so raised shall be final, but without prejudice to the raising of the same questions before the full court upon appeal from the final judgment.

(7) No permanent injunction which may be issued under this section shall be effective for a period exceeding one year from the date of its issuance; provided, however, that after a new hearing and findings of fact as provided in clauses (a) to (e), inclusive, of subsection (1) and subject to the provisions of subsections (2) to (5), inclusive, it may be renewed.

Section 6A. Notwithstanding any of the provisions of section six so far as they may be applicable, a temporary restraining order or preliminary injunction may be granted in any case in which the parties to a jurisdictional dispute, as hereinafter defined, have voluntarily submitted such dispute to arbitration, and one of such parties fails to abide by the arbitration procedure or to comply with the terms of the arbitration award and engages in or continues to engage in a strike, picketing, boycott or other concerted interference against an employer. The restraining order or preliminary injunction may be granted in favor of the party which abides by the procedure and complies with the award as well as in favor of the employer who is ready and willing to abide by the terms of such award.

The term "jurisdictional dispute" means a dispute between two or more labor organizations or groups or employees the object of which is to require that particular work be assigned to employees in a particular labor organization or in a particular trade, craft or class rather than to employees in another labor organization or in another trade, craft or class.

Section 7. In actions for the construction of wills, or for instructions relative to wills the court may order notice of the action and of the time and place for hearing to be served on such number of the parties in interest representing all possible interests as the court shall direct, and to be published for three weeks successively in such newspaper as it directs. If it appears that any possible interest is not represented, further service may be ordered until all possible interests are represented before the court or until a

guardian ad litem has been appointed. If all possible interests are represented by persons before the court, it shall be unnecessary to make other persons having similar interests parties defendant.

Section 7A. As used in this section, "damage to the environment" shall mean any destruction, damage or impairment, actual or probable, to any of the natural resources of the commonwealth, whether caused by the defendant alone or by the defendant and others acting jointly or severally. Damage to the environment shall include, but not be limited to, air pollution, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper operation of dumping grounds, impairment and eutrophication of rivers, streams, flood plains, lakes, ponds or other water resources, destruction of seashores, dunes, wetlands, open spaces, natural areas, parks or historic districts or sites. Damage to the environment shall not include any insignificant destruction, damage or impairment to such natural resources.

As used in this section "person" shall mean any individual, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or any political subdivision thereof, any administrative agency, public or quasi-public corporation or body, or any other legal entity or its legal representatives, agents or assigns.

The superior court for the county in which damage to the environment is occurring or is about to occur may, upon a civil action in which equitable or declaratory relief is sought in which not less than ten persons domiciled within the commonwealth are joined as plaintiffs, or upon such an action by any political subdivision of the commonwealth, determine whether such damage is occurring or is about to occur and may, before the final determination of the action, restrain the person causing or about to cause such damage; provided, however, that the damage caused or about to be caused by such person constitutes a violation of a statute, ordinance, by-law or regulation the major purpose of which is to prevent or minimize damage to the environment.

No such action shall be taken unless the plaintiffs at least twenty-one days prior to the commencement of such action direct a written notice of such violation or imminent violation by certified mail, to the agency responsible for enforcing said statute, ordinance, by-law or regulation, to the attorney general, and to the person violating or about to violate the same; provided, however, that if the plaintiffs can show that irreparable damage will result unless immediate action is taken the court may waive the foregoing requirement of notice and issue a temporary restraining order forthwith.

It shall be a defense to any action taken pursuant to this section that the defendant is subject to, and in compliance in good faith with, a judicially enforceable administrative pollution abatement schedule or implementation plan the purpose of which is alleviation of damage to the environment complained of, unless the plaintiffs demonstrate that a danger to the public health and safety justifies

the court in retaining jurisdiction.

Any action brought pursuant to the authorization contained in this section shall be advanced for speedy trial and shall not be compromised without prior approval of the court.

If there is a finding by the court in favor of the plaintiffs it may assess their costs, including reasonable fees of expert witnesses but not attorney's fees; provided, however, that no such finding shall include damages.

The court may require the plaintiffs to post a surety or cash bond in a sum not to exceed five hundred dollars to secure the payment of any costs which may be assessed against the plaintiffs in the event they do not prevail.

Nothing contained in this section shall be construed so as to impair, derogate or diminish any common law or statutory right or remedy which may be available to any person, but the cause of action herein authorized shall be in addition to any such right or remedy.

Section 8. Civil actions in which equitable relief is sought and motions and other applications therein, whether interlocutory or final, shall in the first instance be heard and determined by one justice of the court.

Section 9. All acts and proceedings in civil actions other than trials upon the merits, wherever they may be conducted, shall be considered as taking place in court and not in chambers.

Section 10. A justice of either court or the full court may, if necessary, hear and determine cases pending in a county other than that in which such justice or court is sitting, or any motion therein; but a motion shall not be so heard nor an order so made until reasonable notice thereof has been given to the adverse party or his counsel; and either party may transmit his reasons in writing for or against the application to the court or justice, who shall examine the same and proceed thereon as if the parties were present. All orders made on such hearings shall be transmitted to the clerk in the proper county, and be entered by him.

Section 11. The supreme judicial court, upon request of a party to a civil action in which equitable relief is sought, may frame issues of fact to be tried by a jury and order the same to be tried in that court or in the superior court in the county in which such cause is pending, or upon the request of all parties in any other county.

Section 12. If there is no regular sitting of the supreme judicial court within three months after the framing of such issues, a justice thereof may order the clerk of the courts for the county in which the cause is pending to summon a jury to try such issues, and the proceedings at such trial shall be in all respects the same as in a trial at a regular sitting.

Section 13. The superior court, upon request of a party to a civil action in which equitable relief is sought pending therein, may frame issues of fact to be tried by a jury and order them to be tried in the county in which such cause is pending.

Section 14. A justice of the supreme judicial court and a

justice of the superior court shall, at all convenient times, sit in Boston to hear and determine civil actions in which equitable relief is sought and motions therein arising in any county.

Section 15. A justice of either court shall not dissolve an injunction issued by the other court, or by a justice thereof, or interpose in any action in which equitable relief is sought pending before the other court, except as provided in sections one hundred and fifteen, one hundred and seventeen, and one hundred and eighteen of chapter two hundred and thirty-one.

Section 16. The courts may issue writs of seisin and execution in common form if such process is appropriate for the enforcement of a judgment granting or denying equitable relief.

Section 17. Where a bond is required of a receiver appointed by either court the provisions of section seven of chapter two hundred and three shall apply.

Section 18. The original papers in a civil action pending in either court may be taken from the files in any county by counsel of record of either party, for use before the court, upon leaving a memorandum and receipt on such files, containing a short description of the papers so taken.

SECTION 63. Chapter 215 of the General Laws is hereby amended by striking out section 6, as most recently amended by section 24 of chapter 888 of the acts of 1970, and inserting in place thereof the following section: —

Section 6. Probate courts shall have original and concurrent jurisdiction with the supreme judicial and superior courts of all cases and matters of equity cognizable under the general principles of equity jurisprudence and, with reference thereto, shall be courts of general equity jurisdiction, except that the superior court shall have exclusive original jurisdiction of all actions in which injunctive relief is sought in any matter growing out of a labor dispute as defined in section twenty C of chapter one hundred and forty-nine; provided, however, that in proceedings of which probate courts have jurisdiction by reason of the provisions of this paragraph a plaintiff, defendant, or intervener may, within seven days after proper service has been made upon all parties, remove the case to the superior court. The removing party shall first pay the register of probate an entry fee equal to that for an original entry in the superior court and shall file with the register a notice of removal and an affidavit setting forth the names and addresses of all other parties to the action and of their attorneys. The register shall forthwith transmit all papers in the case and said entry fee to the clerk of the superior court for the county in which the action was originally commenced, and shall notify in writing all parties and their attorneys of the transfer. Thereafter the case shall proceed as if originally commenced in the superior court except that any temporary orders or preliminary injunctions issued by the probate court shall remain in full force and effect until further order of the superior court.

Probate courts shall also have jurisdiction concurrent with the

supreme judicial and superior courts, of all cases and matters in which equitable relief is sought relative to the administration of the estates of deceased persons, to wills, including questions arising under section twenty of chapter one hundred and ninety-one, to trusts created by will or other written instrument and, in cases involving in any way the estate of a deceased person or the property of an absentee whereof a receiver has been appointed under chapter two hundred or the property of a person under guardianship or conservatorship, to trusts created by parole or constructive or resulting trusts, of all matters relative to guardianship or conservatorship, of actions such as one described in clause (11) of section three of chapter two hundred and fourteen and of all other matters of which they now have or may hereafter be given jurisdiction. They shall also have jurisdiction to grant equitable relief to enforce foreign judgments for support of a wife or of a wife and minor children against a husband who is a resident or inhabitant of this commonwealth, upon an action by the wife commenced in the county of which the husband is a resident or inhabitant. They shall, after the divorce decree has become absolute, also have concurrent jurisdiction to grant equitable relief in controversies over property between persons who have been divorced. They shall also have jurisdiction of an action by an administrator, executor, guardian, conservator, receiver appointed as aforesaid or trustee under a will to enjoin for a reasonable period of time the foreclosure, otherwise than by open and peaceable entry, of a mortgage on real estate, or the foreclosure of a mortgage on personal property, which real estate or personal property is included in the estate or trust being administered by such fiduciary, if in the opinion of the court the proper administration of the estate or trust would be hindered by such foreclosure. They shall also have jurisdiction, concurrent with the superior court, of proceedings in which equitable relief is sought under sections seven to twelve, inclusive, of chapter one hundred and seventeen and section twenty-six of chapter one hundred and twenty-three.

Notwithstanding any contrary or inconsistent provisions of the General Laws, procedure in cases in the probate court within the jurisdiction granted by this section shall be governed by the Massachusetts Rules of Civil Procedure.

SECTION 64. Said chapter 215 is hereby further amended by striking out section 6A, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 6A. In any proceeding before a probate court, an attachment may be made by injunction to reach shares of stock or other property which cannot be reached to be attached in a civil action in which money damages are sought, and the property so attached shall thereafter be subject to such order as justice and equity may require; and in relation to such probate proceedings said court shall have all the powers which the supreme judicial and superior courts have in relation to actions to reach and apply.

SECTION 65. Said chapter 215 is hereby further amended by

striking out section 9, as most recently amended by chapter 360 of the acts of 1947, and inserting in place thereof the following section: —

Section 9. A person aggrieved by an order, decree or denial of a probate court made after this chapter takes effect, may, within thirty days after the entry thereof, appeal therefrom to the appeals court or, subject to the provisions of section ten of chapter two hundred and eleven A, to the full court of the supreme judicial court. Said courts shall have like powers and authority with respect thereto as upon an appeal in any civil action.

SECTION 66. Said chapter 215 is hereby further amended by striking out section 10, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 10. The procedure upon an appeal from an order, decree or denial of a probate court shall be in accordance with the Massachusetts Rules of Appellate Procedure.

SECTION 67. Section twelve of said chapter two hundred and fifteen is hereby repealed.

SECTION 68. Section 13 of said chapter 215, as appearing in the Tercentenary Edition, is hereby amended by striking out, in lines 3 and 7, the word “full” and inserting in place thereof, in each instance, the word: — appeals.

SECTION 69. Section 16 of said chapter 215, as so appearing, is hereby amended by striking out the last sentence and inserting in place thereof the following sentence: — Questions of law arising upon the trial of any such issues may be considered and determined by the appeals court or the supreme judicial court in the same manner and with like effect as in any civil action tried in the superior court.

SECTION 70. Section twenty-one of said chapter two hundred and fifteen is hereby repealed.

SECTION 71. Section 34 of said chapter 215 is hereby amended by striking out, in lines 6 and 7, as so appearing, the words “in equity in relation to any suit in equity” and inserting in place thereof the words: — in relation to an action in which equitable relief is sought.

SECTION 72. Section 20 of chapter 218 of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence: — District courts may issue writs of scire facias against executors and administrators upon a suggestion of waste after a judgment against them and also against bail taken in a civil action before them, and may proceed to judgment and execution.

SECTION 73. Chapter 220 of the General Laws is hereby amended by striking out section 13A, added by section 5 of chapter 407 of the acts of 1935, and inserting in place thereof the following section: —

Section 13A. Any person who shall wilfully disobey any lawful process, order, judgment or command of the court in any action in which injunctive relief is sought in any matter involving or grow-

ing out of a labor dispute, as defined in section twenty C of chapter one hundred and forty-nine, by doing any act or thing in or by such process, order, judgment or command forbidden to be done by him, if the act or thing so done by him is of such character as to constitute also a criminal offense under the laws of the commonwealth shall enjoy the right to a speedy and public trial for his said contempt by an impartial jury of the county wherein it shall have been committed; provided, that this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or apply to the misbehavior, misconduct or disobedience of any officer of the court in respect to the orders or process of the court.

SECTION 74. Chapter 221 of the General Laws is hereby amended by striking out section 6, as most recently amended by section 1 of chapter 710 of the acts of 1964, and inserting in place thereof the following section: —

Section 6. The justices of the superior court may appoint, for a term of three years from the date of their appointment, nineteen assistant clerks of said court for civil business in the county of Suffolk, one of whom shall perform the duties of clerk pertaining to actions in which equitable relief is sought in said court.

SECTION 75. Said chapter 221 is hereby further amended by striking out section 6A, as amended by section 3 of chapter 774 of the acts of 1949, and inserting in place thereof the following section: —

Section 6A. The justices of the superior court may designate, for a term of three years from the date of such designation, one of the assistant clerks for the county of Middlesex, appointed under section four or section five, to perform, under the direction of the clerk of the courts for the county of Middlesex, the duties of clerk pertaining to actions in which equitable relief is sought in said court, who shall receive from said county, in addition to the salary paid to him as an assistant clerk under section four or section five, as the case may be, a sum equivalent to five per cent of the salary of the clerk.

SECTION 76. Said chapter 221 is hereby further amended by striking out section 6B, added by chapter 300 of the acts of 1953, and inserting in place thereof the following section: —

Section 6B. The justices of the superior court may designate, for a term of three years from the date of such designation, one of the assistant clerks for the county of Essex, appointed under section four, to perform, under the direction of the clerk of the courts for the county of Essex, the duties of clerk pertaining to actions in which equitable relief is sought in said court, who shall receive from said county, in addition to the salary paid to him as an assistant clerk under section four, a sum equivalent to five per cent of the salary of the clerk.

SECTION 77. Said chapter 221 is hereby further amended by striking out section 19, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 19. The clerks shall cause one or more copies of all notices of appeal, orders for the report of cases, and bills of exceptions in criminal matters which may be filed or allowed in cases in which the attorney general appears for the commonwealth to be printed and forwarded to him at Boston as soon as may be after they have been filed or allowed.

SECTION 78. Section twenty-one of said chapter two hundred and twenty-one is hereby repealed.

SECTION 79. Said chapter 221 is hereby further amended by striking out section 22, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 22. A clerk of the courts may issue any order of notice upon any complaint or other proceeding in a civil action which might be issued by the court; but the court or a justice thereof may cause additional notice to be given.

SECTION 80. Section 56 of said chapter 221, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence: — When a civil action is at issue, the district court, if both parties assent thereto in writing, may appoint one or more auditors to hear the parties, examine their vouchers and evidence, state accounts and report upon such matters therein as may be ordered by the court.

SECTION 81. The first sentence of section 58 of said chapter 221, as appearing in section 1 of chapter 40 of the acts of 1932, is hereby amended by inserting after the word "Auditors", in line 1, the words: — appointed by the district or probate courts.

SECTION 82. Said chapter 221 is hereby further amended by striking out sections 61, 62 and 62A, as appearing in the Tercentenary Edition, and inserting in place thereof the following three sections: —

Section 61. The court shall award reasonable compensation and allow actual expenses of travel in attending hearings, if said expenses be approved by the court as reasonable, to auditors, but no allowance for the expenses of travel shall be allowed by the court unless the auditor shall file a true and correct account of such expenses, signed and sworn to by him. Said compensation and expenses shall be paid by the county if the auditors are appointed by the probate court. If they are appointed by the district court, the compensation awarded and expenses of travel allowed may be paid by either party and taxed in his bill of costs if he prevails; but the plaintiff shall be liable for such payment, and the court may make orders and issue process to enforce the same.

Section 62. Auditors shall file their final report in the office of the clerk or register of the court by which they are appointed within ninety days after the hearing before them has been closed or within such time as the court may allow, and, in default thereof, shall not be entitled to any fees, except as provided in section sixty-two A.

Section 62A. If an auditor appointed by the probate court becomes incapacitated or dies without having filed his final report,

the court may award him or his estate reasonable compensation, payable by the county, upon a finding that he actually performed services which would entitle him to the compensation awarded had he filed a report as provided in section sixty-two; provided, that all his records and memoranda, or copies thereof, in the case in which compensation is sought, are filed with the register of the court.

SECTION 83. Chapter 223 of the General Laws is hereby amended by striking out section 1, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 1. A transitory action shall, except as otherwise provided, if any one of the parties thereto lives in the commonwealth, be brought in the county where one of them lives or has his usual place of business; provided, that except in actions upon negotiable instruments if the plaintiff is an assignee of the cause of action, it shall be brought only in a county where it might have been brought by the assignor thereof. If neither party lives in the commonwealth, the action may be brought in any county. If an action is dismissed because the defendant has raised timely objection to venue, the defendant shall be allowed double costs.

SECTION 84. Said chapter 223 is hereby further amended by striking out section 4, as so appearing, and inserting in place thereof the following section: —

Section 4. An action of replevin in the district court shall be brought in the county where the goods or beasts are detained.

SECTION 85. Said chapter 223 is hereby amended by striking out section 15, as so appearing, and inserting in place thereof the following section: —

Section 15. If an error in venue is discovered at any stage of the proceedings of a civil action in the supreme judicial or superior court, the court may, upon motion of either party, order the action, with all papers relating thereto, to be removed to the proper county upon terms to the defendant; and it shall thereupon be entered and prosecuted in the same court for that county as if it had been originally commenced therein, and all prior proceedings otherwise regularly taken shall be valid.

SECTION 86. Said chapter 223 is hereby further amended by striking out sections 16 to 20, inclusive, and inserting in place thereof the following six sections: —

Section 16. In the district court actions at law, unless founded on scire facias or other special writs, or unless otherwise authorized by statute or by established practice, shall be commenced by original writs. Such writs shall be signed, sealed and bear teste as required by the constitution, and shall be framed either to summon the defendant, with or without an order to attach his goods or estate, or to attach his goods or estate and, for want thereof, to take his body; or, in an action commenced by trustee process, to attach his goods or estate in his own hands and also in the hands of the trustee. Original writs shall be in the form heretofore established by law and by the usage and practice of the courts. If changes in their form are necessary in order to adopt them to

changes in the law, or for any other sufficient reason, the courts may make such changes, subject to the final control of the supreme judicial court, which may by general rule regulate such changes in all the courts.

Section 16A. There shall appear on the summons of each original or trustee writ issued by a district court and on each summons or trustee summons issued by a court where procedure is governed by the Massachusetts Rules of Civil Procedure a notice informing the party served that he need not personally appear in court on the day designated as the return day or the day an answer is required, but that either he or his attorney should, in order to avoid judgment being entered against him, file a written answer by a specified date.

Section 17. In an action in the district court a separate summons shall be served on the defendant after an attachment of property on the writ, and the service thereof shall be a sufficient service of the original summons.

Section 18. In the district court in actions against corporations, and in other actions in which property may be attached, but in which the defendant is not liable to arrest, the writ of attachment and original summons may be combined in one, requiring the officer to attach the goods and estate and to summon the defendant.

Section 19. In an action in the district court, if the name of a defendant is not known to the plaintiff, the writ may be issued against him by a fictitious name, and if duly served, shall not be abated for that cause, but may be amended, and terms may be imposed.

In an action in the superior court, supreme judicial court or land court or the housing court of the city of Boston if the name of the defendant is not known to the plaintiff, the defendant may be designated in the summons and complaint by a fictitious name. The use of a fictitious name shall not be grounds for dismissal of the complaint if sufficient service has been made, and amendments shall be allowed and terms may be imposed.

Section 20. Process in the supreme judicial and superior court shall be signed, and may be issued, by the clerk, shall bear teste of the first justice of the court who is not a party to the action, may be returnable to the same court in any other county, may run, and shall be executed and obeyed, throughout the commonwealth.

SECTION 87. Sections twenty-one, twenty-two and twenty-four of said chapter two hundred and twenty-three are hereby repealed.

SECTION 88. Said chapter 223 is hereby further amended by striking out sections 26 and 27, as appearing in the Tercentenary Edition, and inserting in place thereof the following two sections: —

Section 26. In an action in the district court, if the writ requires the officer to attach the goods or estate of the defendant and for want thereof to take his body, the plaintiff or his attorney may by written or verbal directions require the officer to serve the writ by an attachment of goods or estate or by the arrest of the

defendant, if such arrest is authorized, and the officer shall serve the writ according to such directions.

Section 27. An original writ issued by a district court may be directed to and served by any officer qualified to serve civil process in actions involving the amount of damages claimed in the writ, and shall be served not less than seven nor more than sixty days before the return day; but if such writ is to be served in a county other than that in which the court issuing it is held, it shall, except in trustee process, be served at least fourteen days before the return day.

SECTION 28. Section 28 of said chapter 223, as so appearing, is hereby amended by inserting after the word "writ", in line 1, the words: — issued by a district court.

SECTION 29. Said chapter 223 is hereby amended by striking out sections 29 to 32, inclusive, and inserting in place thereof the following five sections: —

Section 29. In an action in the district court, a separate summons which is served after an attachment of property shall be served by delivering it to the defendant or by leaving it for him as hereinafter provided; and an original summons without an attachment shall be served by reading it to the defendant, by delivering to him a copy thereof attested by the officer who serves it or by leaving such copy for him as hereinafter provided.

Section 30. In an action brought in the district court the separate summons may be served at any time after the attachment has been made, if it is served the number of days before the return day required for the service of the original writ; and a certificate of the service of the summons shall be endorsed on the original writ.

