

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

United States and of the State of Maine,

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

APPENDIX.

PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

Augusta:

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.....
1841.

scribed, of his intention to have his claim determined at law, said court may, after due notice to the executor or administrator on the estate, if they think that justice requires it, give such applicant leave to institute a suit for recovery of his claim, at the next district court in the county, where the executor or administrator resides; but such application must be made, within two years after the return of the commissioners; and leave shall not be granted after the lapse of four years from the time administration was granted; and no distribution shall be disturbed by any judgment, which may be recovered in such action.

SECT. 10. Whenever a review is granted, by either of said courts, the trial shall be had in the court by which the review was granted.

Where new trial may be had.

CHAPTER 124.

OF ACTIONS OF REVIEW.

- SECT. 1. In what court, a writ of review shall be prosecuted.
2. Form of the writ.
 3. Mode of service.
 4. Attachment of property.
 5. Entry of the action, and filing papers.
 - 6, 7. Pleadings, and issue.
 8. Evidence and proceedings.

SECT. 9. Judgment.

10. Costs.
11. Original attachment or bail, not continued by review.
12. Form of judgment, if damages be reduced.
13. Form, if damages be increased.
14. Provision, in cases of replevin and set off.

SECTION 1. Whenever a person is entitled, as a matter of right, to a review of an action, as provided in the seventh section of the one hundred and fifteenth chapter, or whenever a review is granted by the supreme judicial court, or by the district court, a writ of review, in the former case, shall be sued out, and prosecuted in the same court in which the judgment complained of was rendered; and, in the latter case, the writ shall be sued out and prosecuted in the court, which granted the review.

In what courts, a writ of review shall be prosecuted. 1821, 57, § 4.

SECT. 2. It shall not be necessary, in the writ of review, to recite at length the writ and proceedings in the original suit, but it may merely contain a summons to the defendant to appear and answer to the plaintiff in the review of an action, which was brought by the plaintiff; and such suit, and the judgment therein, may be described and identified in a condensed form, so as to render it intelligible and sufficiently certain.

Form of the writ.

SECT. 3. Such writ of review may be served in the same manner, as other writs; or, when the defendant is not an inhabitant of, or found in the state, it may be served on the person, who appeared, as his attorney, in the original suit.

Mode of service.

SECT. 4. If the writ of review is sued out by the original plaintiff, he may cause the defendant's property to be attached, as might have been done in the original suit, and the form of the writ may be varied accordingly.

Attachment of property.

CHAP. 124.

Entry of the action, and filing papers.

1821, 57, § 4.
1826, 347, § 5.
1 Mass. 159.
1 Greenl. 399.

Pleadings, and issue.

1821, 57, § 4.

Same subject.

1821, 57, § 4.

Evidence, and proceedings.

1821, 57, § 4.

Judgment.

1821, 57, § 4.
10 Mass. 218.

Costs.

1821, 57, § 5.
4 Mass. 614.
1 Greenl. 255.
2 Greenl. 397.

Original attachment, or bail, not continued by review.

1821, 57, § 6.

Form of judgment, if damages be reduced.

Form, if damages be increased.

Provision, in cases of replevin and set off.

SECT. 5. The plaintiff in review shall enter the action at the next term after it is granted, unless for special reasons the court on motion grant leave to enter it at the second term; and he shall produce in court, there to be filed, certified copies of the writ and judgment, and all proceedings in the former suit, and the originals or copies of all depositions, used and filed therein.

SECT. 6. The cause shall be tried on the issue joined in the former suit; but the court may allow amendments in any of the pleadings, as they might have done in the original action, or they may admit additional issues, or brief statements.

SECT. 7. If the former judgment was rendered on default, or without any issue joined, the proper pleadings shall be made on the trial of the review, and the cause be tried thereon.

SECT. 8. Each party may introduce any legal evidence, whether produced on the former trial or not; and the cause shall be disposed of by verdict, nonsuit, default or otherwise, as if it were an original suit.

SECT. 9. Judgment on the review shall be given, as the merits of the cause, upon law and evidence, shall require, without any regard to the former judgment, except as is hereinafter mentioned.

SECT. 10. The party, prevailing in the review, shall recover his costs, but this shall not prevent the court, when granting a review on petition, from imposing on him such terms as to costs, as they may deem reasonable.

SECT. 11. No attachment made, or bail, taken, in the original action, shall be liable to satisfy the judgment, which shall be rendered on the review.

SECT. 12. If any sum is recovered by the plaintiff in the original action for debt or damages, and that sum is reduced on the review, the original defendant shall have judgment and execution for the difference, with his costs; or, if the former judgment has not been satisfied, one judgment may be set off against the other, and an execution shall issue for the balance.

SECT. 13. If the original plaintiff shall recover on the review a greater sum for debt or damage, than was awarded to him on the original judgment, he shall have judgment and execution for the excess, and costs on the review.

SECT. 14. In review of actions of replevin, and in actions where an offset is filed, the defendant shall be considered, so far as it respects the damages, that may be awarded to him, in the original action, or on the review, like a plaintiff in other actions.

CHAPTER 125.**OF MORTGAGES, THEIR REDEMPTION AND FORECLOSURE, AND OTHER LIENS ON REAL AND PERSONAL ESTATE.**

SECT. 1. How mortgages of real estate are made.
2. Mortgagee may enter before breach, unless otherwise agreed.

SECT. 3. Modes of obtaining possession for foreclosure.
4. Foreclosure in three years.