

# 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.**

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

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**Augusta:**

PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE.

.....  
1841.

CHAP. 129.

Mode of entering judgment, and awarding execution.

Scire facias by the other cotenants on such judgment.

time before final judgment, become parties to the action; and the plaintiff, with such of the other cotenants as shall thus become parties, may prosecute the suit for the benefit of all concerned.

SECT. 19. The court shall enter up judgment for the whole amount of the injury, proved to have been done to such lands; but shall award execution only for the proportion thereof sustained by the plaintiffs, actually prosecuting the suit.

SECT. 20. The remaining cotenants may, afterwards, either jointly or severally, sue out a scire facias on such judgment, and execution shall be thereupon awarded for their proportion of the damages, adjudged in the original suit.

CHAPTER 130.

OF REPLEVIN OF BEASTS AND CHATTELS.

- SECT. 1. Owner of beasts distrained, may replevy them.
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- 3. Bond to be given, before service of writ.
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- 8. Any goods, unlawfully detained, may be replevied.
- 9. In what courts, replevin may be brought.
- 10. Bond to be given, before service.

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- 12. Assessment of damages on judgment for return of property to an attaching officer.
- 13. Disposal of the money recovered by the officer.
- 14. Appropriation of the moneys received by the creditor in such cases.
- 15. Judgment for damages and costs, if plaintiff recover.
- 16. Continuance of attachment, if the goods be replevied.
- 17. When writ of reprisal shall issue.
- 18. Defendant's remedy on the replevin bond.
- 19. Limitation of surety's liability on a replevin bond.

Owner, of beasts distrained, may replevy them. 1821, 80, § 1. 1834, 137, § 8.

The process.

Bond to be given, before service of the writ. 1834, 137, § 8.

SECTION 1. Any person, whose beasts are distrained or impounded, in order to recover any penalty or forfeiture supposed to have been incurred by their going at large, or to obtain satisfaction for any damages, alleged to have been done by them, may maintain a writ of replevin against the impounder or finder therefor, to be sued out and prosecuted before any justice of the peace for the county, in the form prescribed in chapter, one hundred and fourteen.

SECT. 2. The writ shall be sued out, served and returned, and the cause shall be heard and determined, in like manner as is provided in the case of other civil actions before a justice of the peace, except as otherwise prescribed.

SECT. 3. The writ shall not be served, unless the plaintiff, or some one in his behalf, shall execute and deliver to the officer a bond to the defendant, with sufficient sureties, to be approved by the officer, in a penalty double the actual value of the property to be replevied, conditioned as stated in the prescribed form of the writ, and to be returned with the writ, for the use of the defendant.

SECT. 4. If it shall appear upon the nonsuit of the plaintiff, or upon a trial, or otherwise, that the beasts were lawfully taken or distrained, the defendant shall have judgment for such sum, as shall be found to be due from the plaintiff for the penalty or forfeiture, or for the damages, for which the beasts were impounded, together with all the legal fees, costs and expenses incurred by reason of the distress, and also the costs of the action of replevin; or, instead of such judgment, the justice, or court having cognizance thereof, may, in his or their discretion, enter judgment for a return of the beasts to the defendant, to be held by him for the original purpose, irrepleviable by the plaintiff, and for the defendant's damages for the taking thereof by the replevin, and the costs of suit.

CHAP. 130.

Judgment, if the beasts be lawfully distrained.  
1821, 80, § 2.

SECT. 5. If it shall appear, upon default of the defendant, or upon a trial or otherwise, that the beasts were taken or distrained, without any sufficient or justifiable cause, the plaintiff shall have judgment for his damages caused by the unjust taking and detaining the beasts, and for his costs of the suit.

Judgment, if unlawfully distrained.  
1821, 80, § 2.

SECT. 6. Either party may appeal from the final judgment of the justice, as in other civil actions.

Appeal.

SECT. 7. When it shall appear, that the sum demanded for the penalty, forfeiture or damages, exceeds the sum of twenty dollars, or that the property of the beasts is in question, and that their value exceeds twenty dollars, or that the title to real estate is concerned or brought in question, the case shall, at the request of either party, be transferred either to the district court, to be there disposed of as is provided in chapter, one hundred and sixteen, with respect to other civil actions brought before a justice of the peace, in which the title to real estate is concerned, or brought in question; provided, the party, requesting such transfer, shall recognize as in actions of trespass brought before a justice of the peace, in such reasonable sum as the justice shall order, to enter the said action at the next term of the court, to which the action is transferred, and prosecute the same with effect, and to pay all intervening damages and costs.

In what cases, a cause may be transferred from a justice to the district court.  
1821, 80, § 3.

SECT. 8. When any goods shall be unlawfully taken, or unlawfully detained from the owner or the person, entitled to the possession thereof, or when any goods of that value, which are attached on mesne process, or taken in execution, are claimed by any person, other than the defendant in the suit, in which they are so attached and taken, such owner or person may cause them to be replevied.

Any goods, unlawfully detained, may be replevied.  
1821, 80, § 4.  
4 Greenl. 306.

SECT. 9. If the value of the goods aforesaid shall exceed the sum of twenty dollars, the writ may be sued out of, and returnable to the district court, or the supreme judicial court for the county, in which the goods are detained, and substantially of the form prescribed in chapter, one hundred and fourteen; and, if the goods aforesaid should not exceed the value of twenty dollars, the writ may be sued out and returnable before a justice of the peace of the county, where the goods to be replevied are detained, and substantially of the same form, but to be made applicable to the jurisdiction; and may be directed to any county where any defendant may reside; said writs, in both cases, may be sued out, served and returned like

In what courts, replevin may be brought.  
1821, 80, § 4.  
1823, 443.  
1833, 67.  
3 Mass. 199.  
7 Mass. 353.  
1 Greenl. 133.  
2 Greenl. 162.  
6 Greenl. 261.  
3 Fairf. 51, 261.