Section 31. In an action brought in the district court, if the summons is not served personally on the defendant, the original or a copy, as the case may be, shall be left at his last and usual place of abode, if he has any within the commonwealth known to the officer. If he has none, it shall be left with his tenant, agent or attorney, if he has any within the commonwealth known to the officer. If he has no such last and usual place of abode and no tenant, agent or attorney, no service on him shall be required except as provided in the three following sections.

Section 31A. Personal service of a writ or summons upon a defendant while he is exercising his right to vote shall be null and void.

Section 32. In an action in the district court, if an absent defendant whose property has been attached is sued with one or more others on a joint contract, and he has no such last and usual place of abode and no tenant, agent or attorney, within the commonwealth, the summons for him shall be left with one of the co-defendants, if there is any within the commonwealth.

SECTION 33. Section thirty-three of said chapter two hundred and twenty-three is hereby repealed.

SECTION 34. Said chapter 223 is hereby further amended by striking out sections 35 and 36, as appearing in the Tercentenary

Edition, and inserting in place thereof the following two sections: —

Section 35. When process is served by an officer by leaving copies of the summons, subpoena, or summons and complaint at the last and usual place of abode of any person, the officer serving the same shall state in his return the place as definitely as is practicable, giving, if possible, the street and number, where service was made.

Section 36. Process issued by a district court against a county, city, town, corporation, body corporate, joint stock association, voluntary association described in chapter one hundred and eighty-two, parish or religious society, proprietors of wharves, general fields or real estate lying in common, who are incorporated, executor, administrator, guardian, conservator, receiver, trustee or assignee shall be served by copy or by copy and summons.

SECTION 93. Section forty-one of said chapter two hundred and twenty-three is hereby repealed.

SECTION 94. Section 42 of said chapter 223, as amended by section 1 of chapter 295 of the acts of 1937, is hereby further amended by inserting after the word "writ", in line 8, the words: — of attachment.

SECTION 95. Section 43 of said chapter 223, as appearing in the Tercentenary Edition, is hereby amended by inserting after the word "writ", in line 6, the words: — or complaint.

SECTION 96. Said chapter 223 is hereby further amended by striking out section 44, as so appearing, and inserting in place thereof the following section: —

Section 44. No ship or vessel shall be attached in a civil action on an original writ unless a declaration is inserted in the writ before service thereof, nor shall such attachment be made upon an original writ or a writ of attachment unless the plaintiff or a person in his behalf makes affidavit and proves to the satisfaction of a justice of a court that he has a good claim and reasonable expectation of recovering an amount, exclusive of all costs, equal at least to one third of the damages demanded in the original writ or complaint, which affidavit and the certificate of the justice that he is satisfied that the same is true shall be annexed to the writ.

SECTION 97. Said chapter 223 is hereby further amended by striking out section 44A, as amended by section 2 of chapter 295 of the acts of 1937, and inserting in place thereof the following section: —

Section 44A. Motor vehicles registered under the law of this commonwealth shall not be attached by writ of attachment in a civil action based upon a contract unless written consent to such attachment is endorsed on the writ and signed by a justice, associate justice or special justice of the court wherein such action is commenced. Costs in any action in which such a motor vehicle has been attached shall be in the discretion of the court.

SECTION 98. The first sentence of section 45 of said chapter 223, as appearing in the Tercentenary Edition, is hereby amended

by inserting after the word "writ", in line 7, the words: — or complaint.

SECTION 99. Said chapter 223 is hereby further amended by striking out section 46, as so appearing, and inserting in place thereof the following section: —

Section 46. In an action brought in the district court successive attachments may be made upon the same writ by one or more officers and in one or more counties, before, but not after, service of the summons.

In an action in the superior court or supreme judicial court or the housing court of the city of Boston or the housing court of the county of Hampden successive attachments may be made upon the same writ of attachment by one or more officers in one or more counties before, but not after the expiration of thirty days from the date of the complaint.

SECTION 100. Said chapter 223 is hereby further amended by striking out section 50, as amended by section 8 of chapter 765 of the acts of 1957, and inserting in place thereof the following section: —

Section 50. If an attachment is made of articles of personal property which, by reason of their bulk or for other cause, cannot be immediately removed, a certified copy of the writ of attachment together with a certified copy of the officer's endorsement on the original writ of attachment of the date or dates of the executing of the writ, may, within three days after the attachment, be deposited in the office of the town clerk or the state secretary or in the registry of deeds, as the case may be, where filing is required to perfect a security interest in such goods under section nine-four hundred and one of chapter one hundred and six; and such attachment shall be as valid and effectual as if the articles had been retained in the possession and custody of the officer.

SECTION 101. Said chapter 223 is hereby further amended by striking out section 56, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 56. The officer who makes such later attachment shall not take the property itself, but he shall make proof of service of the writ of attachment to the court in writing, stating by whom the property was previously attached and shall leave a certified copy of the writ of attachment and of the proof of service of that writ of attachment with the former officer, if living, or, if he is dead, with his executor or administrator or whoever then has possession of the property. The attachment shall be considered as made when such copy is delivered in any of the modes provided in this section.

SECTION 102. Said chapter 223 is hereby further amended by striking out section 59, as so appearing, and inserting in place thereof the following section: —

Section 59. Property which has been attached in conjunction with an action in the district court shall be held for thirty days after final judgment for the plaintiff or claimant so that it may be taken on execution, unless the attachment is sooner dissolved; but

if attached in Nantucket county and judgment is rendered in another county, or if judgment is rendered in Nantucket county and it was attached in another county, it shall be held in like manner, subject to the same condition, for sixty days after final judgment. Upon a final judgment for the plaintiff in an action in the superior court or before a single justice of the supreme court or in the housing court of the city of Boston, property which has been attached shall remain subject to the attachment for thirty days after the expiration of the time to appeal from the judgment so that it may be taken on execution unless the attachment is sooner dissolved; but if an appeal is claimed the attachment shall remain in force during the pendency of the appeal and if the judgment is affirmed, for thirty days from the entry of the order of the appellate court; but if attached in Nantucket county and judgment rendered in another county, or if judgment is rendered in Nantucket county and it was attached in another county, it shall be held in like manner, subject to the same condition for a period of sixty days.

SECTION 103. Sections sixty and sixty-one of said chapter two hundred and twenty-three are hereby repealed.

SECTION 104. Said chapter 223 is hereby further amended by striking out section 63, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 63. No attachment of land or of any leasehold estate shall be valid against a subsequent attaching creditor, or against a subsequent purchaser in good faith and for value, unless the officer deposits a certified copy of the writ of attachment and so much of his return thereon as relates to the attachment of the estate, in the registry of deeds for the county or district where the land lies.

SECTION 105. Said chapter 223 is hereby further amended by striking out section 68, as so appearing, and inserting in place thereof the following section: —

Section 68. The register in such case, in addition to the names of the parties to the action which he is required to enter as provided in section sixty-five, shall also enter in his docket of attachments the names of the persons in whom the record or legal title stands, as returned by the officer, in the same manner as if the estate of such persons were attached as defendants in the action.

SECTION 106. Said chapter 223 is hereby further amended by striking out section 71, as so appearing, and inserting in place thereof the following section: —

Section 71. Shares of stock shall not be attached in a civil action in which only money damages are sought.

SECTION 107. Said chapter 223 is hereby further amended by striking out section 76, as amended by section 3 of chapter 298 of the acts of 1943, and inserting in place thereof the following section: —

Section 76. If the mortgagee, pledgee, lienor or conditional vendor, or his assigns, demands and receives more than the amount due to him, he shall be liable to the attaching creditor for the

excess, with interest thereon at the rate of twelve per cent a year.

SECTION 108. Said chapter 223 is hereby further amended by striking out sections 84 and 85, as appearing in the Tercentenary Edition, and inserting in place thereof the following two sections: —

Section 84. In an action in the district court, if the service of a writ, process or order is defective or insufficient, the court or tribunal to which it is returnable may, upon motion of the plaintiff or petitioner issue further writs, processes and orders, which shall be served in such manner as may be therein directed; and upon proper service thereof, the court or tribunal shall thereby acquire the same jurisdiction of the subject and of the parties as it would have obtained if such service had been made in pursuance of the original writ, process or order. The action, suit or proceeding shall be continued from time to time until such service is made.

In an action in the supreme judicial court, superior court, the housing court of the city of Boston, or housing court of the county of Hampden if the defendant makes a motion to dismiss the action for insufficient service of process, the court may dismiss the action without prejudice or may quash the process and allow the issuance and service of new process in accordance with the Massachusetts Rules of Civil Procedure.

Section 85. At any time during the pendency of an action in the district court, upon the commencement of which an arrest or attachment is authorized by law, the court for cause may, on motion ex parte, order such arrest of the defendant or such attachment of his property by trustee process or otherwise to secure the judgment or decree which the plaintiff may obtain in said cause; but no arrest of the defendant shall be authorized unless the same facts as are required to be proved to authorize an arrest on mesne process are proved to the satisfaction of the court by affidavit as provided in section two of chapter two hundred and twenty-four. Except in Suffolk county, a clerk of such court may, under the same conditions, order such attachment of the property of the defendant. Such arrest or attachment shall be subject to all the provisions of law relative to arrest and attachment upon mesne process, so far as applicable.

SECTION 109. Said chapter 223 is hereby further amended by striking out section 86A, as most recently amended by section 4 of chapter 591 of the acts of 1973, and inserting in place thereof the following section: —

Section 86A. Upon motion of the plaintiff at any time after entry of a judgment in his favor in the supreme judicial court, superior court, housing court of the city of Boston or housing court of the county of Hampden but before the expiration of the time to appeal therefrom or, if an appeal is claimed, during the pendency thereof, such court shall have jurisdiction by appropriate procedure and process to cause to be reached, held and thereafter applied in payment of any such judgment or decree in his favor in such action or suit the same kind of property, right, title or interest, legal or equitable, of a defendant, within or without the commonwealth,

which may be reached and applied under clauses (6) and (7) of section three of chapter two hundred and fourteen, and any property, right, title or interest, legal or equitable, real or personal, including any shares or interests in corporations organized under the laws of the commonwealth or of the United States, and located or having a general office in the commonwealth, fraudulently conveyed by the defendant with intent to defeat, delay or defraud his creditors or to defeat or delay the plaintiff in the satisfaction of his claim, or purchased, or directly or indirectly paid for, by him, the record or other title to which is retained in the vendor or is conveyed to a third person with intent to defeat, delay or defraud the creditors of the defendant or to defeat or delay the plaintiff in the satisfaction of his claim; provided, that, in reaching and applying hereunder the interest of a partner in partnership property, the business of the partnership shall not be enjoined or otherwise interrupted further than to restrain the withdrawal of any portion of the defendant's share or interest therein until final judgment or decree in such action or suit. If such equitable relief is granted, the defendant may give to the plaintiff a sufficient bond payable to him with sureties approved by the court conditioned to pay him the amount of his judgment within thirty days of the date when execution may issue upon such judgment, and, upon the filing of such bond with the clerk, the court shall proceed no further in the proceedings to reach and apply and any injunction previously issued in the course of such proceedings shall be dissolved.

SECTION 110. Said chapter 223 is hereby further amended by striking out sections 94 and 95, as appearing in the Tercentenary Edition, and inserting in place thereof the following two sections: —

Section 94. The officer who takes such bond shall return it with the writ on which the first attachment is made in like manner as bail bonds are returned, with a certificate of his doings therein; and if the bond is forfeited, any of the attaching creditors may bring an action thereon.

Section 95. If judgment is rendered for the defendants in an action on such bond, executions for the costs shall be issued against the attaching creditors by whom the action was brought.

SECTION 111. Section ninety-six of said chapter two hundred and twenty-three is hereby repealed.

SECTION 112. Section 97 of said chapter 223, as so appearing, is hereby amended by striking out, in line 1, the words "in equity".

SECTION 113. Said chapter 223 is hereby further amended by striking out sections 99 and 100, as so appearing, and inserting in place thereof the following two sections: —

Section 99. A creditor who is entitled to the benefit of the bond, and who has not joined in bringing the action thereon may, upon motion at any time before final judgment, intervene in the action upon terms.

Section 100. No creditor whose cause of action on such bond accrued more than one year before the commencement of the action shall have judgment or execution.

SECTION 114. Section 109 of said chapter 223, as so appearing, is hereby amended by striking out, in line 2, the words "answer, plea" and inserting in place thereof the word: — pleading.

SECTION 115. Section 114 of said chapter 223, as most recently amended by section 2 of chapter 234 of the acts of 1943, is hereby further amended by striking out the first sentence and inserting in place thereof the following three sentences: — If an excessive or unreasonable attachment, by trustee process or otherwise, is made, the defendant or person whose property has been attached may submit a written motion, in any county, to a justice of the court to which such process is returnable, for a reduction of the amount of the attachment or for its discharge. If such motion is made to a justice of the superior court or of the supreme judicial court or to a judge of the housing court of the city of Boston or of the housing court of the county of Hampden, notice thereof shall be served upon each of the parties in accordance with the Massachusetts Rules of Civil Procedure. If such motion is made to a justice of the district court, such justice shall order a notice to the plaintiff, or, if the plaintiff is a non-resident, to his attorney, which shall be returnable before himself or any other justice of the same court as speedily as circumstances permit.

SECTION 116. Said chapter 223 is hereby further amended by striking out sections 115 and 115A and inserting in place thereof the following two sections: —

Section 115. If the final judgment in an action in the district court is for the defendant, the attachment shall be forthwith dissolved. If the final judgment in the superior or the supreme judicial court or the housing court of the city of Boston or the housing court of the county of Hampden is for the defendant the attachment shall be dissolved when the time for appeal from the judgment has expired, but if an appeal has been claimed, the attachment shall remain in force during the pendency of the appeal. Affirmance of the judgment by the supreme judicial court or appeals court shall dissolve the attachment forthwith.

Section 115A. If real property of the defendant is attached in any action and no service is made upon him, the attachment shall be dissolved unless it appears of record that notice of such action has been given to him, in such manner as the court orders, within sixty days after the commencement of the action, or within such further time as the court may allow.

SECTION 116A. Section 115B of said chapter 223, inserted by section 2 of chapter 179 of the acts of 1972, is hereby amended by inserting after the word "action", in line 2, the words: — to be brought in the district court.

SECTION 117. Section 117 of said chapter 223, as appearing in the Tercentenary Edition, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence: — Such proceeds may be recovered by the executor or administrator in a civil action.

SECTION 118. Section 118 of said chapter 223, as so appearing,

is hereby amended by striking out, in line 4, the word "contact" and inserting in place thereof the words: — a civil action.

SECTION 119. Said chapter 223 is hereby further amended by striking out sections 119 to 121, inclusive, as so appearing, and inserting in place thereof the following three sections: —

Section 119. The defendant, in an action founded on either of the three preceding sections, shall not be allowed to set-off or counter-claim for a demand against the executor or administrator, or against the estate of the deceased.

Section 120. A defendant whose property has been attached in a civil action may at any time before final judgment, dissolve the attachment by giving a bond with sufficient sureties, who shall be approved by the plaintiff or by his attorney in writing, by a master in chancery, or by a justice of a court if the attachment is made within the jurisdiction of such justice, conditioned to pay the plaintiff, within thirty days after the final judgment of a district court or within thirty days from the expiration of the time to appeal a final judgment of the superior or supreme judicial court or the housing court of the city of Boston or the housing court of the county of Hampden, or within thirty days of the entry of an order in the supreme judicial court or appeals court affirming such final judgment of the superior or supreme judicial court or the housing court of the city of Boston or the housing court of the county of Hampden, such amount, if any, as he may recover; and also to pay to the plaintiff, within thirty days from the expiration of the time to appeal a special judgment entered in accordance with the provisions of chapter two hundred and thirty-five, the amount, if any, for which such special judgment shall be entered. Sureties shall not be sufficient unless they are satisfactory to the plaintiff or unless the magistrate finds that each, if there are only two, is worth, in excess of his indebtedness, an amount equal to that for which the attachment is laid; or, if there are more than two, that they are together worth twice such amount.

Section 121. Before such bond is approved, the defendant, or a person in his behalf, shall make application in writing to the magistrate, specifying therein the names and residences of the proposed sureties and, except in case the proposed surety is a surety company qualified to do business in the commonwealth, therein setting forth the property with which each of said sureties proposes to qualify, and in case said property, as so set forth, be realty, then giving the name of the town where the same is located. Notice of the time and place of the hearing, containing a copy of the application to the magistrate, shall be given the plaintiff or his attorney as provided in sections twenty-six to twenty-nine, inclusive, of chapter two hundred and thirty-three or served upon the plaintiff in accordance with the Massachusetts Rules of Civil Procedure; but the plaintiff or his attorney may in writing waive such notice or may approve the bond at any time.

SECTION 120. Said chapter 223 is hereby further amended by striking out section 125, as so appearing, and inserting in place

thereof the following section: —

Section 125. A defendant may, at any time before execution may issue on a final judgment, release from attachment the property attached, or such part thereof as he may elect, by giving bond to the plaintiff with sufficient sureties, who shall be approved by the plaintiff or by his attorney in writing, by a master in chancery, or by a justice of a court of record if the attachment is made within the jurisdiction of his court, conditioned to pay the plaintiff within thirty days after the entry of a final judgment in the district court or within thirty days after the expiration of the time of appeal from a final judgment of the superior or supreme judicial court or the housing court of the city of Boston or the housing court of the county of Hampden or from a special judgment entered under chapter two hundred and thirty-five, or, if an appeal is claimed from said judgments, within thirty days of the entry of the order of the full court or appeals court, the amount fixed as the value of the property so released, or so much of said amount as may be necessary to satisfy the amount, if any, which the plaintiff may recover, and the property so released shall be described in such bond. The defendant, or a person in his behalf, may make written application to any magistrate who is authorized to approve the sureties upon said bond in the county where the property is situated, stating the names of the parties to the action, the name of the officer who made the attachment, the names and residences of the proposed sureties, and, except in case the proposed surety is a surety company qualified to do business in the commonwealth, setting forth the property with which each of said sureties proposes to qualify, and in case said property, as so set forth, be realty, then giving the name of the city or town where the same is located. The magistrate shall forthwith cause a copy of the application, with notice of the time and place for the hearing, to be served upon the plaintiff, if he resides in the county, otherwise upon the officer who made the attachment; but the plaintiff or his attorney may in writing waive such notice or may approve the bond or sureties at any time, or may agree that the amount of the bond is sufficient without approving the sureties, in which case the appraisal hereinafter provided for need not be made. The notice shall be served twenty-four hours, at least, before the time appointed therein for a hearing and as much earlier as the magistrate may order. At the time and place appointed, after hearing the parties, the magistrate shall appoint three disinterested persons to examine and appraise the attached property described in the application, who shall be sworn, shall appraise the property at its fair market value and shall make return of their doings in writing to the magistrate at a time and place fixed by him to which the hearing shall be adjourned. At such adjourned hearing the defendant may give bond to the plaintiff, with sureties, who shall be approved by the magistrate as herein provided. Upon the filing of such bond, as is required by the provisions of section one hundred and twenty-three, the attachment upon the property

described therein shall be dissolved. When successive attachments in favor of different plaintiffs are made upon personal property the defendant may release from the attachments the property attached, or such portion thereof as he may elect, by giving bond with sufficient sureties to be approved as hereinbefore provided. The sheriff of the county in which the first attachment was made shall be the obligee on the bond, which shall be deposited immediately after it is given with the clerk of the courts for the same county, except that in Suffolk county it shall be deposited with the clerk of the superior court for civil business. The bond shall be conditioned on the defendant's paying to such sheriff within the time fixed by this section for giving bond to release attached property from attachment, the amount fixed as the value of the property so released and the amount so paid shall be held by the sheriff, after deducting the necessary charges, subject to the attachments in the order in which they were made, and shall be disposed of in the same manner as the proceeds of attached personal property sold under section eighty-seven.

SECTION 121. Said chapter 223 is hereby further amended by striking out sections 127 and 128, as so appearing, and inserting in place thereof the following two sections: —

Section 127. If an attachment of real property is made under sections sixty-seven and sixty-eight, the person in whose name the record title of the property attached stands, or a person in his behalf, may, before final judgment, dissolve the attachment by giving bond to the plaintiff, with sufficient sureties, conditioned to pay him, if he establishes his title to the land in a civil action against the person having the record title thereto at the time of the attachment, the ascertained value of the land, or so much thereof as shall satisfy the amount, if any, which the plaintiff shall recover upon final judgment, or upon a special judgment under chapter two hundred and thirty-five, in the action in which such attachment was made. All proceedings required in the two preceding sections shall apply to the dissolution of an attachment under this section. In the trial of such action to establish title, the record of the attachment and of final or special judgment, as the case may be, in the action in which the attachment was made shall be conclusive evidence of a momentary seisin of the land in the plaintiff to enable him to maintain an action therefor upon his own seisin; but no such action to establish title shall be brought after the expiration of one year from the date of such final or special judgment. If the plaintiff recovers judgment on such action he shall not have an execution for possession, but may have an execution for costs.

Section 128. A defendant may dissolve an attachment by depositing with the attaching officer an amount of money equal at least to the amount of the ad damnum in the writ or complaint, which the officer shall hold in place of the property attached and which shall be subject to be disposed of in the same manner.

SECTION 122. Said chapter 223 is hereby further amended by

striking out section 130, as so appearing, and inserting in place thereof the following section: —

Section 130. An attachment of property shall be dissolved by the appointment by any court of competent jurisdiction in the commonwealth of a receiver to take possession of such property if the complaint seeking the appointment of such receiver is filed in said court within four months after such attachment was made, unless the court at any time, in its discretion, continues such attachment. In such case the court may authorize the receiver to prosecute or defend the action upon which the attachment was made.

SECTION 123. Section eighteen of chapter two hundred and twenty-six of the General Laws is hereby repealed.

SECTION 124. Chapter 227 of the General Laws is hereby amended by striking out section 1, as amended by section 1 of chapter 612 of the acts of 1949, and inserting in place thereof the following section: —

Section 1. A personal action shall not be maintained against a person not an inhabitant of the commonwealth unless he or his agent appointed under section five or five A has been served with process in the commonwealth, or unless service has been made upon him outside the commonwealth, as authorized by chapter two hundred and twenty-three A, or unless an effectual attachment of his property within the commonwealth has been made upon the original writ, and in case of such attachment without such service, the judgment shall be valid only to secure the application of the property so attached to the satisfaction of the judgment.

SECTION 125. Said chapter 227 is hereby further amended by striking out section 3, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 3. If such cross action is brought in the district court, the writ may be served on the attorney of record for the plaintiff in the original action, and such service shall be as valid and effectual as if made on the party himself. If such action is asserted as a counterclaim to an original action asserted in the supreme judicial or superior court or in the housing court of the city of Boston or in the housing court of the county of Hampden, the pleading asserting such counterclaim shall be served upon the attorney of record for the plaintiff.

SECTION 126. Section 5A of said chapter 227, as amended by chapter 413 of the acts of 1964, is hereby further amended by striking out the last two sentences and inserting in place thereof the following sentence: — The plaintiff's affidavit of compliance herewith, and the defendant's return receipt, if received by the plaintiff, or other proof of actual notice shall be filed in the case on or before the return day if such process is returnable in the district court, or on or before the date on which the defendant's answer must be filed if such process is returnable to the supreme judicial or superior court or the housing court of the city of Boston

or the housing court of the county of Hampden or within such further time as the court may allow.

SECTION 127. Section 6 of said chapter 227, as appearing in the Tercentenary Edition, is hereby amended by striking out, in line 4, the word "entry" and inserting in place thereof the word: — commencement.

SECTION 128. Section 7 of said chapter 227 is hereby amended by striking out the first sentence, as amended by section 6 of chapter 591 of the acts of 1973, and inserting in place thereof the following sentence: — If a defendant in an action in the supreme judicial or superior court or the housing court of the city of Boston or the housing court of the county of Hampden is absent from the commonwealth or his residence is unknown to the officer serving the summons and complaint, and no personal service has been made on him or his agent appointed under section five, or if the service of process is defective or insufficient by reason of a mistake of the plaintiff or officer as to where or with whom the summons or copy ought to have been left, the court, upon suggestion thereof by the plaintiff, shall order the action to be continued until notice of the action is given in such manner as it may order.

SECTION 129. Said chapter 227 is hereby further amended by striking out section 8, as amended by section 7 of said chapter 591, and inserting in place thereof the following section: —

Section 8. If, after such notice, the defendant does not appear within twenty-one days after the day specified therefor, a default shall be entered and judgment rendered against him as provided in section one.

SECTION 130. Section 9 of said chapter 227, as appearing in the Tercentenary Edition, is hereby amended by striking out, in line 10, the word "review" and inserting in place thereof the words: — writ of review or proceeding for relief from judgment.

SECTION 131. Said chapter 227 is hereby further amended by striking out sections 11, 12 and 13, as so appearing, and inserting in place thereof the following three sections: —

Section 11. If the execution in an action under this chapter, except as otherwise provided, is levied on land, no alienation thereof by the original plaintiff shall prevent the defendant from retaking the same or as much thereof as may be necessary to satisfy the judgment which he recovers on a writ of review or other proceeding for relief from judgment, if such writ or proceeding is sued out or commenced within one year after the original judgment.

Section 12. If the original judgment was for seisin of the land demanded in a real action, the writ of seisin may be issued in favor of the plaintiff without his giving bond; and if the judgment is reversed in whole or in part upon a review or other proceeding, whether sued out or commenced within the year or afterward, the original defendant may have restitution of the land.

Section 13. An action of tort against several defendants, any one of whom is absent from the commonwealth at the time of the service of process, shall be conducted with regard to him relative

to the service of process, judgment, review thereof and execution as if he were the sole defendant.

SECTION 132. Said chapter 227 is hereby amended by striking out sections 16 and 17, as so appearing, and inserting in place thereof the following two sections: —

Section 16. Real actions against several defendants, any one of whom is absent from the commonwealth, shall be conducted relative to him as if he were the sole defendant.

Section 17. The provisions of this chapter relative to judgment, bond and review in actions of tort shall apply to a mixed action if the defendant or one of several defendants is absent from the commonwealth, but, as to the service of process and notice to the defendant, it shall be conducted as a real action.

SECTION 133. Section 4 of chapter 228 of the General Laws, as so appearing, is hereby amended by striking out the last two sentences.

SECTION 134. Said chapter 228 is hereby further amended by inserting after section 4 the following section: —

Section 4A. In the supreme judicial, superior or land court or the housing court of the city of Boston or the housing court of the county of Hampden such substitution of the executor or administrator shall be in accordance with the Massachusetts Rules of Civil Procedure.

SECTION 135. Said chapter 228 is hereby further amended by striking out section 5, as most recently amended by chapter 391 of the acts of 1950, and inserting in place thereof the following section: —

Section 5. In the district or probate court the death shall be suggested on the record, and the executor or administrator may, within such time as the court shall allow, appear and prosecute or defend the action, which shall thenceforth be conducted in the same manner as if it had been originally commenced by or against the same executor or administrator. If the executor or administrator does not voluntarily appear, the surviving party may take out a citation from the court requiring the executor or administrator to appear and take upon himself the prosecution or defense of the action.

Such citation shall be returnable at such time as the court may order and shall be served fourteen days at least before the return day; but it shall not issue after the expiration of one year from the time such executor or administrator has given bond unless in accordance with section five A.

SECTION 136. Said chapter 228 is hereby further amended by inserting after section 5 the following three sections: —

Section 5A. The plaintiff in a personal action in the district court or in a proceeding in the probate court the cause of which survives and who had a right to take out a citation against the executor or administrator of a sole defendant but who did not do so within the time limited in the preceding section may commence a civil action in the supreme judicial or superior court for an order

to such executor or administrator to appear in that action and defend the same. The court shall grant such relief if it finds that justice and equity so require and that the plaintiff is not chargeable with excusable neglect.

To effectuate such order the supreme judicial or superior court may further order that any finding, order, judgment or other act therein entered or done, which otherwise would prevent the prosecution of the cause to determination on its merits, be vacated, and upon the filing therein of a copy of the judgment ordering the vacation thereof such finding, order, judgment or other act shall stand vacated, and it may make further orders, all so that said action may proceed to final determination on its merits as though such executor or administrator had been cited in within the time limited by the preceding section.

Section 5B. Whenever, upon the trial of a civil action in the supreme judicial or superior court seeking the relief authorized by section five A, it shall be made to appear to the court that the legal representative of the deceased person within nine months of his appointment failed to notify in writing the plaintiff of such death and failed within said nine months duly to suggest such death in such action, such facts may be sufficient ground for granting the relief authorized by said section five A.

Section 5C. Neither the relief authorized by section five A nor any comparable relief authorized by the Massachusetts Rules of Civil Procedure nor the final determination of the action in which the representative is substituted shall affect any payment or distribution not concerned with said action which was made before application was made for such relief pursuant to said section five A or pursuant to any applicable rule of the Massachusetts Rules of Civil Procedure.

SECTION 137. Section 8 of said chapter 228, as appearing in the Tercentenary Edition, is hereby amended by striking out, in line 1, the word "demandant" and inserting in place thereof the word: — plaintiff.

SECTION 138. Section 9 of said chapter 228, as so appearing, is hereby amended by striking out, in line 1, the word "demandants" and inserting in place thereof the words: — plaintiffs in a real or mixed action.

SECTION 139. Section 10 of said chapter 228, as so appearing, is hereby amended by striking out, in lines 2 and 5, the word "demandants" and inserting in place thereof, in each instance, the word: — plaintiffs.

SECTION 140. Said chapter 228 is hereby further amended by striking out sections 11 and 12 and inserting in place thereof the following two sections: —

Section 11. If the defendant in a real or mixed action dies before final judgment, his heir or devisee of the land demanded may, within such time as the court allows, appear and defend the action, which shall be conducted as if commenced against him. If the heir or devisee does not voluntarily appear, the court before

whom the action is pending shall, upon the application of the plaintiff, summon such heir or devisee to appear and defend the action. If any of several defendants in such action dies before final judgment, the action may be prosecuted against the surviving defendants for so much of the land as they hold or claim.

Section 12. If a party to a suit in equity in the probate court dies and the cause by the rules of equity may be revived against or in favor of an executor, administrator, heir, devisee or other person, such representative may, in lieu of proceedings to revive the same, appear or be summoned to prosecute or defend in like manner as in a civil action.

SECTION 141. Chapter 229 of the General Laws is hereby amended by striking out section 6, as most recently amended by section 5 of chapter 238 of the acts of 1958, and inserting in place thereof the following section: —

Section 6. In any civil action brought under section two or five A, damages may be recovered for conscious suffering resulting from the same injury, but any sum so recovered shall be held and disposed of by the executors or administrators as assets of the estate of the deceased.

SECTION 142. Said chapter 229 is hereby further amended by striking out section 11, as amended by section 2 of chapter 298 of the acts of 1960, and inserting in place thereof the following section: —

Section 11. In any civil action in which a verdict is given or a finding made for pecuniary damages for the death, with or without conscious suffering, of any person, whether or not such person was in the employment of the defendant against whom the verdict is rendered or finding made, there shall be added by the clerk of the court to the amount of the damages interest thereon from the date of the writ in the district court or from the date of the commencement of the action in the superior court, even though such interest brings the amount of the verdict or finding beyond the maximum liability imposed by law.

SECTION 143. Section 3 of chapter 230 of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by striking out, in line 4, the words “, in replevin or tort”.

SECTION 144. Section 4 of said chapter 230, as so appearing, is hereby amended by striking out, in lines 1 and 2, the words “in an action of replevin is rendered” and inserting in place thereof the words: — of property is rendered in a civil action.

SECTION 145. Said chapter 230 is hereby further amended by striking out section 5, as amended by chapter 116 of the acts of 1934, and inserting in place thereof the following section: —

Section 5. It shall be unnecessary to remove an executor or administrator in order that an action to enforce a claim in favor of the estate may be brought by an administrator to be appointed in his place, when he refuses to bring such action at the request of an heir, legatee or creditor, or is unable to do so by reason of his interest or otherwise, but an heir, legatee or creditor having

an interest in the enforcement of any such claim may bring a civil action to enforce it for the benefit of the estate in like circumstances and in like manner as a person beneficially interested in a trust fund may bring an action to enforce a claim in favor of such fund, and in case of such action in respect to real estate, it shall not be an obstacle to the action that a license to sell it has not been obtained by the executor or administrator.

SECTION 146. Said chapter 230 is hereby further amended by striking out sections 10 to 13, inclusive, and inserting in place thereof the following four sections: —

Section 10. Upon the return unsatisfied of an execution upon a judgment of a district or probate court against an executor or administrator for a debt due from the estate of the deceased, the court may, upon a suggestion by the creditor of waste, issue a writ of scire facias against the executor or administrator. If the defendant does not appear and show sufficient cause to the contrary, he shall be found guilty of waste and shall be personally liable for the amount thereof, if it can be ascertained, otherwise for the amount due on the original judgment, with interest from the time when it was rendered, and judgment and execution shall be awarded as for his own debt.

Upon the return unsatisfied of an execution upon a judgment of the supreme judicial, superior or land court against an executor or administrator for a debt from the estate of the deceased, the creditor may, by motion or by action in the court which rendered the original judgment, charge the executor or administrator with waste and seek to hold the executor or administrator personally liable for the amount thereof if it can be ascertained, otherwise for the amount due on the original judgment, with interest from the time when it was rendered, and judgment and execution shall be awarded as for his own debt.

Section 11. If an executor or administrator dies or is removed from office during the pendency of an action to which he is a party, it may be prosecuted by or against the administrator de bonis non in like manner as if commenced by or against him; and the provisions of the Massachusetts Rules of Civil Procedure and of chapter two hundred and twenty-eight relative to the appearance, substitution or citation of an administrator and relative to dismissal, nonsuit or default shall apply to such administrator de bonis non.

Section 12. If an executor or administrator dies or is removed after judgment has been rendered for or against him by the district or probate court, such court may issue a writ of scire facias in favor of or against the administrator de bonis non; and if an executor or administrator dies or is removed after judgment has been rendered for or against him by the supreme judicial, superior or land court, such court may upon motion amend such judgment in favor of or against the administrator de bonis non; and a new execution may be issued upon the scire facias or amended judgment in like manner as may be done in favor of or against an

original executor or administrator in case of death of his testator or intestate after a judgment rendered for or against him; except that a judgment against the first executor or administrator for costs for which he was personally liable shall be enforced only against his executor or administrator and not against the administrator de bonis non.

Section 13. If judgment is rendered for or against an executor or administrator, an appeal may be claimed therefrom by or against an administrator de bonis non in like manner as it might have been claimed by or against the executor or administrator who was party to the judgment.

SECTION 146A. Chapter 231 of the General Laws is hereby amended by striking out after the title PLEADING AND PRACTICE, as appearing in the Tercentenary Edition, the following notice: —

[All sections of this chapter, except as otherwise provided, apply to actions at law in the supreme judicial court and superior courts. The following signs against a section number indicate that a section also applies as follows:

- * to civil actions before any district court. See § 141.
- † to real and mixed actions, and to the land court or proceedings therein. See § 142.
- ‡ to the municipal court of the city of Boston. See § 143.
- § to suits in equity and probate proceedings. See § 144.
- || to petitions for damages for taking by eminent domain and for abatement of betterment assessments. See § 145.
- ¶ to suits in equity. See § 146.]

SECTION 147. Said chapter 231 is hereby further amended by striking out section 1, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 1. In the district courts, there shall be three divisions of personal actions: —

First, Contract, which shall include actions formerly known as assumpsit, covenant, and debt, except actions for penalties.

Second, Tort, which shall include actions formerly known as trespass, trespass on the case, trover and actions for penalties.

Third, Replevin.

SECTION 148. Said chapter 231 is hereby further amended by striking out section 1A, inserted by chapter 403 of the acts of 1951, and inserting in place thereof the following section: —

Section 1A. In the district courts, causes of action may be commenced and joined in a single writ when they arise out of the same matter.

SECTION 149. Said chapter 231 is hereby further amended by striking out sections 2 to 4, inclusive, as appearing in the Tercentenary Edition, and inserting in place thereof the following three sections: —

Section 2. In the district courts, in actions of contract for the recovery of money due for manual labor, two or more persons may join in one action against the same defendant, although the claims

are not joint, if the claim of no one of such plaintiffs exceeds twenty dollars; and each plaintiff so joining may recover the amount found to be due him solely. The claim of each plaintiff shall be stated in a separate count, and the court may make such order for trial of the issues as may be most convenient, may enter separate judgments, issue one or more executions and make such order relative to costs as the case requires.

Section 3. In the district courts, joint tenants or tenants in common may join in any action to recover damages for injury to real or personal property, or any one or more of them may sue for his or their damages.

Section 4. In the district courts, all or any of the persons severally liable upon written contracts, including bills of exchange and promissory notes, may be joined in one action. The declaration shall describe the several contracts, and may contain one count against all the defendants, or several counts against the several defendants. The court shall make such order for the separate trial of the issues as may be convenient, and shall enter several judgments according to the several contracts and issue one or more executions.

SECTION 150. Section 4A of said chapter 231 is hereby amended by striking out the first sentence, as appearing in section 1 of chapter 350 of the acts of 1943, and inserting in place thereof the following sentence: — In the district courts, two or more persons may join in one action as plaintiffs if they assert any right to recover jointly, severally, or in the alternative, in respect of or arising out of the same matter, transaction, occurrence, or series of matters, transactions or occurrences.

SECTION 151. Section 4B of said chapter 231, as most recently amended by chapter 494 of the acts of 1973, is hereby further amended by striking out, in line 1, the word "Before" and inserting in place thereof the words: — In the district courts, before.

SECTION 152. Said chapter 231 is hereby further amended by striking out section 5, as amended by section 2 of chapter 141 of the acts of 1945, and inserting in place thereof the following section: —

Section 5. In the district courts, the assignee of a non-negotiable legal chose in action which has been assigned in writing may maintain an action thereon in his own name, but subject to all defenses and rights of counter-claim, recoupment or set-off to which the defendant would have been entitled had the action been brought in the name of the assignor except as otherwise provided in section 9-318 of chapter one hundred and six.

SECTION 153. Said chapter 231 is hereby further amended by striking out section 6, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 6. In an action for the recovery of an outstanding debt or claim sold or assigned by an executor or administrator under a license of the probate court costs shall be recovered by or against the plaintiff but not against the executor or administrator. In the district court or probate court such action or proceeding shall

be brought in the name of the purchaser or assignee, and the fact of the sale shall be set forth in the writ, declaration, bill or petition, and the defendant may avail himself of any defense which would have been open to him upon an action or proceeding brought by the executor or administrator.

SECTION 154. Said chapter 231 is hereby further amended by striking out section 6A, as appearing in section 1 of chapter 372 of the acts of 1939, and inserting in place thereof the following section: —

Section 6A. In the district courts, at any time before or during the trial of an action by a married woman or minor for damages for personal injuries, the husband of such woman or the parent or guardian of such minor, if he has paid or incurred medical expenses, on account of such injuries, may upon motion be admitted as party plaintiff, and, if liability is established, may recover a separate judgment for such medical expenses, in which case the amount thereof shall not be included in the judgment recovered by the original plaintiff. The claim for such expenses shall be stated in a separate count. The court may issue one or more executions and make such order relative to costs as the case requires.

SECTION 155. Said chapter 231 is hereby further amended by striking out section 6B, as most recently amended by section 3 of chapter 298 of the acts of 1960, and inserting in place thereof the following section: —

Section 6B. In any action in which a verdict is rendered or a finding made or an order for judgment made for pecuniary damages for personal injuries to the plaintiff or for consequential damages, or for damage to property, there shall be added by the clerk of the court to the amount of damages interest thereon from the date of commencement of the action even though such interest brings the amount of the verdict or finding beyond the maximum liability imposed by law.

SECTION 156. Said chapter 231 is hereby further amended by striking out section 6C, as appearing in chapter 763 of the acts of 1968, and inserting in place thereof the following section: —

Section 6C. In all actions based on contractual obligation, upon a verdict, finding or order for judgment for pecuniary damages, interest shall be added by the clerk of the court to the amount of damages, at the contract rate, if established, or at the rate of six per cent per annum, from the date of the breach or demand. If the date of the breach or demand is not established, interest shall be added by the clerk of court, at such contractual rate, or at the rate of six per cent per annum from the date of the commencement of the action.

SECTION 157. Section 7 of said chapter 231 is hereby amended by inserting after the word "In", in line 1, as appearing in the Tercentenary Edition, the words: — the district courts, in.

SECTION 158. Section eight of said chapter two hundred and thirty-one is hereby repealed.

SECTION 159. Said chapter 231 is hereby further amended by

striking out sections 9 to 17, inclusive, and inserting in place thereof the following ten sections: —

Section 9. In an action to recover possession of real property for a term of years or other interest, if the defendant is wrongfully in possession it shall not be material how he obtained such possession.

Section 10. In the district courts, in actions of tort for breaking and entering the plaintiff's close, the place of the alleged trespass shall be designated in the declaration by name, boundaries or other sufficient description.

Section 11. In the district courts, in actions of contract or of tort, unless an arrest of the person is made or except as provided in section forty-four of chapter two hundred and twenty-three, the writ need not contain a declaration or any description of the cause of action in which it is intended to declare, except the name of the division thereof; but if the declaration is not inserted before the service of the writ, the defendant shall, upon motion, be entitled as of right to a postponement for at least seven days after the return day.

Section 12. In the district courts, the declaration, unless inserted in the writ, may be filed in the clerk's office on or before the return day of the writ. In an action or suit in the district or probate courts in which there has been an attachment of property or an injunction restraining the transfer or encumbering thereof a copy of the declaration and bill of particulars, when such bill is necessary, or of the bill or petition shall be furnished to the defendant or his attorney within three days after a written demand therefor upon the plaintiff or his attorney, and in case of failure so to do, the cause may, upon motion, be dismissed with costs.

Section 13. In the district courts, if the plaintiff fails to enter his writ, or if he fails either to insert a declaration in the writ or to file it in the clerk's office on or before the return day of the writ, the action may at any time, upon motion of the defendant, be dismissed with costs; but the court may upon terms allow the plaintiff, at any time before the next regular return day, to enter his writ and file his declaration.

Section 13A. Any judgment entered in an action upon a contract, promissory note or other instrument in which or in a memorandum or writing relating to which is contained a stipulation, whereby the defendant in such action waived or agreed to waive or authorized another person to waive or agree to waive the issue or service of process in such an action shall be set aside or vacated on motion of the defendant, unless it appears that service in the usual manner was had upon him or that the plaintiff sent to him by registered mail at least seven days before the entry of such action a notice of his intention to enter the same on said day and at the time of entry filed an affidavit of giving notice as aforesaid, which affidavit shall be prima facie evidence of the giving thereof. Any stipulation in a contract, promissory note or other instrument, or in any memorandum or writing relating thereto, whereby a party

thereto agrees to confess judgment in any action which may be brought thereon or authorizes or agrees to authorize another person to confess judgment as aforesaid shall be void and any judgment by confession taken in pursuance of such a stipulation shall be set aside or vacated on motion of the defendant. When a judgment is set aside or vacated under the authority of this section, all outstanding executions issued thereon shall be stayed or superseded without security.

Section 14. In the district courts, if one of the common counts is used, the plaintiff shall file a bill of particulars with his writ when it is entered. The items in such bill shall be numbered consecutively, and the bill shall be part of the declaration and be answered as such.

Section 15. In the district courts, either party may demur to the pleadings of the adverse party, but no mere defects of form in the declaration or in the subsequent pleadings shall be assigned as causes for demurrer. If the adverse party does not amend the pleadings demurred to, he shall be held to have joined in demurrer.

Section 16. In the district courts, the defendant may demur to the declaration or to one or more counts therein, and shall assign specifically the causes of demurrer.

Section 17. In the district courts, the plaintiff may demur to the answer or to so much thereof as applies to one or more counts in the declaration, and shall assign specifically the causes of demurrer.

SECTION 160. Section 18 of said chapter 231, as so appearing, is hereby amended by striking out, in line 1, the word "Demurrers" and inserting in place thereof the words: — In the district courts, demurrers.

SECTION 161. Said chapter 231 is hereby further amended by striking out sections 19 to 28, inclusive, as so appearing, and inserting in place thereof the following ten sections: —

Section 19. In the district courts, if a demurrer has been sustained, overruled or withdrawn, the court shall make an order relative to the filing of an answer or replication or a trial of the facts.