**CHAP. 130.** other writs in civil actions, in all particulars, in which a different course is not prescribed.

Bond to be given, before service.  
11 Mass. 281.  
14 Mass. 313.  
5 Pick. 226.

**SECT. 10.** The officer, before serving the writ, shall take from the plaintiff, or some one in his behalf, a bond to the defendant, with sufficient sureties, in double the value of the goods to be replevied; conditioned as in the bond described in section, three; which bond shall be returned to the court from which the writ issued, with the writ, for the use of the defendant.

Judgment for a return.  
1821, 80, § 4.  
5 Mass. 343.

**SECT. 11.** If it shall appear upon the nonsuit of the plaintiff, or upon a trial or otherwise, that the defendant is entitled to a return of the goods, he shall have judgment therefor accordingly, with damages for the taking thereof by the replevin, with his costs, and a writ of return and restitution thereupon accordingly.

Assessment of damages, on judgment for return of property to an attaching officer.  
1 Mass. 421.  
2 Fairf. 66.  
11 Pick. 223.

**SECT. 12.** If the goods, when replevied, were taken in execution, or, if they were attached, and judgment be afterwards rendered for the attaching creditor, and if, in either case, the service of the execution be delayed by means of the replevin, the damages to be assessed for the defendant, in case of a judgment for a return, shall be not less than at the rate of twelve per cent. by the year, on the value of the goods, for so long time as the service of the execution shall be so delayed.

Disposal of the money recovered by the officer.  
1821, 80, § 4.

**SECT. 13.** All sums, recovered in an action of replevin by any officer, for or on account of any goods attached or taken on execution by him, or recovered in an action upon the bond given upon replevin of such goods, shall be applied and disposed of, as far as they will go, in the following manner:

*First.* To pay the lawful fees and charges of the officer and the reasonable expenses of the action of replevin, and the action on the bond, so far as they are not reimbursed by the costs, that may be recovered;

*Secondly.* To pay to the creditor, at whose suit the goods were attached, or taken in execution, the sum, if any, recovered by him in that suit, or as much thereof as shall remain unpaid, with interest therefor, at the rate of twelve per cent. by the year, for such time, if any, as the money shall have been withheld from the creditor, or the service of his execution delayed, by reason of the replevin; and,

*Thirdly.* If the attaching creditor, in such case, shall not recover judgment in the suit in which the attachment was made, or if any balance shall remain of the money, so recovered by the officer, after paying what is due to the creditor, as before provided, such balance or the whole amount, as the case may be, shall be applied and disposed of, in the same manner, as would and ought to have been done with the surplus, if any, of the proceeds of sale, in case the same goods had been sold on execution.

Appropriation of moneys received by the creditor, in such cases.

**SECT. 14.** All sums, received by such creditor, for the proceeds of sale of any goods, that had been attached or taken on execution, and which are afterwards returned, and all sums, received for the value of any of such goods, as are not returned, and also all sums, recovered from the officer for the insufficiency of the sureties in the bond, shall be applied toward the discharge of the judgment recovered by the creditor; but all sums, received as interest or damages

for the delay of his execution, shall be retained to his own use, and shall not go in discharge of the judgment. CHAP. 130.

SECT. 15. If it shall appear, upon default of the defendant, or upon a trial, or otherwise, that the goods were unlawfully taken or attached, or unlawfully detained by the defendant, the plaintiff shall have judgment for his damages caused thereby, and for his costs of the suit. Judgment for damages and costs, if plaintiff recover. 5 Mass. 343.

SECT. 16. If the goods, which are replevied, had been attached, they shall, in case of judgment for a return, be held liable to the attachment until final judgment in the suit, in which they were attached, and for thirty days thereafter, in order to their being taken in execution; and, if such final judgment be rendered before the return of the goods, or, if the goods when replevied, were seized and held on execution, they shall be held subject to the same attachment or seizure for thirty days after the return, in order that the execution may be served thereon, or the service thereof completed in like manner, as it might have been, if the goods had not been replevied. Continuance of attachment, if goods be replevied. 1821, 80, § 4.

SECT. 17. When the officer, to whom the writ of return and restitution shall be directed, shall not be able to find in his precinct the beast, or other property, which by the precept is directed to be returned, he shall certify that fact in his return; and the court, whence the same issued, may, upon motion, grant a writ of reprisal, substantially of the form prescribed in chapter, one hundred and fourteen, against the plaintiff in replevin, to take the goods or beasts of the plaintiff, not exempted from attachment, of the full value, to be delivered to the defendant, and held and disposed of by him according to law, until the plaintiff shall restore the beast or other property by him taken on the writ of replevin. When writ of reprisal shall issue. 1821, 80, § 5.

SECT. 18. The foregoing provisions shall not preclude the defendant from resorting to his remedy, on the replevin bond, or to his remedy against the officer for the insufficiency of the sureties on the bond, to recover the value of the goods, together with the damage or loss occasioned by the replevin thereof, notwithstanding he may have endeavored to recover the same by the writs of return and of reprisal, as herein before provided. Defendant's remedy on the replevin bond.

SECT. 19. No action shall be maintained against any person, as surety in a replevin bond, unless the writ be served on him within one year after the final judgment in the action of replevin, or if the action shall not be entered by the plaintiff, and the defendant shall not obtain judgment upon a complaint, such writ against the surety may be served on him within one year after the end of the term, at which the action of replevin ought to have been entered, and not afterwards. Limitation of surety's liability on a replevin bond.