Section 20. In the district courts, a defense to any action, which formerly might have been made by plea in abatement, may be made by answer in abatement.

Section 21. If an answer in abatement is overruled on demurrer, or if, in consequence of such answer in abatement, the plaintiff amends, the defendant, within such time as the court orders, shall in the district courts answer to the merits, and in the land court in a real or mixed action plead to the merits.

Section 22. In a personal action in the district courts, the defendant shall file an answer to the declaration. In real and mixed actions in the land court which are not governed by the Massachusetts Rules of Civil Procedure he may plead the general issue, and may give in evidence thereunder all matters which he might formerly have pleaded in bar.

Section 23. In the district courts, two or more defendants making the same defense may answer or plead jointly. Different consistent defenses may be separately stated in the same answer or plea.

Section 24. When a case is taken to the superior court upon appeal from the judgment of the district court the superior court may order the parties to replead in accordance with the Massachusetts Rules of Civil Procedure and only those issues as are raised by such pleadings shall be tried in the superior court.

Section 25. In the district courts, an answer shall deny in clear and precise terms every substantive fact intended to be denied in each count of the declaration separately, or it shall declare the defendant's ignorance of the fact, so that he can neither admit nor deny but leaves the plaintiff to prove it.

Section 26. In the district courts, in answering the common counts and the count on an account annexed, the defendant shall answer specifically every item contained in the bill of particulars or account annexed, but he may make one and the same allegation or denial relative to any number of items to which such allegation or denial is applicable, specifying the number of the items thus answered together, if less than the whole. If the defendant denies that an item is due or payable, or that he owes the plaintiff as alleged, he shall state all the substantive grounds on which he intends to rest such denial, and shall specify whether the whole or part of such item or demand is denied, and if a party only is denied, he shall specify such part.

Section 27. In the district courts, a denial by answer, affidavit or otherwise of a time, amount, quantity or place alleged shall declare whether it is applicable to every time, amount, quantity or place or not; and if not, what time, amount, quantity or place it admits.

Section 28. In the district courts, an answer shall state clearly and precisely each substantive fact intended to be relied upon in avoidance of the action, and if it sets up the statute of limitations, the statute of frauds or any other legal bar, the defendant shall have the benefit of such defense although the answer does not deny the facts set forth in the declaration.

SECTION 162. Said chapter 231 is hereby further amended by striking out section 29, as amended by chapter 263 of the acts of 1960, and inserting in place thereof the following section: —

Section 29. In the district courts, a signature to an instrument declared on or set forth as a cause of action or as a ground of defense or set-off shall be taken as admitted unless the party sought to be charged thereby files in court, within the same length of time after such instrument is pleaded as is allowed for an answer or within such further time as the court may allow on motion and notice, a specific denial of the genuineness thereof and a demand that it shall be proved at the trial.

SECTION 163. Said chapter 231 is hereby further amended by striking out section 30, as amended by chapter 179 of the acts of

1949, and inserting in place thereof the following section: —

Section 30. In the district courts, if it is alleged in any civil action or proceeding that a party is an executor, administrator, guardian, trustee, assignee, conservator or receiver or is a corporation, or that a place is a public way, such allegation shall be taken as admitted unless the party controverting it files in court, within the time allowed for the answer thereto, or within ten days after the filing of the paper containing such allegation, or within such further time as the court may allow on motion and notice, a special demand for its proof.

SECTION 164. Said chapter 231 is hereby further amended by striking out sections 31 to 39, inclusive, as appearing in the Tercentenary Edition, and inserting in place thereof the following nine sections: —

Section 31. In the district courts, the defendant may allege in defense any facts which would entitle him in equity to be absolutely and unconditionally relieved against the plaintiff's claim or cause of action or against a judgment recovered by the plaintiff in such action.

Section 32. In actions in the district courts, instruments relied on in an answer or in a subsequent pleading shall be set out, or copies of the originals filed, in the manner provided for declaring thereon in the eleventh clause of section seven.

Section 33. In the district courts, if a conditional obligation, contract or grant is relied on in an answer or subsequent pleading, the condition shall be considered a part of the instrument, and similar averments shall be required in pleading on the same as are required by the twelfth clause of section seven.

Section 34. In the district courts, the plaintiff may, at any time before trial, file a replication to the answer, clearly and specifically stating any facts in reply to new matter therein; but, except as herein provided, no further pleading shall be required after the answer. Any new matter in avoidance of the action which the answer contains shall be considered to be denied by the plaintiff without a replication, unless the court, upon motion of the defendant, requires him to reply thereto, and to state what part, if any, he admits or denies.

Section 35. In the district courts, the probate courts, and in proceedings in the land court which are not governed by the Massachusetts Rules of Civil Procedure, the plaintiff may, in reply to a defense alleged by the defendant, allege any facts which would in equity avoid such defense or which would entitle the plaintiff to be absolutely and unconditionally relieved in equity against such defense.

Section 36. In the district court, an answer or replication may allege facts occurring after the commencement of the action, and the court may allow a supplemental declaration, answer or replication to be filed, alleging material facts which occurred or came to the knowledge of the party after the former declaration, answer or replication was filed.

Section 37. In the district courts, a party may allege a fact or title alternatively.

Section 38. In the district courts, the allegations and denials of each party shall be so construed by the court as to secure as far as possible substantial precision and certainty and to discourage vagueness and loose generalities. A substantive fact alleged with substantial precision and certainty and not denied in clear and precise terms shall be held to be admitted. No party shall be required to state evidence, or to disclose the means by which he intends to prove his case.

Section 39. In the district courts, a personal action shall be considered at issue when the pleadings are closed. Real and mixed actions in the land court which are not governed by the Massachusetts Rules of Civil Procedure shall be considered at issue when the plea is filed.

Section 165. Section 40 of said chapter 231, as so appearing, is hereby amended by striking out, in line 1, the words "in an action at law" and inserting in place thereof the words: — in an action in the district court.

SECTION 166. Section 41 of said chapter 231, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence: — In the district courts, whenever two or more persons claim any interest in property, or the proceeds or value of, or damages for the taking, detention or conversion of, any property deposited with any public warehouseman, or other depositary for hire, or with any pledgee as security for a loan, such bailee or pledgee may, either in any action against him for the recovery of such property, or for such proceeds, value or damages, or as an original suit brought in the judicial district where such property is situated or was last held by such bailee or pledgee, file a petition stating the names and residences of all known claimants.

SECTION 167. Said chapter 231 is hereby further amended by striking out sections 42 and 43, as appearing in the Tercentenary Edition, and inserting in place thereof the following two sections: —

Section 42. Original writs in the district courts, complaints in the supreme judicial, superior, probate and land courts, the housing court of the city of Boston and the housing court of the county of Hampden, and writs of scire facias by private persons on judgment or recognizance in the district or probate courts, in which the plaintiff is not an inhabitant of the commonwealth, shall before the filing or entry thereof, be endorsed by a responsible person who is such an inhabitant; but if one of the plaintiffs is such an inhabitant, the writ or complaint need not be so endorsed. Every endorser, in the case of avoidance or inability of the plaintiff, shall be liable to pay all costs awarded against the plaintiff if an action therefor is commenced within one year after the original judgment.

Section 43. If a plaintiff, not an inhabitant of the commonwealth, fails, by accident, mistake or inadvertence, to have his writ or complaint endorsed as required by the preceding section,

the court may at any stage of the case, upon terms, allow him to procure an endorser with the same effect as if the writ or complaint had been endorsed before the filing or entry thereof.

SECTION 168. Section forty-six of said chapter two hundred and thirty-one is hereby repealed.

SECTION 169. Said chapter 231 is hereby further amended by striking out sections 49 to 54, inclusive, as appearing in the Tercentenary Edition, and inserting in place thereof the following six sections: —

Section 49. In the district courts, no writ, process, action, declaration or other proceeding shall be abated, arrested, quashed or reversed for any circumstantial errors or mistakes if by it the person and case may be rightly understood by the court; or for defect or want of form only.

Section 50. In the district courts, if an issue of fact is found against the defendant upon a plea or answer in abatement, final judgment, subject to section fifty-three, shall be rendered against him.

Section 51. In the district courts, the probate courts, and in proceedings in the land court which are not governed by the Massachusetts Rules of Civil Procedure, the court may, at any time before final judgment except as otherwise provided, allow amendments introducing a necessary party, discontinuing as to a party or changing the form of the action, and may allow any other amendment in matter of form or substance in any process, pleading or proceeding, which may enable the plaintiff to sustain the action for the cause for which it was intended to be brought, or enable the defendant to make a legal defense.

Section 52. In an action in the district courts, the probate courts, and in proceedings in the land court which are not governed by the Massachusetts Rules of Civil Procedure, the court may allow a party to whose pleadings a demurrer has been filed to amend, upon terms, within such time as it orders.

Section 53. In the district courts, if the defect upon which a plea or answer in abatement is founded is capable of amendment, the court may allow the plaintiff to amend, upon terms. The court may allow the defendant to amend an answer in abatement or to answer over by special order of the court for good cause shown, and not otherwise.

Section 54. In the district courts, if a new defendant is introduced by amendment, the plaintiff may take out against him a new writ of capias and attachment or of summons in such form, and returnable at such time, as the court orders. Upon service and return of such new writ, like proceedings may be had as if the person named therein had been originally made a party.

SECTION 170. Section fifty-five of said chapter two hundred and thirty-one is hereby repealed.

SECTION 171. Said chapter 231 is hereby further amended by striking out sections 56 to 58, inclusive, as appearing in the Tercentenary Edition, and inserting in place thereof the following three sections: —

Section 56. The district courts may allow formal defects or imperfections in the record or proceedings to be corrected or amended after judgment has been rendered, if justice so requires and the amendment is consistent with the judgment.

Section 57. In the district courts, if the defendant, having been duly served with process, fails to appear or answer thereto, his default shall be recorded and judgment shall be rendered for the plaintiff with costs. The court may, for good cause shown, extend the time for entering an appearance, and may, in its discretion and upon terms, take off a default at any time before judgment.

Section 58. In the district courts, upon entry of a default or nonsuit, the clerk shall forthwith give written notice thereof, in such manner as the court by rule shall direct, to the attorney of record, if any, of each party against whom such default or nonsuit is entered. If a party has no attorney of record, and if, in the case of the entry of a default, the officer's return does not show that personal service of the writ has been made upon him, the notice shall be given to the party.

SECTION 172. Section 58A of said chapter 231, as so appearing, is hereby amended by striking out, in line 2, the words "of tort, the payment of the judgment wherein" and inserting in place thereof the words: — in which payment of the judgment.

SECTION 173. Said chapter 231 is hereby further amended by striking out section 59, as most recently amended by section 1 of chapter 491 of the acts of 1965, and inserting in place thereof the following section: —

Section 59. In the district courts, in any action of contract, except an action against an executor or administrator for liability of the deceased, at any time after the completion of the pleadings counsel for either party may file an affidavit that in his belief there is no genuine issue of material fact but only questions of law in connection with all or some part of the action or of some issue determinative thereof, and may move for an immediate entry of judgment thereon. Said motion may be accompanied by affidavits on personal knowledge of admissible facts as to which it appears affirmatively that the affiants would be competent to testify. The facts stated in the accompanying affidavits shall be taken to be admitted for the purpose of the motion unless within twenty-one days, or such further time as the court may order, contradictory affidavits are filed, or the opposing party shall file an affidavit showing specifically and clearly reasonable grounds for believing that contradiction can be presented at the trial but cannot be furnished by affidavits. Copies of all motions and affidavits hereunder shall be furnished upon filing to opposing counsel. If admissions in the pleadings, interrogatories, or admissions under section sixty-nine, stipulations or affidavits hereunder show affirmatively, that except as to the amount of damages no genuine issue of material fact exists and that there is nothing to be decided except questions of law, an order for default, or judgment for the moving party, shall forthwith be entered if he shall be entitled thereto as a matter of

law, subject to an assessment of damages, if required.

SECTION 174. Said chapter 231 is hereby further amended by striking out section 59A, as appearing in section 2 of chapter 674 of the acts of 1955, and inserting in place thereof the following section: —

Section 59A. In any action before the supreme judicial court or superior court, the court may, on motion for cause shown, advance the action for a speedy trial. If an action has been removed by the defendant from a district court and the court finds either that the ad damnum is not more than two thousand dollars, or that the plaintiff seeks to recover solely for his personal labor, with or without interest, the court shall, upon motion, advance such action for speedy trial.

SECTION 175. Section 59B of said chapter 231, as appearing in the Tercentenary Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence: — In the district courts, in an action of contract where the plaintiff seeks to recover a debt or liquidated demand, he may, at any time after the defendant has appeared on affidavit by himself or by any other person who can swear to the facts of his own knowledge, verifying the cause of action and stating that in his belief there is no defense thereto, move for the immediate entry of judgment for the amount of the debt or demand, together with interest if any is claimed.

SECTION 176. Said chapter 231 is hereby further amended by striking out section 59C, as amended by chapter 69 of the acts of 1960, and inserting in place thereof the following section: —

Section 59C. An action pending before the superior court which alleges malpractice, error or mistake against a physician, surgeon, dentist, optometrist, hospital or sanitarium shall, at the request of either party, be advanced by the court so that it may be heard and determined with as little delay as possible.

SECTION 177. Section 59D of said chapter 231, as appearing in chapter 139 of the acts of 1952, is hereby amended by striking out, in line 2, the words “in law or in equity or otherwise”.

SECTION 178. Sections sixty and sixty A of said chapter two hundred and thirty-one are hereby repealed.

SECTION 179. Section 61 of said chapter 231, as appearing in the Tercentenary Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence: — Any party, in the district courts, after the entry of a writ, or in the probate courts, after the filing of any bill or petition, may interrogate an adverse party for the discovery of facts and documents admissible in evidence at the trial of the case.

SECTION 180. Section 68 of said chapter 231, as so appearing, is hereby amended by striking out, in line 1, the word “Every” and inserting in place thereof the words: — In the district and probate courts, every.

SECTION 181. Section 69 of said chapter 231 is hereby amended by striking out the first sentence, as appearing in chapter 450 of

the acts of 1946, and inserting in place thereof the following sentence: — In the district courts, a party by written demand filed in the clerk's office and notice given by copy thereof by registered mail, return receipt requested, to the other party or his attorney, not less than ten days before the trial of the action or suit, may call upon the other party to admit, for the purposes of the case only, any material fact or facts or the execution of any material paper or document which the party filing the demand intends to use at the trial.

SECTION 182. Said chapter 231 is hereby further amended by striking out sections 70 and 71, as appearing in the Tercentenary Edition, and inserting in place thereof the following two sections: —

Section 70. In the district and probate courts, the court may in all cases order either party to file a statement of all particulars necessary to give to the adverse party and to the court reasonable knowledge of the nature and grounds of the action or defense.

Section 71. In the district courts, probate courts, and in proceedings in the land court which are not governed by the Massachusetts Rules of Civil Procedure, the court may make orders allowing amendments before trial, or a supplemental declaration, answer or replication, or any other interlocutory order necessary to prepare the case for trial but the court shall make such rules relative to notice, the times and places for motions at chambers, and other matters, as shall from time to time be necessary.

SECTION 183. Said chapter 231 is hereby further amended by striking out section 72, as amended by section 50 of the acts of 1958, and inserting in place thereof the following section: —

Section 72. In the district courts, and in proceedings in the land court which are not governed by the Massachusetts Rules of Civil Procedure the parties may make agreements relative to amendments and the time for filing papers, which shall be equivalent to an order of the court to the same effect. Any order mentioned in the preceding section may be entered by consent signed by the parties or their attorneys; but no agreement of attorneys, relative to an action or proceeding shall be valid unless in writing.

SECTION 184. Said chapter 231 is hereby further amended by striking out sections 74 to 76, inclusive, as appearing in the Tercentenary Edition, and inserting in place thereof the following three sections: —

Section 74. If the defendant in an action in the district court wherein damages only are sought to be recovered, offers in court and by a writing consents to be defaulted, and to have judgment rendered against him as damages for an amount therein specified, the writing and the time of its filing shall be entered of record; and if the plaintiff within ten days, or such further time as the court allows, after receipt of notice thereof, accepts such offer, the court shall render judgment accordingly, with costs to the date of the notice.

Section 75. In an action in the district court if the plaintiff does not elect to accept such offer, and does not recover as damages

an amount, excluding interest from the date of the offer, larger than the amount so offered by the defendant, the plaintiff shall have judgment for his costs after said date.

Section 76. In an action in the district court if a demurrer is overruled because it appears to the justice hearing it to be frivolous, immaterial or intended for delay, the case shall proceed to judgment as if no demurrer had been filed, and execution may be awarded or stayed upon terms. If execution is not awarded, any security taken shall stand as if no judgment had been entered until an order is made for final judgment.

SECTION 185. Section seventy-seven of said chapter two hundred and thirty-one is hereby repealed.

SECTION 186. Section 79 of said chapter 231, as appearing in the Tercentenary Edition, is hereby amended by inserting after the word "trial", in line 1, the words: — in the district court.

SECTION 187. Section eighty of said chapter two hundred and thirty-one is hereby repealed.

SECTION 188. Said chapter 231 is hereby further amended by striking out section 82, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 82. In counties containing two or more shire towns, the supreme judicial or the superior court at the sitting held on or next after the filing of the defendant's answer may designate the shire town where the action shall be tried, and it shall not then be put on the trial list for sittings held in any other town of that county except by agreement of the parties.

SECTION 189. Section eighty-four of said chapter two hundred and thirty-one is hereby repealed.

SECTION 190. Said chapter 231 is hereby further amended by striking out sections 86 to 88, inclusive, and inserting in place thereof the following three sections: —

Section 86. In an action in the district court if the plaintiff fails to introduce evidence at the trial in support of a count in the declaration, it shall, if not wholly or partly admitted by the answer, be stricken out; and the court may, either of its own motion or upon motion of a party, require unnecessary counts and statements to be stricken out of the pleadings, and may impose terms.

Section 87. In any civil action pleadings shall not be evidence on the trial, but the allegations therein shall bind the party making them.

Section 88. An offer of judgment made under the provisions of the Massachusetts Rules of Civil Procedure or pursuant to section seventy-four of this chapter which is not accepted shall not be evidence against the party making it, either in a subsequent proceeding in the action in which it is made or in another action or suit.

SECTION 191. Section 90 of said chapter 231, as so appearing, is hereby amended by striking out, in line 1, the word "If" and inserting in place thereof the following words: — In an action in the district court, if.

SECTION 192. Said chapter 231 is hereby further amended by striking out section 91, as amended by section 1 of chapter 365 of the acts of 1943, and inserting in place thereof the following section: —

Section 91. In an action of slander or libel, if the defendant alleges that the words spoken or published were true, such allegation, although not supported by the evidence, shall not of itself be proof of the malice alleged in the complaint, nor shall statements of the defendant differing in import from those alleged be admissible to establish his malice unless such statements were published in pursuance of a general scheme to defame or otherwise injure the plaintiff. If the plaintiff proposes to introduce evidence of statements of the defendant other than those contained in his pleadings, he shall give the defendant written notice of such intention, specifying the date and content of each such statement, at least fourteen days before trial begins, or earlier if the court so orders; and, if any such statement is introduced in evidence, the defendant shall be permitted to prove that it was true, or was privileged, or any other facts relating thereto which tend to negate malice.

SECTION 193. Said chapter 231 is hereby further amended by striking out sections 95 to 97, inclusive, and inserting in place thereof the following three sections: —

Section 95. In an action upon a judgment obtained by default and without the knowledge of the defendant, brought within six years after the rendition thereof, the court may, in its discretion and upon terms, allow the defendant to show in defense any payment, satisfaction or extinguishment of the claim, prior to the obtaining of such judgment, or any matter of fraud, which in either case he might have shown in the original suit upon a motion for relief from judgment or, in the district court, upon a writ of review.

Section 96. On motion made pursuant to the Massachusetts Rules of Civil Procedure, and upon such terms as are just, a court may relieve a party or his legal representative from a final judgment. If no attachment was made in the action, such relief may be granted and execution stayed without security; but if there was attachment, the amount of the bond shall be fixed at the actual value of the property attached, as agreed by the parties or determined by the court. Liability upon an attachment made or bond given in the original action shall not continue after the judgment has been vacated, except that if the prevailing party has been relieved from judgment under this section within thirty days of the entry thereof, such liability shall, if a subsequent judgment is rendered, continue during such time thereafter as it would have continued upon the original judgment had it not been vacated.

Section 97. Unless a written waiver of the right of appeal has been filed by all the parties, a party aggrieved by the judgment of a district court in a civil action which could not have been removed to the superior court may appeal therefrom to said court within six days after the entry thereof. In such case no execution shall be

issued on the judgment appealed from. The case shall be entered in the superior court pursuant to the provisions of section one hundred and one and shall there be tried and determined as if originally entered therein.

SECTION 194. The first paragraph of section 102C of said chapter 231, as appearing in section 3 of chapter 369 of the acts of 1958, is hereby amended by striking out, in line 5, the words "action of tort or contract" and inserting in place thereof the words: — civil action.

SECTION 195. The third paragraph of said section 102C of said chapter 231, as appearing in chapter 303 of the acts of 1960, is hereby amended by striking out the last sentence and inserting in place thereof the following sentence: — Judgment shall be entered accordingly after the expiration of ten days from the filing of such finding or decision or order of dismissal, unless said justice for cause shown otherwise orders.

SECTION 196. The first sentence of the third paragraph of section 108 of said chapter 231, as appearing in the Tercentenary Edition, is hereby amended by striking out, in line 51, the words "after August thirty-first, nineteen hundred and twelve", and in lines 52 and 53, the words "after September thirtieth, nineteen hundred and twenty-two".

SECTION 197. Section 109 of said chapter 231, as so appearing, is hereby amended by striking out the last four sentences and inserting in place thereof the following three sentences: — The completion of such appeal shall be in accordance with the Massachusetts Rules of Appellate Procedure. The expense of the preparation of the necessary papers and copies of papers and their transmission, and the entry fee in the supreme judicial court, shall be taxed in the bill of costs of the prevailing party, if he has paid it. Section twenty-five of chapter two hundred and sixty-one shall apply to such appealed cases.

SECTION 198. Said chapter 231 is hereby further amended by striking out section 110, as so appearing, and inserting in place thereof the following section: —

Section 110. The appellate division of each district court shall have the powers of amendment of the trial court; shall have discretionary power to take further testimony and to render a decision based on such testimony; to decide issues of fact dependent upon issues of law or to direct a trial of such fact issues by a justice of the district court; to draw inferences from cases stated by agreement of the parties; and to render decision according to the justice of the case.

No new trial shall be granted in any civil action or proceeding in any district court on the ground of improper admission or rejection of evidence, or for any error as to any matter of pleading or procedure if the appellate division deems that the error complained of has not injuriously affected the substantial rights of the parties; and, if it appears to the appellate division that said error affects part only of the matter in controversy or some or only one of the

parties, the court may direct final judgment as to part thereof, or some or one only of the parties, and may direct a new trial as to the other part only or as to the other parties.

SECTION 199. Said chapter 231 is hereby further amended by striking out section 111, as amended by section 11 of chapter 591 of the acts of 1973, and inserting in place thereof the following section: —

Section 111. A justice of the superior or land court or the judge of the housing court of the city of Boston or the housing court of the county of Hampden, after verdict or after a finding of the facts by the court, may report the case for determination by the appeals court.

If a justice of the superior court is of the opinion that an interlocutory finding or order made by him so affects the merits of the controversy that the matter ought to be determined by the appeals court before any further proceedings in the trial court, he may report such matter to the appeals court, and may stay all further proceedings except such as are necessary to preserve the rights of the parties.

A justice of the superior court may, upon request of the parties, in any case where there is agreement as to all the material facts, report the case to the appeals court for determination without making any decision thereon.

SECTION 200. Said chapter 231 is hereby further amended by striking out section 112, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 112. A justice of the supreme judicial court, after a finding of facts by the court may report a case for determination by the court or the appeals court.

If a justice of the supreme judicial court is of the opinion that an interlocutory finding or order made by him so affects the merits of the controversy that the matter ought to be determined by the full court or the appeals court before any further proceedings in the trial court, he may report such matter to either court, and may stay all further proceedings except such as are necessary to preserve the rights of the parties.

A justice of the supreme judicial court may, upon request of the parties, in any case where there is agreement as to all material facts, report the case to the full court or the appeals court without making any decision thereon.

SECTION 201. Said chapter 231 is hereby further amended by inserting after said section 112 the following two sections: —

Section 112A. Proceedings before the appeals court or the full court of the supreme judicial court upon a report pursuant to the two preceding sections shall be governed by the Massachusetts Rules of Appellate Procedure. The report shall constitute a notice of appeal within the meaning of said rules, and the entry of such report shall constitute the filing of a notice of appeal for purposes of computing time thereunder. The party aggrieved by an interlocutory finding or order shall be treated as the appellant; the

plaintiff shall be treated as the appellant whenever the whole case is reported.

Section 112B. In civil actions, formal exceptions to rulings or orders of any court are unnecessary; but all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection shall not thereafter prejudice him.

SECTION 202. Said chapter 231 is hereby further amended by striking out sections 113 to 119, inclusive, and inserting in place thereof the following seven sections: —

Section 113. A party aggrieved by a final judgment of the superior court, the land court, the housing court of the city of Boston or the housing court of the county of Hampden, may appeal therefrom to the appeals court or, subject to the provisions of section ten of chapter two hundred and eleven A, to the full court of the supreme judicial court.

Section 114. A party aggrieved by a final judgment of a single justice of the supreme judicial court may appeal therefrom to the full court of the supreme judicial court.

Section 115. Upon an appeal the appeals court or the supreme judicial court shall affirm, reverse, or modify the judgment appealed from. Upon reversal of a final judgment either court may remand a cause to the trial court which entered the judgment appealed from with necessary and proper directions for further proceedings, or may render such judgment as the court below should have rendered.

No execution shall issue during the pendency of an appeal. In the event that execution has issued before the filing of a notice of appeal, upon the filing of such notice the clerk shall notify the officer holding the execution, and all further proceedings thereon shall be stayed. Nothing in this section shall be construed to impair the authority of a justice of either court to order a stay of execution upon such terms as are just.

Section 116. Upon an appeal from a final judgment, the justice of the court by whom it was made may make such orders staying the enforcement of the judgment in an action for an injunction or appointment of a receiver as are needful for the protection of the rights of the parties, until the appeal shall be heard by the appellate court. Such order may be modified or vacated by the order of the appellate court, upon motion, after the appeal is taken.

Section 117. After an appeal has been taken from a final judgment of the superior court, the housing court of the city of Boston or the housing court of the county of Hampden, the appellate court may, by an order, on terms or otherwise, suspend the execution or operation of the final judgment appealed from, pending the appeal, and may modify or annul any order made for the protection of the rights of the parties, pending the appeal; but,

until such order has been modified or annulled, the justice of the superior court by whom the final judgment appealed from was made, or any other justice of said court, or the judge of the housing court of the city of Boston or of the housing court of the county of Hampden, by whom the judgment appealed from was made, may make any proper interlocutory orders, pending such appeal, including orders for the appointment of receivers, of injunction, of prohibition, and orders for continuing in force such orders previously made, or for modifying or dissolving them. The justice or judge who makes any such interlocutory orders may enforce them by appropriate proceedings, pending the appeal.

Section 118. A party aggrieved by an interlocutory order of a justice of the superior court or the judge of the housing court of the city of Boston or the judge of the housing court of the county of Hampden, may file a petition in the appropriate appellate court seeking relief from such order. The appellate court may, in its discretion, grant the same relief as an appellate court is authorized to grant pending an appeal under section one hundred and seventeen. The filing of a petition hereunder shall not suspend the execution of the order which is the subject of the petition, except as otherwise ordered by the appellate court.

Section 119. No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or anything done or omitted by the trial court or by any of the parties is ground for modifying or otherwise disturbing a judgment or order unless the appeals court or the supreme judicial court deems that the error complained of has injuriously affected the substantial rights of the parties. If either court finds that the error complained of affects only one or some of the issues or parties involved it may affirm the judgment as to those issues or parties unaffected and may modify or reverse the judgment as to those affected.

SECTION 203. Sections one hundred and twenty, one hundred and twenty-one, one hundred and twenty-two and one hundred and twenty-three of said chapter two hundred and thirty-one are hereby repealed.

SECTION 204. Said chapter 231 is hereby further amended by striking out sections 124 and 125, as appearing in the Tercentenary Edition, and inserting in place thereof the following two sections: —

Section 124. Whenever a question in dispute at the trial of an issue of fact in any civil action depends upon the decision of a question of law, the appeals court or the full bench of the supreme judicial court, upon appeal may, if satisfied that it has before it all the facts necessary for determining the question in dispute, direct that judgment be entered or that such other action be taken as shall accord with the determination of such court; or if either court shall be of the opinion that it has not before it sufficient facts to determine said question, it may direct such issues or questions as it shall think proper to be tried before a jury if the case be a jury case, or otherwise before a judge, and may direct in the alternative

the action to be taken upon the verdict or finding. When any such question of law shall arise in a trial, the judge shall, by leaving appropriate questions to the jury, or by his own findings where the trial is without a jury ascertain so far as is practicable all the facts both as to liability and damages necessary on any theory of the law to enable an appellate court to make the proper final disposition of the case, unless in the opinion of the court such a course is inexpedient under the circumstances of the case.

Section 125. Upon appeal in a civil action the appeals court and supreme judicial court shall have all the powers of amendment of the court below; and whenever objections have been taken to the exclusion of evidence, or where the alleged error arises from the omission at the trial of some fact which, under the circumstances of the case, may subsequently be proved without involving any question for a jury, and without substantial injustice to either party the appellate courts shall have full discretionary authority to cause such further testimony to be taken as it deems necessary, either by oral examination in court, by reference, by affidavit or by deposition, and both courts shall have power to render any judgment and to make any order that ought to have been made upon the whole case.

SECTION 205. Sections one hundred and twenty-six, one hundred and twenty-eight, one hundred and twenty-nine, one hundred and thirty-one, one hundred and thirty-three, one hundred and thirty-four, one hundred and thirty-five, one hundred and thirty-six and one hundred and thirty-seven of said chapter two hundred and thirty-one are hereby repealed.

SECTION 206. Section 132 of said chapter 231, as appearing in the Tercentenary Edition, is hereby amended by inserting after the word "or", in line 5, the words: — the appeals court or, and by striking out, in line 6, the word "exceptions" and inserting in place thereof the word: — appeal.

SECTION 207. Said chapter 231 is hereby further amended by striking out sections 138 to 140, inclusive, as appearing in the Tercentenary Edition, and inserting in place thereof the following three sections: —

Section 138. No subsequent attaching creditor or purchaser of property attached, other than parties to the record, shall be bound by an amendment of the pleadings which substantially affects his rights unless he has had due notice of the motion for leave to amend and unless he has had an opportunity to be heard thereon. Such persons shall also have the right of appeal.

Section 139. If a corporation is a party to an action or proceeding referred to in this chapter, all motions, pleadings, or other papers requiring the signature or oath of the party may be signed or sworn to in behalf of the corporation by an officer or agent thereunto specially authorized.

Section 140. No action at law in the district court or Boston municipal court shall be discontinued, nor shall the plaintiff in any such action become nonsuit after the action shall have been re-

ferred to an auditor and hearings before such auditor have been begun, except with the written consent of the defendant or in the discretion of the court.

SECTION 208. Said chapter 231 is hereby further amended by striking out sections 141 to 146A, inclusive, and inserting a place thereof the following seven sections: —

Section 141. Sections one, one A, two, three, four, four A, four B, five, six, six A, six B, six C, six D, seven, ten, eleven, twelve, thirteen, thirteen A, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-seven, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three, fifty-four, fifty-six, fifty-seven, fifty-eight, fifty-eight A, fifty-nine, fifty-nine B, sixty-one, sixty-two, sixty-three, sixty-four, sixty-five, sixty-six, sixty-seven, sixty-eight, sixty-nine, seventy, seventy-one, seventy-two, seventy-four, seventy-five, seventy-six, seventy-nine, eighty-five, eighty-five A, eighty-five B, eighty-five D, eighty-five E, eighty-five F, eighty-five G, eighty-five H, eighty-five I, eighty-five J, eighty-five K, eighty-five L, eighty-five M, eighty-five N, eighty-six, eighty-seven, eighty-eight, eighty-nine, ninety, ninety-one, ninety-one A, ninety-two, ninety-three, ninety-four, ninety-four A, ninety-five, ninety-seven, ninety-eight, ninety-nine, one hundred and two C, one hundred and three, one hundred and four, one hundred and four A, one hundred and six, one hundred and seven, one hundred and eight, one hundred and nine, one hundred and ten, one hundred and nineteen, one hundred and thirty-eight, one hundred and thirty-nine, one hundred and forty, one hundred and forty A, one hundred and forty B, one hundred and forty C, one hundred and forty-seven shall apply to actions in a district court.

Section 142. Sections six, six B, six C, six D, nine, thirteen A, twenty-four, forty-one, forty-two, forty-three, forty-four, forty-five, forty-seven, forty-eight, fifty-eight A, fifty-nine A, fifty-nine C, fifty-nine D, eighty-one, eighty-two, eighty-three, eighty-four A, eighty-five, eighty-five A, eighty-five B, eighty-five C, eighty-five D, eighty-five E, eighty-five F, eighty-five G, eighty-five H, eighty-five I, eighty-five J, eighty-five K, eighty-five L, eighty-five M, eighty-five N, eighty-seven, eighty-eight, eighty-nine, ninety-one, ninety-one A, ninety-two, ninety-three, ninety-four, ninety-four A, ninety-five, ninety-six, ninety-seven, ninety-nine, one hundred and two, one hundred and two C, one hundred and three, one hundred and four, one hundred and four A, one hundred and six, one hundred and seven, one hundred and eleven, one hundred and twelve A, one hundred and thirteen, one hundred and fifteen, one hundred and sixteen, one hundred and seventeen, one hundred and eighteen, one hundred and nineteen, one hundred and twenty-seven, one hundred and thirty, one hundred and thirty-eight, one hundred and thirty-

nine, one hundred and forty A, one hundred and forty B, one hundred and forty C shall apply to actions in the superior court.

Section 143. Sections nine, twenty-one, twenty-two, thirty-five, thirty-nine, forty-two, forty-three, forty-four, forty-five, forty-seven, forty-eight, fifty-one, fifty-two, seventy-one, seventy-two, eighty-three, eighty-seven, eighty-eight, eighty-nine, ninety-five, ninety-six, one hundred and eleven, one hundred and twelve A, one hundred and thirteen, one hundred and fifteen, one hundred and sixteen, one hundred and eighteen, one hundred and nineteen, one hundred and twenty-seven, one hundred and thirty, one hundred and thirty-eight, one hundred and thirty-nine shall apply in the land court.

Section 144. Sections nine, forty-two, forty-three, forty-four, forty-five, forty-seven, forty-eight, eighty-one, eighty-three, eighty-five, eighty-five D, eighty-seven, eighty-eight, eighty-nine, ninety-five, ninety-six, one hundred and eleven, one hundred and twelve A, one hundred and thirteen, one hundred and fifteen, one hundred and sixteen, one hundred and seventeen, one hundred and eighteen, one hundred and nineteen, one hundred and twenty-seven, one hundred and thirty, one hundred and thirty-eight, one hundred and thirty-nine shall apply in the housing court of the city of Boston and in the housing court of the county of Hampden.

Section 145. Sections six, twelve, thirteen A, thirty-five, fifty-one, fifty-two, sixty-one, sixty-two, sixty-three, sixty-four, sixty-five, sixty-six, sixty-seven, sixty-eight, seventy, seventy-one, eighty-three, eighty-seven, eighty-eight, eighty-nine, one hundred and twenty-seven, one hundred and thirty, one hundred and thirty-eight, one hundred and thirty-nine shall apply in the probate court.

Section 146. Sections one hundred and nine, one hundred and twelve, one hundred and twelve A, one hundred and thirteen, one hundred and fourteen, one hundred and fifteen, one hundred and sixteen, one hundred and seventeen, one hundred and eighteen, one hundred and nineteen, one hundred and twenty-four, one hundred and twenty-five shall apply to appeals to the supreme judicial court.

Section 146A. Sections one hundred and eleven, one hundred and twelve, one hundred and twelve A, one hundred and thirteen, one hundred and fifteen, one hundred and sixteen, one hundred and seventeen, one hundred and eighteen, one hundred and nineteen, one hundred and twenty-four, one hundred and twenty-five shall apply to appeals to the appeals court.

SECTION 209. Chapter 231A of the General Laws, added by section 1 of chapter 582 of the acts of 1945, is hereby amended by striking out sections 6 and 7, and inserting in place thereof the following two sections: —

Section 6. In any action heretofore or hereafter brought to obtain a judgment or other consequential relief, whether such judgment or relief is granted or not, the court may make a binding determination as provided in this chapter upon application of any party made in his pleadings.

Section 7. In an action wherein a judgment or other consequential relief is sought, the costs shall not be affected by the making or refusal of any determination; but in an action for a determination only, under this chapter, costs shall be wholly in the discretion of the court.

SECTION 210. Chapter 232 of the General Laws is hereby amended by striking out section 1, as appearing in the Tercenary Edition, and inserting in place thereof the following section: —

Section 1. If at the commencement of an action in the district court or in the municipal court of the city of Boston upon a judgment or upon a contract, express or implied, for property sold, for money paid, for money had and received, for service performed and for an amount which is liquidated or may be ascertained by calculation, the defendant has in his own right a claim against the plaintiff such as is hereinbefore mentioned or such a claim which has been assigned to him with notice thereof to the plaintiff, it may be set off against the plaintiff's claim as hereinafter provided.

The provision of this section and sections two to eleven, inclusive, of this chapter shall apply only to actions in the district courts.

SECTION 211. Said chapter 232 is hereby further amended by striking out section 9, as amended by section 17 of chapter 591 of the acts of 1973, and inserting in place thereof the following section: —

Section 9. In the municipal court of the city of Boston, a declaration in set-off may be filed at any time during the sitting at which the writ is returnable, or within such further time as the court may allow. In other district courts and in the housing court of the city of Boston and the housing court of the county of Hampden, it shall be filed when the action is entered, or within such further time as the court allows.

SECTION 212. Sections twelve, thirteen and fourteen of chapter two hundred and thirty-two of the General Laws are hereby repealed.

SECTION 213. The General Laws are hereby amended by inserting after chapter 232 the following chapter: —

CHAPTER 232A.

TENDER.

Section 1. The payment or tender of payment of the whole amount due on a contract for the payment of money after it is due and payable and before action is commenced shall, if pleaded, have the same effect as if made at the time provided in the contract. Such payment or tender may also be made after action has been commenced if made at least four days before the return day of the writ in an action in the district court or if made at least four days prior to the date by which the answer must be filed in the superior court, with costs to the time of payment or tender.

The tender last mentioned may be made to the plaintiff or to his attorney in the action, and, if not accepted, the defendant may avail himself of the tender in defense in like manner as if made before the commencement of the action, bringing into court the amount so tendered.

Section 2. If such tender is accepted in an action commenced in the district court, the plaintiff or his attorney shall, at the request of the defendant, sign a certificate or notice thereof to the officer who has the writ, and deliver it to the defendant; and if any further costs are incurred for a service made by the officer after the tender and before he receives notice thereof, the defendant shall pay the same to the officer, or the tender shall be invalid.

If such tender is accepted in an action commenced in the superior court, the parties shall file a stipulation of dismissal in the court in which the action is pending.

Section 3. A person upon whose property a lien is claimed may make in any proceeding a tender or an offer of judgment relating thereto in like manner and with like effect as in matters of contract.

SECTION 214. Chapter 233 of the General Laws is hereby amended by striking out section 24, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 24. Depositions may be taken as provided in this chapter to be used before the district and probate courts. When an action is tried in the superior court upon removal or appeal from the district court, depositions taken in preparation for the trial in the district court may be used in the superior court.

SECTION 215. Said chapter 233 is hereby further amended by striking out section 65A, as so appearing, and inserting in place thereof the following section: —

Section 65A. If a party to an action or suit who has filed answers to interrogatories under any applicable statute or any rule of the Massachusetts Rules of Civil Procedure dies, so much of such answers as the court finds have been made upon the personal knowledge of the deceased shall not be inadmissible as hearsay or self-serving if offered in evidence in said action or suit by a representative of the deceased party.

SECTION 216. Said chapter 233 is hereby further amended by striking out section 67, as so appearing, and inserting in place thereof the following section: —

Section 67. Evidence in any proceeding seeking equitable relief shall be taken in the same manner as in actions at law, unless the court otherwise orders; but this section shall not prevent such use of affidavits as had been heretofore allowed.

SECTION 217. Section one of chapter two hundred and thirty-five of the General Laws is hereby repealed.

SECTION 218. Said chapter 235 is hereby further amended by striking out sections 4 and 5, as appearing in the Tercentenary Edition, and inserting in place thereof the following two sections: —

Section 4. Every judgment or order of the supreme judicial, superior or land court shall bear date of the year, month and day when entered; but the court may order it to be entered as of an earlier day than that of entry.

Section 5. In an action in the district court upon a promissory note or other contract where the amount due appears to be undisputed, the debt or damages may be ascertained and assessed by the clerk under a general order of the court or by special reference to him. The judgment in either case shall be entered in the same form as if awarded on an assessment or computation made by the court.

SECTION 219. Said chapter 235 is hereby further amended by striking out section 8, as so appearing, and inserting in place thereof the following section: —

Section 8. When judgment is rendered upon an award of county commissioners, a committee or referees, or upon the report of an auditor or master, or upon the verdict of a jury or the finding of a justice, interest shall be computed upon the amount of the award, report, verdict or finding, from the time when made to the time the judgment is entered. Every judgment for the payment of money shall bear interest from the day of its entry. The warrant or execution issued on a judgment for the payment of money shall specify the day upon which judgment is entered, and shall require the collection or satisfaction thereof with interest from the day of its entry.

SECTION 220. Said chapter 235 is hereby further amended by striking out section 11, as so appearing, and inserting in place thereof the following section: —

Section 11. If a further amount afterwards becomes due on such bond or other contract, the plaintiff, his executor or administrator may cause the original defendant, his executor, administrators, heirs, devisees or assigns to be summoned before the court in which the judgment was rendered to show cause why execution should not be awarded upon the judgment for the damages caused by such further breach. If the judgment upon the bond was rendered by the superior court the plaintiff, his executor or administrator shall cause the adverse party to be summoned by a motion stating the nature of such further breach; if such judgment was rendered by a district court, the plaintiff, his executor or administrator shall cause the adverse party to be summoned by a writ of scire facias from said court stating the nature of such further breach.

SECTION 221. Said chapter 235 is hereby further amended by striking out section 16, as so appearing, and inserting in place thereof the following section: —

Section 16. No execution shall issue within twenty-four hours after the entry of judgment in the district court. No execution shall issue upon a judgment of the supreme judicial, superior or land court or the housing court of the city of Boston or the housing court of the county of Hampden, until the expiration of the time to appeal therefrom.

SECTION 222. Said chapter 235 is hereby further amended by striking out sections 19 to 21, inclusive, and inserting in place thereof the following three sections: —

Section 19. If a judgment remains unsatisfied after the expiration of the time for taking out execution thereon the creditor may obtain a new execution by a writ of scire facias if such unsatisfied judgment was rendered by a district court, or, if such judgment was rendered by the supreme judicial, superior or land court or the housing court of the city of Boston, by a motion to such court; or he may at any time after the judgment, subject to section twenty of chapter two hundred and sixty, have an action of contract thereon.

Section 20. If an execution is returned satisfied in whole or in part by the sale of property not liable to such execution, and if damages are recovered against the judgment creditor or the officer who served the execution on account of the seizure and sale of such property, the creditor shall be entitled to a new execution for the amount then remaining due him upon a writ of scire facias or a motion pursuant to the preceding section.

Section 21. If an execution against a corporation is satisfied in whole or in part by service or levy on the person or property of a member thereof, and the property levied on or damages for the service or levy are subsequently recovered by such member from the officer or judgment creditor, the creditor, upon a writ of scire facias on a judgment rendered by a district court or upon a motion to the court which rendered the judgment if other than a district court, shall be entitled to a new execution for the amount then remaining due him.

SECTION 223. Said chapter 235 is hereby further amended by striking out section 24, as so appearing, and inserting in place thereof the following section: —

Section 24. If a plaintiff would be entitled to a judgment or a decree, except for the bankruptcy or insolvency of the debtor or his discharge therein, and if, more than four months prior to the commencement of proceedings in bankruptcy, or, in voluntary proceedings in insolvency, more than four months prior to the time of the first publication of the notice of the issuing of the warrant, or, in involuntary proceedings more than four months prior to the first publication of the notice of the petition, or, in proceedings in composition in insolvency in which no assignment has been made, more than four months prior to the notice by the register to the creditors of the debtor's proposal of composition, any property, estate, interest or money of a debtor has been attached, or brought within the control of a court of equity by proceedings under clause (6) of section three of chapter two hundred and fourteen, by other proceedings, or by payment into court, the court may at any time upon motion enter a special judgment or decree for the plaintiff, for the amount of his debt or damages and costs, or for such other relief as he may be entitled to, to be enforced in the first instance only against the property, estate, interest or money, so attached

or brought within the control of a court of equity. If such property, estate, interest or money shall be insufficient to satisfy the judgment or decree in full, the court may thereafter, if the debtor's discharge is refused, or if he shall unreasonably delay to prosecute said proceedings to a discharge, order an alias or other successive execution or other process to be issued upon such judgment or decree for such portion thereof as remains unsatisfied. The creditor may also in case of such refusal or delay have a writ of scire facias, motion or action as provided in section nineteen. This section shall not impair the powers which courts of equity may otherwise exercise.

SECTION 224. Chapter 236 of the General Laws is hereby amended by striking out section 38 to 40, inclusive, as appearing in the Tercentenary Edition, and inserting in place thereof the following three sections: —

Section 38. If the debtor tenders the amount justly due for redemption, and the creditor or, in case of a sale, the purchaser does not within seven days after the tender release the land as before provided, the debtor may recover it, with costs, in an action to recover a freehold estate against the creditor or purchaser as a disseisor; but before judgment therein is entered for him, he shall bring into court for the use of the creditor or purchaser the amount so tendered.

Section 39. The debtor may, within the year before limited for redemption and irrespective of any tender, bring in the supreme judicial or the superior court in the county where the land lies, a civil action for redemption, under the two following sections.

Section 40. The debtor shall in his complaint offer to pay the amount found due for redemption and may set forth any tender he has made. The court shall determine the amount due, unless it has been already ascertained under section thirty-four, and shall require the debtor, within such time as it may order, to deposit with the clerk for the use of the creditor or purchaser the amount due for redemption. Upon the debtor's complying with the order, he shall be entitled to judgment and execution for seisin of the land.

SECTION 225. Section 41 of said chapter 236, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence: — If the creditor or purchaser has, before the commencement of the action, tendered such a deed of release and alleges such tender and brings the deed into court to be delivered to the debtor, he shall recover costs.

SECTION 226. Said chapter 236 is hereby further amended by striking out section 51, as so appearing, and inserting in place thereof the following section: —

Section 51. If, after the return of such execution issued by a district court, it appears to the creditor that the land levied on, or any part thereof, cannot be held thereby, he may take out from the court from which the execution issued a writ of scire facias

requiring the debtor to appear and show cause why another execution should not be issued on the same judgment, and the writ may issue although there is a subsequent judgment for a part thereof not satisfied by the levy.

If, after the return of such execution issued by the supreme judicial, superior or land court or the housing court of the city of Boston or the housing court of the county of Hampden, it appears to the creditor that the land levied on, or any part thereof, cannot be held thereby, he may move the court which issued the execution to order the debtor to appear and show cause why another execution should not be issued on the same judgment, and the court may so order although there is a subsequent judgment for a part thereof not satisfied by the levy.

If the debtor, after being duly summoned, does not show sufficient cause to the contrary, the levy of the former execution may be set aside and another execution issued for the amount then due on the original judgment and not included in a subsequent judgment, but without interest or further costs.

SECTION 227. Chapter 237 of the General Laws is hereby amended by striking out sections 1 to 18, inclusive, and inserting in place thereof the following eighteen sections: —

Section 1. All estates of freehold in fee simple, fee tail or for life may be recovered in a civil action.

Section 2. A civil action to recover freehold estates in fee simple, fee tail or for life may be prosecuted against the commonwealth under this chapter.

Section 3. The plaintiff shall declare on his own seisin within twenty years then last past, without specifying any particular day, and shall allege a disseisin by the defendant, but need not aver a taking of the profits. He shall set forth the estate which he claims in the land whether in fee simple, fee tail or for life, and if the latter, whether for his own life or for the life of another, but he need not set forth the original gift, devise or other conveyance or title by which he claims the estate.

Section 4. The plaintiff need not prove an actual entry under his title, but proof that he is entitled to such an estate as he claims in the land and that he has a right of entry therein shall be sufficient to prove his seisin. No such action shall be maintained unless the plaintiff has at the time of commencing his action a right of entry into the land demanded.

Section 5. Such action shall be prosecuted in the same manner as if the plaintiff, at the time of commencing the action, had made an actual entry on the land demanded and had been immediately ousted by the defendant. In a trial upon the general issue, if the plaintiff proves that he is entitled to the estate set forth in the complaint and that he had a right of entry on the day when the action was commenced, he shall recover the land unless the defendant proves a better title in himself.

Section 6. A person in possession of land demanded in a civil action, claiming an estate of freehold therein, may be considered

as a disseisor for the purpose of trying the right, irrespective of the manner of his original entry therein.

Section 7. If the person in possession has actually ousted the plaintiff or withheld from him the possession of the land, he may, at the election of the plaintiff, be considered as a disseisor for the purpose of trying the right, although he claims an estate less

Section 8. Joint tenants or tenants in common may join in a civil action for the recovery of land, or any one of them may sue alone for his share.

Section 9. The law and practice relative to pleadings and evidence in a writ of entry upon disseisin, as heretofore recognized and established, shall continue in force, except as altered by this chapter and chapters one hundred and eighty-five and two hundred and thirty-one and by the Massachusetts Rules of Civil Procedure.

Section 10. Non-tenure, disclaimer, several tenancy and sole tenancy may be pleaded in answer.

Section 11. The plaintiff may recover any specific part or undivided portion of the land to which he proves a sufficient title, although less than demanded in the complaint.

Section 12. If the plaintiff recovers judgment, he shall recover in the same action, subject to the limitations provided in this chapter, damages for rents and profits of the land from the time when his title accrued and for any destruction or waste of the buildings or other property for which the defendant is liable.

Section 13. Rents and profits for which the defendant is liable shall be the clear annual value of the land while he was in possession thereof, after deducting all lawful taxes and assessments on the land paid by him and all necessary and ordinary expenses of cultivating the land or collecting rents, profits or income thereof.

Section 14. In determining rents and profits, the value of the use by the defendant of any improvements made by him or by those under whom he claims shall be excluded.

Section 15. The defendant shall not be liable for rents and profits for any time more than six years prior to the commencement of the action or for waste or damages committed before said six years, unless rents and profits are allowed to diminish the defendant's recovery upon his counterclaim for improvements under section twenty-seven.

Section 16. If the land demanded has been actually held and possessed by the defendant and by those under whom he claims for six years next before the commencement of the action, he shall, if judgment is against him, be entitled to compensation as herein-after provided for the value of any buildings or improvements made or erected on the land by him or by any person under whom he claims.

Section 17. The defendant shall also be entitled to like compensation although the land has not been so held for six years, if he holds it under a title which he had reason to believe good.

Section 18. The defendant may interpose a counterclaim for the value of such improvements.

SECTION 228. Section nineteen of said chapter two hundred and thirty-seven is hereby repealed.

SECTION 229. Said chapter 237 is hereby further amended by striking out sections 20, 21 and 22, as appearing in the Tercentenary Edition, and inserting in place thereof the following three sections: —

Section 20. The amount recovered by the defendant upon such counterclaim shall not exceed the amount actually expended by the defendant and those under whom he claims, nor shall it exceed the amount by which the value of the land is actually increased thereby as assessed at the time of the action.

Section 21. Except as provided in sections twenty-two to twenty-four, inclusive, and in section twenty-six, if there is a trial in the land court, it shall at the same time assess the amounts due the plaintiff for rents and profits or other damages, if any, and shall determine the amount to be allowed to the defendant for improvements, if any, and also, if duly required, the value of the plaintiff's estate, unless, on its own motion or that of either party, made before its finding or decision on the title is recorded, it postpones such assessment or determination until after its trial of the title and its findings or decision thereon.

Section 22. If trial by jury shall be demanded and if issues therefor are to be framed to obtain an assessment of the amounts due to the plaintiff for rents and profits or other damages, or a determination of the amount to be allowed to the defendant for improvements, or of the value of the plaintiff's estate, the land court, on its own motion, or on that of either party, made at any time before the papers required by section fifteen of chapter one hundred and eighty-five have been entered in the superior court, may postpone such issues until after its trial of the title and its findings or decision thereon. In such case said court shall order that the procedure provided by section fifteen of chapter one hundred and eighty-five be suspended pending its further order under section twenty-three.

SECTION 230. Section 23 of said chapter 237, as so appearing, is hereby amended by striking out, in line 3, the word "demandant" and inserting in place thereof the word: — plaintiff.

SECTION 231. Section 24 of chapter 237, as so appearing, is hereby amended by striking out, in line 2, the word "demandant" and inserting in place thereof the word: — plaintiff.

SECTION 232. Said chapter 237 is hereby further amended by striking out sections 25 to 31, inclusive, as so appearing, and inserting in place thereof the following seven sections: —

Section 25. In cases where an assessment of the amounts due to the plaintiff for rents and profits and other damages, or a determination of the amount to be allowed to the defendant for improvements, or of the value of the plaintiff's estate is to be made by the land court, such assessment or determination may, if the

parties consent, be made by assessors appointed by that court.

Section 26. The defendant shall have judgment upon his counterclaim for the value of the improvements. The plaintiff shall have judgment and execution for the amount found due him for rents and profits and other damages due from the defendant as well as for seisin of the land.

Section 27. If the amount found due to the defendant for improvements exceeds the amount found due from him for rents and profits accruing within six years, he shall be chargeable with rents and profits accruing before that time, so far as necessary to balance his judgment for improvements; but in such case he shall not be liable to repay rents and profits in excess of the value of the improvements.

Section 28. The plaintiff shall, except as provided in the following section, before taking out execution for seisin of the land, pay to the defendant, or for his use to the recorder of the land court, the amount, if any, by which the defendant's judgment upon his counterclaim for improvements exceeds the amount recovered against the defendant by the plaintiff upon his claim for rents and profits and other damages; but the defendant or person claiming under him shall not be liable for rents and profits accruing between the date of the judgment and payment by the plaintiff of said amount.

Section 29. If the plaintiff has had judgment for seisin of the land, he may take out a writ of seisin before judgment has been rendered upon his claim for rents and profits or other damages or upon the defendant's counterclaim for improvements, but if there is pending such a counterclaim, the plaintiff, before taking out his writ of seisin, shall furnish such security or pay into court such amount of money as the land court may order, to secure to the defendant the payment of any amount found due him for such improvements.

Section 30. If the defendant has judgment for such improvements, he may have an execution therefor or he may collect the same, with all reasonable costs and expenses for such collection, out of the security furnished, or may receive it out of the money paid into court and the residue thereof, if any, shall be returned to the plaintiff.

Section 31. If the defendant counterclaims for improvements as before provided the plaintiff may, by motion, require the value of his estate in the land demanded, without the improvements, to be determined as provided for the assessment of rents, profits and improvements. Such value shall be the value which, at the time of assessment, the land would have had if the improvements had not been made by the defendant or a person under whom he claims.

SECTION 233. Section 32 of said chapter 237, as so appearing, is hereby amended by striking out, in line 1, the word "demandant" and inserting in place thereof the word: — plaintiff, — and by striking out, in line 3, the word "tenant" and inserting in place

thereof the word: — defendant.

SECTION 234. Said chapter 237 is hereby further amended by striking out sections 33 to 38, inclusive, as so appearing, and inserting in place thereof the following six sections: —

Section 33. If the plaintiff elects to relinquish the land as before provided, the defendant shall thenceforth hold all the estate which the plaintiff had therein at the commencement of the action, if he pays said value thereof in three equal instalments on or before the expiration of one, two and three years, respectively, from the time when said election was entered on the record, with interest therefrom on the amount unpaid.

Section 34. Said payments shall be made to the plaintiff or for his use to the recorder of the land court; and if the defendant fails to make any such payment within the time limited therefor, the plaintiff may, within three months after default of payment, take out his writ of seisin on the judgment recovered, and shall take and hold the land without allowance for any improvements made thereon.

Section 35. If the defendant or his heirs or assigns, after the land is so relinquished to him, are evicted therefrom by force of a better title than that of the original plaintiff, the person so evicted may recover in a civil action from such plaintiff, or from his executors, administrators, heirs or devisees under chapter one hundred and ninety-seven, the amount so paid for the land, with lawful interest thereon; but in order to be so entitled to recover, the defendant or those holding under him shall give notice to the person so liable to refund the purchase money of the pendency of the action for the recovery of the land, so that he may offer evidence tending to prove that the original plaintiff had the better title.

Section 36. If, after judgment for the plaintiff, either party dies before the writ of seisin is executed, or before the case is otherwise settled under this chapter, any money payable by the plaintiff or defendant, respectively, may be paid by him or his executor or administrator, or by a person entitled to the estate under him, to the defendant or plaintiff, respectively, or his executor or administrator.

Section 37. The writ of seisin issued in such case shall be in the name of the original plaintiff against the original defendant, although either or both of them are dead, and when executed it shall enure to the benefit of the plaintiff or of the person entitled to the land under him, as if it had been executed on the day when the judgment was rendered.

Section 38. If a plaintiff claiming an estate for life only satisfies a judgment upon the defendants counterclaim for improvements, he or his executor or administrator shall, at the determination of his estate, be paid by the remainderman or reversioner the value of the improvements as they then exist, shall have a lien on the land for said value as if it had been mortgaged for the payments of such value, and may keep possession of the land until such

payment is made.

SECTION 235. Section 39 of said chapter 237, as so appearing, is hereby amended by striking out, in line 2, the words "suit in equity" and inserting in place thereof the words: — civil action.

SECTION 236. Said chapter 237 is hereby further amended by striking out section 41, as so appearing, and inserting in place thereof the following section: —

Section 41. The remainderman or reversioner, or those claiming under him, shall be deemed disseized at the determination of the life estate, and the civil action under section thirty-nine and all other remedies by action or entry for the recovery of the land shall be barred as in other cases of disseisin, and the limitation of three years provided for the redemption of a mortgage shall not apply.

SECTION 237. Said chapter 237 is hereby amended by striking out sections 43 and 44 and inserting in place thereof the following two sections: —

Section 43. This chapter shall not prevent the plaintiff from maintaining an action for mesne profits, or for damage done to the land, against any person, except the defendant in the action to regain seisin.

Section 44. The provisions of this chapter relative to rents and profits to be recovered, an allowance for improvements made on the land demanded and the value of the land without the improvements shall not apply to an action brought by a mortgagee, his heirs or assigns, against a mortgagor, his heirs or assigns, for the recovery of the land mortgaged.

SECTION 238. Section 1 of chapter 238 of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by striking out, in line 4, the words "by a writ of dower" and inserting in place thereof the words: — in a civil action.

SECTION 239. Said chapter 238 is hereby further amended by striking out section 8, as so appearing, and inserting in place thereof the following section: —

Section 8. A party aggrieved by a judgment rendered under section five, or upon a report of the commissioners under the preceding section, may appeal therefrom to the appeals court or, subject to the provisions of section ten of chapter two hundred and eleven A, to the supreme judicial court; but an appeal from the judgment rendered under the preceding section shall not draw in question the interlocutory judgment.

SECTION 240. Said chapter 238 is hereby further amended by striking out section 10, as so appearing, and inserting in place thereof the following section: —

Section 10. The action shall be brought against the person who is tenant of the freehold at the time when it is commenced. If the demand was not made on him, he shall be liable for damages only for the time during which he held the land; but if the demandant recovers her dower and damages in the action, she may thereafter recover against the prior tenant of the freehold, on whom her demand was made, rents and profits for the time during which he

held the land after the demand.

SECTION 241. Chapter 240 of the General Laws is hereby amended by striking out section 6, as appearing in the Tercenary Edition, and inserting in place thereof the following section: —

Section 6. If, in a civil action in the supreme judicial or the superior court, or in the land court, to quiet or establish the title to land situated in the commonwealth or to remove a cloud from the title thereto, it is sought to determine the claims or rights of persons unascertained, not in being, unknown or out of the commonwealth, or who cannot be actually served with process and made personally amenable to the judgment of the court, such persons may be made defendants and, if they are unascertained, not in being or unknown, may be described generally, as the heirs or legal representatives of AB, or such persons as shall become heirs, devisees or appointees of CD, a living person, or persons claiming under AB. It shall be unnecessary for the maintenance of such action that the defendants shall have a claim or the possibility of a claim resting upon an instrument the cancellation or surrender of which would afford the relief desired; but it shall be sufficient that they claim or may claim by purchase, descent or otherwise, some right, title, interest or estate in the land which is the subject of the action and that their claim depends upon the construction of a written instrument or cannot be met by the plaintiffs without the production of evidence. Two or more persons claiming to own separate and distinct parcels of land in the same county by titles derived from a common source, or two or more persons having separate and distinct interests in the same parcel, may join as plaintiffs in any action brought under this section.

SECTION 242. Section 7 of said chapter 240, as so appearing, is hereby amended by striking out, in lines 1 and 3, the word "suit" and inserting in place thereof, in each instance, the word: — action.

SECTION 243. Section 8 of said chapter 240, as so appearing, is hereby amended by striking out, in line 5, the word "suit" and inserting in place thereof the word: — action.

SECTION 244. Said chapter 240 is hereby further amended by striking out section 10, as so appearing, and inserting in place thereof the following section: —

Section 10. After all the defendants have been served with process or notified as provided in section seven and after the appointment of a guardian ad litem or next friend, if such appointment has been made, the court may proceed as though all defendants had been actually served with process. Such action shall be a proceeding in rem against the land, and a judgment establishing or declaring the validity, nature or extent of the plaintiff's title may be entered, and shall operate directly on the land and have the force of a release made by or on behalf of all defendants of all claims inconsistent with the title established or declared thereby. This and four preceding sections shall not prevent the court from also exercising jurisdiction in personam against defendants actually

served with process who are personally amenable to its judgments.

SECTION 245. Said chapter 240 is hereby further amended by striking out sections 10A and 10B, as appearing in section 3 of chapter 448 of the acts of 1961, and inserting in place thereof the following two sections: —

Section 10A. The superior court and the land court shall have concurrent jurisdiction of a civil action by any person or persons claiming an estate of freehold, or an unexpired term of not less than ten years, in land subject to a restriction described in section twenty-six of chapter one hundred and eighty-four, to determine and declare whether and in what manner and to what extent and for the benefit of what land the restriction is then enforceable, whether or not a violation has occurred or is threatened. The complaint shall state the names and addresses, so far as known to the plaintiff or plaintiffs, of the owners of the subject parcels as to which the determination is sought, of the owners of any benefited land and of any persons benefited other than persons interested in benefited land. There shall be filed therewith (1) a certified copy of the instrument or instruments imposing the restriction, or of a representative instrument if there are many and the complaint includes a summary of the remainder, and (2) a plan or sketch showing the approximate locations of the parcels as to which the determination is sought, and the other parcel or parcels, if any, which may have the benefit of the restriction, and the ways, public or open to public use, upon which the respective parcels abut or nearest thereto, and the street numbers, if any, of such parcels.

Section 10B. The court shall, after consideration of the complaint, instrument or instruments and plan or sketch, and such further documents or evidence as it may require, prescribe the form of notice to be given, the persons to be named or described therein, the manner of service of the notice, and the proof to be required of such service. The court may (1) permit service by registered mail on any person, (2) permit names and addresses of owners to be given from the last assessments for local taxation and record search for subsequent changes, (3) require notice to be published in a newspaper or posted on the subject land or both, (4) name as representative of all persons entitled to enforce the restriction, if it benefits more than four parcels, the owners of the benefited land abutting the subject parcel or parcels and of such additional benefited land in or facing the same block or blocks or in the same vicinity as it deems appropriate, describing the remaining persons generally as the owners of certain identified land and permitting service upon them by publication only, (5) order other or additional notice at any time as it deems most effectual, and (6) if it finds that there are persons benefited but not actually served and for whom others served are not sufficiently representative, appoint a disinterested person to represent them and order costs thereof paid by the plaintiff or plaintiffs. Any person entitled to enforce the restriction, whether or not named or described in the notice, may become a party to the proceeding by filing answer

within the time specified by the notice or by the court.

SECTION 246. Said chapter 240 is hereby amended by striking out section 29, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 29. Except as otherwise provided, procedure in the land court under this chapter shall be that provided by sections fifteen to twenty-five, inclusive, of chapter one hundred and eighty-five and by the Massachusetts Rules of Civil Procedure.

SECTION 247. Chapter 243 of the General Laws is hereby amended by striking out section 5, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 5. The superior court may in an action for a nuisance enjoin such nuisance.

SECTION 248. Section 4 of chapter 244 of the General Laws, as so appearing, is hereby amended by striking out, in line 5, the words “a writ of entry” and inserting in place thereof the words: — an action for possession.

SECTION 249. Section 8 of said chapter 244, as so appearing, is hereby amended by striking out, in line 3, the words “like a writ of entry against the tenant of the freehold”.

SECTION 250. Said chapter 244 is hereby further amended by striking out sections 26 to 29, inclusive, as so appearing, and inserting in place thereof the following four sections: —

Section 26. Except as provided in section forty, a suit for redemption shall be brought in the county where the land or any part thereof lies.

Section 27. If the court finds the plaintiff entitled to redeem, it shall determine the amount due on the mortgage or what condition the plaintiff is bound to perform for the redemption of the land, and shall enter judgment that, upon payment of such amount or performance of such condition within such time as it shall order, the plaintiff shall have execution for possession of the land and shall hold it discharged of the mortgage.

Section 28. If the court finds that the mortgagee has not unreasonably neglected or refused to render a true account of rents and profits of the land mortgaged, it may award him the balance found due on the mortgage, with interest thereon at a rate of not more than twelve per cent a year from the expiration of three years after the entry to the date of the judgment.

Section 29. The court may at the same time order that, if the defendant neglects or refuses to accept the money or other act required by the judgment to be paid or performed, the money shall be left for his use with the clerk of the court, or such other act done as the case requires; and the plaintiff, having performed all acts required by the judgment, may have execution for possession of the land.

SECTION 251. Said chapter 244 is hereby further amended by striking out section 32, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 32. If a person, other than the parties to a suit for

redemption, is interested therein, the court may, upon terms, allow him to intervene.

SECTION 252. Section 36 of said chapter 244, as so appearing, is hereby amended by striking out, in line 5, the words "an action of contract" and inserting in place thereof the words: — a civil action.

SECTION 253. Section 40 of said chapter 244, as so appearing, is hereby amended by striking out, in line 4, the words "a suit in equity" and inserting in place thereof the words: — civil action.

SECTION 254. Chapter 245 of the General Laws is hereby amended by striking out section 1, as appearing in the Tercenary Edition, and inserting in place the following section: —

Section 1. If a person unlawfully enters upon or holds land belonging to the commonwealth, it may be recovered in a civil action brought by the attorney general or by a district attorney in the superior court in any county.

SECTION 255. Section three of said chapter two hundred and forty-five is hereby repealed.

SECTION 256. Section 4 of said chapter 245, as so appearing, is hereby amended by striking out, in line 6, the word "information" and inserting in place thereof the word: — complaint.

SECTION 257. Section 5 of said chapter 245, as so appearing, is hereby amended by striking out, in line 2, the word "information" and inserting in place thereof the word: — complaint.

SECTION 258. Said chapter is hereby further amended by striking out sections 8 to 11, inclusive, and inserting in place thereof the following four sections: —

Section 8. The judgment shall be conclusive between the commonwealth and the defendants who appear and answer, and against every person named as a defendant and duly served and against all persons claiming under such defendants.

Section 9. A person not concluded by a judgment for the commonwealth under the preceding section may, until his claim is barred by law for the limitation of real actions or otherwise, bring an action to recover the land from the commonwealth or from any person then holding under it. He may deny and disprove any facts alleged and proved in the first action and allege and prove other facts in support of his claim and shall, if it appears that he is entitled to the land, have judgment and execution therefor.

Section 10. If the commonwealth continues seized of the land when such new action is commenced, such action shall be brought against the tenant or occupant thereof, and, in addition to the service on him service shall be made upon the attorney general or district attorney. If the commonwealth has granted away the land, the action shall be brought against the tenant of the freehold. In either case it shall be conducted and disposed of as if no such action by the commonwealth had been brought.

Section 11. If the plaintiff recovers judgment, he shall be entitled to rents and profits and chargeable for improvements as provided in chapter two hundred and thirty-seven, although the land

has not been held and possessed for six years under the adverse title.

SECTION 259. Section 1 of chapter 246 of the General Laws is hereby amended by striking out the first sentence, as amended by section 1 of chapter 17 of the acts of 1943, and inserting in place thereof the following sentence: — All personal actions in the district court, except tort for malicious prosecution, for slander or libel, or for assault and battery, and except replevin, may be commenced by trustee process; and in connection with the commencement of any action in the supreme judicial or superior courts except actions only for specific recovery of goods and chattels, for malicious prosecution, for slander and libel, or for assault and battery, trustee process may be used; and any person may be summoned as trustee of the defendant therein; but except in the case of a writ or complaint which contains a statement that the action is upon a judgment, a contract for personal services, for goods sold and delivered, or for money due under a contract in writing, or to recover damages on account of the operation of a motor vehicle not registered in the commonwealth, no writ the *ad damnum* of which is in excess of one thousand dollars, and no summons and complaint seeking damages in excess of one thousand dollars, shall be served upon any alleged trustee unless there shall have been filed by the plaintiff, if other than a city or town of the commonwealth named therein, in the court wherein such action is commenced, a bond with a surety company authorized to do business in the commonwealth as surety, or with sureties approved by a justice, associate justice or special justice of such court, said bond to be in a penal sum not less than ten per cent of the *ad damnum* in the writ or complaint and not less than two hundred and fifty dollars and to be conditioned upon payment to the defendant, if the plaintiff fails to recover or if such action is discontinued, of all costs which may be awarded to the defendant and all damages which he may sustain by reason of such attachment, but not exceeding the penal sum of the bond, nor unless there shall have been endorsed on the writ or complaint by the justice, associate justice or special justice who approved said bond, or by the clerk of such court, the fact that the bond required by this section has been filed in such court.

SECTION 260. Said chapter 246 is hereby amended by striking out sections 2 and 3, as appearing in the Tercentenary Edition, and inserting in place thereof the following two sections: —

Section 2. If, in an action in the supreme judicial or superior court on which trustee process is used, all the persons named in the summons as trustees dwell or have usual places of business in one county, the action shall be brought in that county; otherwise it may be brought in any county where any one of the trustees dwells or has a usual place of business.

Section 3. If, in an action in the supreme judicial or superior court in which trustee process is used in connection with the commencement thereof, the court finds that the trustee was made a party in order to give the court jurisdiction of the action in the county where the trustee dwells or has a usual place of business,

and that neither the plaintiff nor the principal defendant dwells or has a usual place of business therein, it may, upon motion of the defendant at any time before trial, order the action and all papers relating thereto transferred to a county where some one of the principal parties dwells or has a usual place of business, upon terms. The action shall thereupon be entered and prosecuted in the same court for that county as if originally brought therein, and all prior proceedings otherwise regularly taken shall thereafter be valid.

SECTION 261. Section 4A of said chapter 246, as so appearing, is hereby amended by striking out, in line 2, the words "in the writ".

SECTION 262. Said chapter 246 is hereby further amended by striking out section 5, as so appearing, and inserting in place thereof the following section: —

Section 5. Trustee writs returnable to a district court shall be served by copy on each trustee and on the defendant. In other respects service upon trustees and defendants in actions in the district courts shall be in the manner provided by chapter two hundred and twenty-three. Goods and estate of the defendant in his own hands may be attached upon a trustee writ in the manner provided in said chapter, and the writ shall be further served upon each of the trustees and upon the defendant.

The trustee summons shall be served in accordance with the Massachusetts Rules of Civil Procedure.

SECTION 263. Section 6 of said chapter 246, as so appearing, is hereby amended by inserting after the word "writ", in line 3, the words: — or summons.

SECTION 264. Said chapter 246 is hereby further amended by striking out sections 8 to 10, inclusive, as so appearing, and inserting in place thereof the following three sections: —

Section 8. The plaintiff may at any time insert the names of other trustees in the writ or summons, and cause the writ or summons to be served upon them; and after service upon a trustee, a plaintiff may cause the writ or summons to be again served upon the same trustee in the same manner and with the same effect as if he had not been previously served. A writ or summons served upon a trustee after service upon the defendant shall be again served upon the defendant.

Section 9. The plaintiff may proceed in the action against the defendant if the defendant has been served with process although all the trustees have been discharged.

Section 10. A person summoned as trustee in the supreme judicial or superior court shall file his answer within twenty days after service of the trustee summons upon him, unless the court otherwise directs. A person summoned as trustee in the municipal court of the city of Boston shall appear and file his answer within two days, or in any other district court within three days, after the return day of the writ unless further time is allowed by the court. The answer shall disclose plainly, fully and particularly what goods, effects or credits, if any, of the defendant were in the hands

or possession of the trustee when he was served with process.

SECTION 265. Section 14 of said chapter 246, as so appearing, is hereby amended by inserting after the word "writ", in line 3, the word: — or summons.

SECTION 266. Section 19 of said chapter 246, as so appearing, is hereby amended by striking out, in line 4, the words "in tort".

SECTION 267. Section 20A of said chapter 246, inserted by chapter 356 of the acts of 1965, is hereby amended by striking out the second paragraph.

SECTION 268. Said chapter 246 is hereby further amended by striking out section 26, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 26. A trustee may retain or deduct from the goods, effects or credits in his hands all liquidated demands or judgments against the defendant of which, had he not been summoned as trustee, he might have availed himself upon a trial or by the set-off of judgments or executions between himself and the defendant, and he shall be liable for the balance only after all mutual demands, excluding therefrom any claim on either side for unliquidated damages for wrongs or injuries, between himself and the defendant have been adjusted.

SECTION 269. Section 27 of said chapter 246, as so appearing, is hereby amended by striking out, in line 7, the words "service of the writ" and inserting in place thereof the words: — service of process.

SECTION 270. Said chapter 246 is hereby further amended by striking out section 29, as so appearing, and inserting in place thereof the following section: —

Section 29. If, after wages for personal labor or services have been attached and before the entry of the writ in the district court the defendant tenders to the plaintiff or to his attorney the full amount due and recoverable in the action and the fees of the officer for serving the writ, the plaintiff shall recover no costs, except the fees of the officer; and if the defendant is defaulted without an appearance or if he files an offer of judgment on the return day of the writ under section seventy-four of chapter two hundred and thirty-one, and the plaintiff shall recover no costs except the fee and the officer's fee for service of process. thereon from its date, the plaintiff shall recover no costs, except the entry fee and the officer's fees.

If, after wages for personal labor or services have been attached in connection with an action in the supreme judicial or superior courts, the defendant is defaulted or if the defendant makes an offer of judgment in accordance with the Massachusetts Rules of Civil Procedure and the plaintiff accepts such offer or fails to secure a judgment more favorable than the offer, the plaintiff shall recover no costs except the entry fee and the officer's fee for service of process.

SECTION 271. Section 32 of said chapter 246 is hereby amended by striking out paragraph First, as amended by section 2 of chap-

ter 187 of the acts of 1959, and inserting in place thereof the following paragraph: —

First, By reason of having drawn, accepted, made or endorsed a negotiable bill, draft, note or other security which at the date of the writ or summons was negotiable to a holder in due course under the provisions of chapter one hundred and six.

SECTION 272. Paragraph Eighth of said section 32 of said chapter 246, as most recently amended by chapter 235 of the acts of 1960, is hereby further amended by striking out the first sentence and inserting in place thereof the following sentence: — By reason of money or credits due for the wages of personal labor or services of the defendant, unless such attachment is made in an action brought upon a judgment and is authorized in advance by written permission endorsed upon the writ or complaint and signed by a justice, associate justice or special justice of the court in which the action is commenced.

SECTION 273. Section 34 of said chapter 246, as appearing in the Tercentenary Edition, is hereby amended by striking out, in line 4, the words "of the writ".

SECTION 274. Said chapter 246 is hereby further amended by striking out section 38, as so appearing, and inserting in place thereof the following section: —

Section 38. If, while an action is pending, the plaintiff is summoned as trustee of the defendant on account of a counterclaim or a demand in set-off filed therein, such pending action shall be subject to the three preceding sections in the same manner and with the same effect as if it were an action brought upon such counterclaim or demand in set-off by the defendant against the plaintiff.

SECTION 275. Said chapter 246 is hereby further amended by striking out sections 45 to 50, inclusive, as so appearing, and inserting in place thereof the following six sections: —

Section 45. If a person adjudged a trustee does not, upon demand, pay over to the officer goods, effects or credits sufficient to satisfy the execution and if the execution is not otherwise satisfied, the plaintiff may initiate proceedings against the trustee in the court where the judgment was rendered.

If the judgment was rendered by a district court, the plaintiff may sue out a writ of scire facias against him or all, or a separate writ against each, of the trustees, to show cause why judgment and execution should not be awarded against them or him and their or his own goods and estate for the amount remaining unsatisfied on the judgment against the defendant. Such writ may be sued out at any time after thirty days from the date of judgment and may be issued by the court where the judgment was rendered, although the amount of the debt and costs therein exceeds its jurisdiction.

If the judgment was rendered by the superior or supreme judicial court the plaintiff may institute an action in that court to have the original judgment, or the amount remaining unsatisfied from the

goods and estate of the trustee or trustees. Such an action may be commenced at any time after thirty days from the date of the judgment.

Section 46. If a trustee duly served with the scire facias or a summons and complaint issued under the previous section fails to appear and answer, he shall be defaulted; and if he did not answer, and was not examined in the original action, judgment shall be rendered against him upon such default for the whole amount remaining unsatisfied on the judgment against the defendant.

Section 47. If a trustee defaulted on the scire facias or in an action brought under section forty-five has answered or been examined in the original action, judgment shall be rendered upon the facts stated in such answer or examination for any part remaining in his hands of the goods, effects or credits for which he was chargeable as trustee, or for so much thereof as is necessary to satisfy the amount then remaining due on the original judgment.

Section 48. In a proceeding brought under section forty-five, if the trustee appears and answers, he may be examined; but if he has been examined in the original action, he shall be examined again only by order of the court. A trustee may prove any matter necessary or proper for his defense; and any judgment rendered against him shall express the amount for which he is chargeable.

Section 49. No action or scire facias as provided under section forty-five shall be brought against a person adjudged a trustee unless he is served within two years after judgment in the original action; or, if the money or other thing is not payable when the judgment is rendered, unless he is served within one year after such money or other thing becomes payable.

Section 50. If a person summoned as trustee in his own right dies before the judgment recovered by the plaintiff has been fully satisfied, the goods, effects and credits in his hands at the time of the attachment shall remain bound thereby, and his executor or administrator shall be bound thereby, as if the writ or summons were originally served on him.

SECTION 276. Section 52 of said chapter 246, as so appearing, is hereby amended by striking out, in line 8, the words "by scire facias" and inserting in place thereof the words: — in the manner provided in section forty-five.

SECTION 277. Section 53 of said chapter 246, as so appearing, is hereby amended by striking out, in line 6, the words "by scire facias" and inserting in place thereof the words: — as provided in section forty-five.

SECTION 278. Section 56 of said chapter 246, as so appearing, is hereby amended by striking out, in line 4, the words "a suit" and inserting in place thereof the words: — an action.

SECTION 279. Section 58 of said chapter 246, as so appearing, is hereby amended by striking out, in line 5, the words "the scire facias" and inserting in place thereof the words: — a scire facias or civil action under section forty-five.

SECTION 280. Section 64 of said chapter 246, as so appearing,

is hereby amended by striking out, in line 4, the words "upon a scire facias" and inserting in place thereof the words: — in a proceeding under section forty-five.

SECTION 281. Section 65 of said chapter 246, as so appearing, is hereby amended by striking out, in lines 1 and 2, the words "an action at law" and inserting in place thereof the words: — a civil action.

SECTION 282. Said chapter 246 is hereby further amended by striking out sections 71 to 73, inclusive, as so appearing, and inserting in place thereof the following three sections: —

Section 71. If a person so summoned in an action pending in the supreme judicial or superior court is out of the commonwealth at the time of service of the summons and complaint upon him and appears and answers within ten days of his return, or if he is so summoned in an action pending in the district court and is out of the commonwealth at the time of service of the original writ upon him and appears and answers within three days after his return, he shall be allowed his costs and charges.

Section 72. If a person so summoned does not dwell or have a usual place of business in the county where the action is brought, he shall, if he appears at any time in the original action or in a proceeding under section forty-five, be allowed his costs and charges, which shall be retained or recovered as before provided.

Section 73. A person so summoned, who dwells or has a usual place of business in the county where the action is brought and who neglects, without sufficient reason, to appear and answer within the time provided, shall be liable, if the plaintiff recovers judgment and does not otherwise receive his costs, for all costs for the plaintiff's travel and term fees until he appears.

SECTION 283. Said chapter 246 is hereby further amended by striking out section 77, as so appearing, and inserting in place thereof the following section: —

Section 77. If a person summoned as trustee, who dwells or has a usual place of business in the county where the action is brought, is defaulted in the original action, and if a proceeding under section forty-five is brought against him, he shall be liable out of his own goods and estates for all costs in such proceeding, although he is not adjudged a trustee, except as provided in the following sections.

SECTION 284. Section 78 of said chapter 246, as so appearing, is hereby amended by striking out, in line 1, the words "on the scire facias" and inserting in place thereof the words: — under section seventy-seven.

SECTION 285. Section 79 of said chapter 246, as so appearing, is hereby amended by striking out, in line 1, the words "on the scire facias" and inserting in place thereof the words: — under section seventy-seven.

SECTION 286. Section 80 of said chapter 246, as so appearing, is hereby amended by striking out, in line 2, the words "on the scire facias".

SECTION 287. Said chapter 246 is hereby further amended by striking out section 81, as so appearing, and inserting in place thereof the following section: —

Section 81. If several trustees are liable on a scire facias under section forty-five, and the plaintiff, without sufficient reason, sues out two or more writs when he might have joined all the trustees in one writ, he shall recover no more costs than if he had sued out one writ, and the court may apportion the costs among all the trustees liable therefor.

If several trustees are liable in an action brought under section forty-five and the plaintiff fails to join all of the trustees in one action, he shall recover no more costs than if he had so joined them, and the court may apportion the costs among all the trustees liable therefor.

SECTION 288. Section 1 of chapter 249 of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence: — The writ of audita querela for the purpose of preventing, setting aside, or annulling any proceedings upon a judgment or execution rendered or issued by the district court shall be sued out of and returnable to the court in which the judgment was rendered.

SECTION 289. Said chapter 249 is hereby further amended by striking out section 4, as most recently amended by section 1 of chapter 661 of the acts of 1963, and inserting in place thereof the following section: —

Section 4. A civil action in the nature of certiorari to correct errors in proceedings which are not according to the course of the common law, which proceedings are not otherwise reviewable by motion or by appeal, may be brought in the supreme judicial or superior court. Such action shall be commenced within two years next after the proceeding complained of. When such an action is brought against a body or officer exercising judicial or quasi-judicial functions to prevent the body or officer from proceeding in favor of another party, or is brought with relation to proceedings already taken, such other party may be joined as a party defendant by the plaintiff or on motion of the defendant body or officer or by application to intervene. Such other party may file a separate answer or adopt the pleadings of the body or officer. The court may at any time after the commencement of the action issue an injunction and order the record of the proceedings complained of brought before it. The court may enter judgment quashing or affirming such proceedings or such other judgment as justice may require.

SECTION 290. Section 4A of said chapter 249, as appearing in section 2 of said chapter 661, is hereby amended by striking out, in line 1, the word "respondent" and inserting in place thereof the words: — defendant in an action authorized by section four.

SECTION 291. Said chapter 249 is hereby further amended by striking out section 5, as most recently amended by chapter 176

of the acts of 1949, and inserting in place thereof the following section: —

Section 5. A civil action to obtain relief formerly available by writ of mandamus may be brought in the supreme judicial or superior court.

SECTION 292. Said chapter 249 is hereby further amended by striking out sections 6 to 9, inclusive, as appearing in the Tercentenary Edition, and inserting in place thereof the following four sections: —

Section 6. A person whose private right or interest has been injured or put in hazard by the exercise of a franchise or privilege not conferred by law, by a private corporation or by persons claiming to be a private corporation, whether he is a member of such corporation or not, may bring a civil action in the nature of a quo warranto in the supreme judicial or superior court in the county where the defendant has its principal place of business seeking an injunction against such exercise. A copy of the complaint shall be served on the attorney general.

Section 7. The attorney general may intervene in such action and may demand a judgment of fine and forfeiture.

Section 8. If the court finds that the defendant has not exercised a franchise or privilege not conferred by law, he shall recover costs. If the attorney general does not intervene, and the court finds that the respondent has exercised a franchise or privilege not conferred by law, judgment of forfeiture shall not be entered, but judgment shall be entered that the corporation, or the persons claiming to be such, be perpetually excluded from the exercise of such franchise or privilege, and that the directors, managers, or agents, guilty of the usurpation, pay the costs of the complaint.

Section 9. The supreme judicial and superior courts shall have like jurisdiction of civil actions brought by the attorney general against a person holding or claiming the right to hold an office or employment, the salary or compensation of which is payable by the commonwealth, a county, city or town.

SECTION 293. Sections ten, eleven and twelve of said chapter two hundred and forty-nine are hereby repealed.

SECTION 294. Chapter 250 of the General Laws is hereby amended by striking out section 1, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 1. Writs of error in criminal cases shall issue as of course from and be returnable to and be heard and determined by the supreme judicial court.

SECTION 295. Sections three, four, five, six, seven and eight of chapter two hundred and fifty of the General Laws are hereby repealed.

SECTION 296. Said chapter 250 is hereby further amended by striking out sections 14 and 15, and inserting in place thereof the following two sections: —

Section 14. If final judgment has been rendered in a civil action in the district court, said court may, within three months there-

after, if the execution has not been satisfied in whole or in part, vacate it, upon the motion in writing of the prevailing party, and dispose of the case as if it had not been entered. Such motion shall be filed in the case and, except by special order of the court, no bond shall be required.

Section 15. If a final judgment has been entered in the district court either party, or any one or more of several plaintiffs or defendants, within one year thereafter may file in said court a petition to vacate the judgment.

SECTION 297. Said chapter 250 is hereby further amended by striking out sections 21 and 22, as appearing in the Tercentenary Edition, and inserting in place thereof the following two sections: —

Section 21. If judgment is rendered by a district court, as provided in chapter two hundred and twenty-seven, upon the default of a defendant upon whom service has not been made by reason of his being out of the commonwealth or by reason of his residence being unknown, he may, within one year after the judgment or decree, as of right, and without any petition therefor, take a writ of review out of the court in which the judgment was rendered.

Section 22. After the entry of a final judgment in the district court, the court in which the judgment was entered may, upon petition, grant a writ of review. If the judgment was rendered in the absence of the petitioner and without his knowledge, the petition shall be filed within one year after the petitioner first had notice of the judgment; otherwise within one year after the judgment was rendered.

SECTION 298. Chapter 253 of the General Laws is hereby amended by striking out section 4, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 4. The owner or occupant of land which has been overflowed or otherwise injured by such dam may bring a civil action to obtain compensation therefor. Such action shall be commenced within three years next after the event complained of in the superior court for the county where the land or any part thereof lies; but if the land overflowed or injured is outside the commonwealth such action shall be brought in the superior court for the county where the dam or any part thereof is maintained.

SECTION 299. Sections five and six of said chapter two hundred and fifty-three are hereby repealed.

SECTION 300. Said chapter 253 is hereby further amended by striking out sections 7 to 9, inclusive, as appearing in the Tercentenary Edition, and inserting in place thereof the following three sections: —

Section 7. Such action shall be tried by a jury and, if either party requires it, the jury shall, under the direction of the court, view the land alleged to be injured.

Section 8. If the jury finds that the plaintiff has suffered the injury complained of it shall assess the amount of damages sus-

tained within three years last preceding the commencement of the action and to the date of their verdict, taking into consideration any damage caused by the dam to other land of the plaintiff as well as the damage caused thereby to the land overflowed reduced by any benefit caused thereby to the plaintiff's land.

Section 9. If it is alleged in the plaintiff's complaint that the dam has been raised to an unreasonable height, or that it ought not to be kept up and closed during the whole year, the jury shall determine by their verdict how much, if at all, the dam shall be lowered and whether it shall be left open, and, if so, during what part of the year.

SECTION 301. Section 10 of said chapter 253, as so appearing, is hereby amended by striking out, in line 2, the word "petitioner" and inserting in place thereof the word: — plaintiff.

SECTION 302. Said chapter 253 is hereby further amended by striking out section 11, as so appearing, and inserting in place thereof the following section: —

Section 11. The plaintiff may, within three months after the verdict has been recorded elect, by a writing filed in the clerk's office, to take the amount so awarded in gross, instead of such annual compensation.

SECTION 303. Section 12 of said chapter 253, as so appearing, is hereby amended by striking out, in line 2, the word "petitioner" and inserting in place thereof the word: — plaintiff.

SECTION 304. Section 13 of said chapter 253, as so appearing, is hereby amended by striking out, in lines 1 and 2, the words "petitioner does not within said three months make his election" and inserting in place thereof the words: — plaintiff does not file an election.

SECTION 305. Section 14 of said chapter 253, as so appearing, is hereby amended by striking out, in line 3, the words "filing of the original petition" and inserting in place thereof the words: — commencement of the original action.

SECTION 306. Said chapter 253 is hereby further amended by striking out section 18, as so appearing, and inserting in place thereof the following section: —

Section 18. The party prevailing upon such action shall be entitled to costs, except as otherwise provided.

SECTION 307. Said chapter 253 is hereby further amended by striking out sections 21 and 22, as so appearing, and inserting in place thereof the following two sections: —

Section 21. If either party is dissatisfied with the annual compensation established by proceedings upon a civil action under this chapter or corresponding provisions of earlier laws, a new action may be commenced for the increase or diminution of such compensation or for ascertaining the gross amount of the damages, and the action shall be conducted substantially in the manner provided for an original action; but if a plaintiff has declined to accept gross damages which have been awarded to him, they shall not be again assessed within ten years thereafter.

Section 22. Such new action may be maintained by and against either of the parties to the original action or by and against a person lawfully holding under either of them, but it shall not be brought until the expiration of one month after the payment of the year last preceding was due.

SECTION 308. Section 23 of said chapter 253, as so appearing, is hereby amended by striking out, in line 4, the words "files a new petition" and inserting in place thereof the words: — brings an action.

SECTION 309. Section 24 of said chapter 253, as so appearing, is hereby amended by striking out, in lines 4 and 5, the words "files a new petition" and inserting in place thereof the words: — brings an action.

SECTION 310. Section 26 of said chapter 253, as so appearing, is hereby amended by striking out, in line 3, the words "upon a new petition" and inserting in place thereof the words: — in a civil action.

SECTION 311. Section 27 of said chapter 253, as so appearing, is hereby amended by striking out, in line 1 and in line 3, the word "petition" and inserting in place thereof, in each instance, the word: — action.

SECTION 312. Said chapter 253 is hereby further amended by striking out sections 28 to 30, inclusive, as so appearing, and inserting in place thereof the following three sections: —

Section 28. In every civil action brought by the owner of land alleged to be injured by a mill dam, the defendant may bring into court and there tender any amount which he considers proper to be paid to the plaintiff for the damages incurred up to the time of such tender, and may also offer to pay any certain annual compensation for the damages which may be thereafter caused by the dam. If the plaintiff does not accept the amount so tendered with his costs to that time, he shall, unless he recovers greater damages or greater annual compensation than was so offered, be entitled to his costs to the time of the tender, and the defendant shall be entitled to his costs after said time.

Section 29. If the plaintiff accepts the amount so offered for the past damage and for future annual compensation, he shall have judgment therefor and for costs to that time; or the plaintiff may accept either the amount tendered for past damages or the offer for future annual compensation, and proceed to trial on the residue of the complaint under the same liability for costs.

Section 30. Two or more persons who are jointly or separately interested in the land injured may join in a civil action, and the jury may assess joint or several damages as the interest and title of the plaintiffs may require; and judgment and execution shall conform thereto.

SECTION 313. Section thirty-one of said chapter two hundred and fifty-three is hereby repealed.

SECTION 314. Said chapter 253 is hereby further amended by striking out section 32, as appearing in the Tercentenary Edition,

and inserting in place thereof the following section: —

Section 32. If a judgment for the plaintiff is reversed for error, the plaintiff, or any person claiming under him, may commence a new action for the same cause within one year after the reversal of the judgment, and recover all damages sustained during the three years last preceding or at any time after the commencement of the original action.

SECTION 315. Section 43 of said chapter 253, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence: — The court in which an action for such compensation is pending shall, if requested by the plaintiff, require such corporation to give satisfactory security for the payment of all damages and costs which may be awarded thereon, and if the court finds that the security has become insufficient, it shall require the corporation to give further security.

SECTION 316. Said chapter 253 is hereby further amended by striking out section 50, as so appearing, and inserting in place thereof the following section: —

Section 50. The supreme judicial and the superior courts shall have jurisdiction to enforce the six preceding sections.

SECTION 317. Section 61 of said chapter 253, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence: — All amounts due from one or more proprietors to another for money advanced under this chapter may be recovered in a civil action.

SECTION 318. Chapter 254 of the General Laws is hereby amended by striking out section 5, as most recently amended by section 3 of chapter 493 of the acts of 1963, and inserting in place thereof the following section: —

Section 5. A lien upon land for the erection, alteration, repair or removal of a building or other structure or a lien established under section seventy-six of chapter sixty-three, or under section six of chapter one hundred and eighty-three A shall be enforced by a civil action brought in the superior court for the county where the land lies. The plaintiff shall bring his action in his own behalf and in behalf of all other persons in interest who shall become parties. An attested copy of the complaint, which shall contain a brief description of the property sufficient to identify it, and a statement of the amount due, shall be filed in the registry of deeds and recorded as provided in section nine. All other parties in interest may appear and have their rights determined in such action, and at any time before entry of final judgment, upon the suggestion of any party in interest that any other person is or may be interested in the action, or of its own motion, the court may summon such person to appear in such cause on or before a day certain or be forever barred from any rights thereunder. The court may in its discretion provide for notice to absent parties in interest. The terms "party in interest" and "person in interest", as used in this chapter, shall include mortgages and attaching creditors.

SECTION 319. Section 11 of said chapter 254, as appearing in

the Tercentenary Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence: — The lien shall be dissolved unless a civil action to enforce it is commenced within sixty days after the filing of the statement required by section eight.

SECTION 320. The last sentence of section 14 of said chapter 254, as appearing in section 10 of chapter 774 of the acts of 1972, is hereby amended by striking out the words "petition in equity filed" and inserting in place thereof the words: — civil action commenced.

SECTION 321. Section 15 of said chapter 254, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence: — If it appears to the court that no person is entitled to a lien, or that every lien has been discharged by payment thereof, judgment shall be entered to the effect that the lien is dissolved, and a certificate to that effect shall be sent forthwith by the clerk to the register of deeds.

SECTION 322. Section sixteen of said chapter two hundred and fifty-four is hereby repealed.

SECTION 323. Said chapter 254 is hereby further amended by striking out sections 23 and 24, as so appearing, and inserting in place thereof the following two sections: —

Section 23. If the person for whom the labor has been performed or furnished or the material has been furnished dies or conveys away his estate or interest before the commencement of a civil action to enforce a lien, it may be commenced and prosecuted against his heirs or against the persons holding the estate or interest which he had in the land at the time when the labor or material was performed or furnished. If the action was commenced in the lifetime of such person, it may be prosecuted against his executor, administrator, heirs or assigns as if the estate or interest has been mortgaged to secure the debt.

Section 24. If the creditor dies without having commenced such action, it may be commenced and prosecuted by his executor or administrator, or if he dies after having commenced it, it may be so prosecuted.

SECTION 324. Said chapter 254 is hereby further amended by striking out section 26, as so appearing, and inserting in place thereof the following section: —

Section 26. This chapter shall not prevent a person entitled to a lien under it from maintaining a civil action as if he had no lien.

SECTION 325. Section 31 of said chapter 254, added by chapter 530 of the acts of 1961, is hereby amended by striking out the last five sentences and inserting in place thereof the following five sentences: — Proceedings to enforce a lien secured under this section shall be by a civil action in the superior court within one year after the adjudication of bankruptcy, or the assignment for the benefit of creditors or the appointment of a receiver, and the plaintiff shall bring his action in his own behalf and in behalf of all other persons in interest who shall become parties. All other

parties in interest may appear and have their rights determined in such action, and, at any time before entry of final judgment, upon the suggestion of any party in interest that any other person is or may be interested in the action, or of its own motion, the court may summon such person to appear in said cause on or before a day certain or be forever barred from any rights thereunder. The court may in its discretion provide for notice to absent parties in interest. The other provisions of this chapter shall not apply to any such civil action. The provisions of this section shall not apply to any contract with the commonwealth or with any political subdivision thereof or any other public instrumentality.

SECTION 326. Section 131 of chapter 255 of the General Laws, is hereby amended by striking out paragraph (d), as appearing in chapter 822 of the acts of 1967, and inserting in place thereof the following paragraph: —

(d) No court shall enter a deficiency judgment against a debtor which includes a finance charge or insurance premiums allocable to instalments due after repossession. A debtor whose goods have been repossessed shall not be liable in a civil action for a deficiency unless the secured party files an affidavit signed either by the purchaser at the sale or by the secured party stating the price for which the goods were sold and the date and place of sale. Such affidavit shall be filed by the return day if the action is brought in the district court. It shall be filed with the complaint if the action is brought in the superior court.

SECTION 327. Said chapter 255 is hereby further amended by striking out section 17, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 17. A person having such lien, unless the contract described in section fourteen is a maritime contract and the enforcement of the lien is within the exclusive jurisdiction of the courts of the United States, may enforce the lien by a civil action in the superior court for the county where the vessel was at the time when the debt was contracted or where the vessel is at the time the action is commenced. The subsequent proceedings shall, except as hereinafter provided, be as prescribed in chapter two hundred and fifty-four so far as applicable. Upon the commencement of such action, a writ of attachment shall issue against such vessel, her tackle, apparel and furniture; the attachment may be dissolved as in any civil action but such dissolution shall not dissolve the lien.

SECTION 328. Sections eighteen and nineteen of said chapter two hundred and fifty-five are hereby repealed.

SECTION 329. Section 20 of said chapter 255, as appearing in the Tercentenary Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence: — If money is due to more than one person holding such lien and all parties interested have been summoned to appear, the claims of all shall be marshalled, and the court shall make such order as may be necessary to prevent the enforcement of a double lien for

the same labor, materials, stores, provisions or other articles, and to secure the rights of each.

SECTION 330. Section 26 of said chapter 255, as amended by section 10 of chapter 326 of the acts of 1950, is hereby further amended by striking out, in lines 12 and 13, the words "file a petition in the superior court or" and inserting in place thereof the words: — (a) bring a civil action in the superior court to have the property sold to satisfy the debt; or (b) file a petition.

SECTION 331. Section 27 of said chapter 255, as amended by section 11 of said chapter 326, is hereby further amended by striking out, in line 1, the word "The" and inserting in place thereof the words: — When such petition is filed in a district court, the.

SECTION 332. Said chapter 255 is hereby further amended by striking out sections 28 and 29, as appearing in the Tercenary Edition, and inserting in place thereof the following two sections: —

Section 28. If the owner or his usual place of abode is unknown, such petition may be filed sixty days after the money becomes due, and the notice describing the property may be issued "to the unknown owner", or to the owner, naming him, "whose usual place of abode is unknown". If the owner resides out of the commonwealth or he or his usual place of abode is unknown, the notice may be given by publication, as provided in section five.

Section 29. If, upon a default or a trial or hearing it is found that a lien exists upon the property and that the property ought to be sold for the satisfaction of the debt, the court may make an order for such sale, determine and record the amount then due and award costs to the prevailing party. Any proceeds of the sale remaining after satisfying the debt, costs and charges, shall be paid to the owner upon demand.

SECTION 333. The first sentence of section 33 of said chapter 255, as so appearing, is hereby amended by inserting after the word "petition", in line 3, the words: — or civil action.

SECTION 334. Section 29 of chapter 255D of the General Laws is hereby amended by striking out subsection C, as amended by section 14 of chapter 775 of the acts of 1967, and inserting in place thereof the following subsection: —

C. An agreement made by any person subject to this chapter which violates the provisions of this chapter may be declared void by the supreme judicial or superior court upon a civil action brought by the buyer.

SECTION 335. Chapter 256 of the General Laws is hereby amended by striking out section 6, as appearing in the Tercenary Edition, and inserting in place thereof the following section: —

Section 6. If the conusor dies before the debt is fully paid, no execution therefor shall issue as of course, but his estate shall be liable for the debt in like manner as if judgment therefor had been rendered against him in his lifetime; and the conusee or his executor or administrator may recover the same from the executor, administrator, heirs or devisees of the conusor. Such debt may

be recovered by a scire facias or action of contract in the district court or by a civil action in the superior court.

SECTION 336. Said chapter 256 is hereby further amended by striking out section 8, as so appearing, and inserting in place thereof the following section: —

Section 8. No original execution shall issue as of course upon such recognizance after the expiration of three years from the time therein named for payment of the debt or from the time of the last payment endorsed thereon, but the conusee or his executor or administrator may after that time have a scire facias or action of contract thereon in the district court or may bring a civil action in the superior court against the party liable, in like manner and with like effect as upon a judgment.

SECTION 337. Chapter 258 of the General Laws is hereby amended by striking out section 1, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 1. The superior court, except as otherwise expressly provided, shall have jurisdiction of all claims against the commonwealth.

SECTION 338. The first sentence of section 1B of said chapter 258, as appearing in section 1 of chapter 709 of the acts of 1956, is hereby amended by striking out, in line 8, the words "petition filed" and inserting in place thereof the words: — civil action commenced.

SECTION 339. Said chapter 258 is hereby further amended by striking out section 2, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 2. The laws relative to tender, offer of judgment and counterclaim shall apply to the said action, and the case shall be tried by the court without a jury. All hearings shall be in open court, except that on motion by the attorney general or the plaintiff a master may be appointed, and questions of law may be taken to the supreme judicial court, as in other cases. If the amount claimed exceeds two thousand dollars, the action shall be brought in Suffolk county, otherwise in Suffolk county or in the county where the plaintiff resides. If the action is to recover damages for injuries sustained while traveling on a state highway, it may be brought in Suffolk county or in the county where the plaintiff resides or where the injuries were sustained.

SECTION 340. Chapter 260 of the General Laws is hereby amended by striking out section 32, as so appearing, and inserting in place thereof the following section: —

Section 32. If an action duly commenced within the time limited in this chapter is dismissed for insufficient service of process by reason of an unavoidable accident or of a default or neglect of the officer to whom such process is committed or is dismissed because of the death of a party or for any matter of form, or if, after judgment for the plaintiff, the judgment of any court is vacated or reversed, the plaintiff or any person claiming under him may com-

mence a new action for the same cause within one year after the dismissal or other determination of the original action, or after the reversal of the judgment; and if the cause of action by law survives the executor or administrator or the heir or devisee of the plaintiff may commence such new action within said year.

SECTION 341. Said chapter 260 is hereby further amended by adding, under the caption **LIMITATION OF COUNTER-CLAIMS**, the following section: —

Section 36. The provisions of law relative to limitations of actions shall apply to a 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.

Notwithstanding the provisions of the first paragraph of this section, a counterclaim arising out of the same transaction or occurrence that is the subject matter of the plaintiff's claim, to the extent of the plaintiff's claim, may be asserted without regard to the provisions of law relative to limitations of actions.

This section shall apply to actions brought by the commonwealth or for its benefit.

SECTION 342. Chapter 261 of the General Laws is hereby amended by striking out section 4, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 4. If, in a personal action, except an action of replevin or an action under section fifteen of chapter two hundred and fifty-three, which is commenced in the superior court, the plaintiff does not recover final judgment for more than one hundred dollars as damages, he shall recover no costs, unless the right to an easement or the title to land is drawn in question and the justice before whom the action is tried so certifies.

SECTION 343. Section 10 of said chapter 261, as so appearing, is hereby amended by striking out, in line 1, the words "or discontinuance" and inserting in place thereof the words: —, discontinuance or dismissal.

SECTION 344. Section twelve of said chapter two hundred and sixty-one is hereby repealed.

SECTION 345. Said chapter 261 is hereby further amended by striking out section 13, as so appearing, and inserting in place thereof the following section: —

Section 13. In civil actions or other proceedings in which no provision is expressly made by law, the costs shall be wholly in the discretion of the court, but no greater amount shall be taxed therein than is allowed for similar charges in actions in which costs are expressly provided for by law.

SECTION 346. Said chapter 261 is hereby further amended by striking out section 23, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 23. There shall be allowed, in a civil action in the supreme judicial court or in the superior court, in addition to other disbursements allowed by law, the following costs:

For the entry fee, three dollars.

For the complaint, fifty cents.

For an attorney's fee, if an issue in law or fact is joined, two dollars and fifty cents; if not, one dollar and twenty-five cents.

For a term fee, five dollars for each sitting while the action is pending, not exceeding three sittings, except by an order of the court. If an action or question of law therein is carried to the full court, two additional term fees may be allowed. If the defendant is defaulted without having appeared, only one term fee shall be allowed.

For travel, such sum as the court may allow.

SECTION 347. Section twenty-five of said chapter two hundred and sixty-one is hereby repealed.

SECTION 348. Section 31 of chapter 278 of the General Laws is hereby amended by striking out the last sentence.

SECTION 349. Said chapter 278 is hereby further amended by inserting after said section 31 the following three sections: —

Section 31A. If a justice presiding at a trial at which exceptions have been taken fails, by reason of physical or mental disability, death, resignation or removal, to sign or return them, or has been retired under Article LVIII of the Amendments to the Constitution without having signed or returned them, any other justice of the same court may examine and allow or disallow them.

Section 31B. If a justice presiding at the trial of a criminal case finds that the exceptions taken therein are immaterial, frivolous or intended for delay, sentence may be imposed, with or without a stay pending appellate review, notwithstanding the allowance of the exceptions. In case of the disability or death of the presiding justice, any justice of the same court may exercise the power herein conferred.

Section 31C. If the presiding justice, or another justice acting under section thirty-one A, disallows or fails to sign and return the exceptions or alters any statement therein, and defendant is aggrieved thereby, the truth of the exceptions presented may be established before any justice of the supreme judicial court upon petition stating the grievance, and thereupon, the truth of the exceptions being established, they shall be entered and heard, and the same proceedings taken, as if the exceptions had been duly allowed and entered. The supreme judicial court shall make rules for settling the truth of exceptions alleged and not allowed. Such petition shall be filed with the clerk of the supreme judicial court for Suffolk county.

SECTION 350. Said chapter 278 is hereby further amended by striking out section 33, as amended by chapter 265 of the acts of 1933, and inserting in place thereof the following section: —

Section 33. Copies and papers relative to a question of law which arises in a criminal case in the superior court upon appeal, exception, report or otherwise shall be prepared by the clerk of the court at the expense of the county and shall thereupon be transmitted to and entered in the law docket of the supreme judicial court for the commonwealth, or for the proper county, as soon as

may be after such question of law has been reserved and duly made matter of record in the superior court. The clerk shall prepare one copy of every paper on file in the case necessary to a full presentation of all questions of law intended to be raised before the full court, except papers used in evidence only, and of all papers made part of the case by reference in the record, for the use of the chief justice, and a like copy for the clerk of the supreme judicial court which shall be kept on file in said court; five typewritten copies of any opinion or statement of reasons for decision filed by the court below, for the use of the full court; one copy of the record of the court below which transmits the questions of law, for the use of each associate justice, each party and the reporter of decisions. Original papers used in the trial in the court below which are needed before the full court of the supreme judicial court shall be transmitted to its clerk to be kept on file by him until the rescript in such case is sent. In preparing the record, a brief descriptive title of any paper to be contained therein shall be included, but the title of the court, name of the county, names of parties and other formal parts need not appear more than once. No bond, citation, verification, appearance or formal paper shall be deemed a necessary part of the record unless some question in regard thereto is in issue but the contents thereof may be indicated. Matter which appears in two or more papers or portions thereof forming part of the record need be set forth only once therein, and at each place where such matter is omitted there shall be printed a notation of the omission, with a cross reference to the place in the record where such matter appears. Entry of a case hereunder shall not transfer the case, but only the question to be determined.

SECTION 351. This act shall take effect on July first, nineteen hundred and seventy-four. *Approved November 30, 1973.*

Chap. 1115. AN ACT AUTHORIZING THE TOWNS OF WAKEFIELD AND LYNNFIELD TO ENTER INTO A CONTRACT FOR SEWAGE DISPOSAL.

Be it enacted, etc., as follows:

The town of Wakefield acting through its board of public works and the town of Lynnfield acting through its board of selectmen are hereby authorized to contract with each other for the purpose of providing for sewage disposal and such contract may involve the use of a sewer under the control of the metropolitan district commission.

Approved November 30, 1973.

Chap. 1116. AN ACT AUTHORIZING THE DEMOCRATIC TOWN COMMITTEE IN THE TOWN OF ASHBURNHAM TO ADD TO ITS ELECTED MEMBERS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to allow the democratic town committee in