

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:

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

.....
1841.

SECT. 4. The complainant, in his writ, may also set forth and declare for any special damages, he may have suffered, by means of the service of such execution; and, on proof of such damages, he shall have judgment and execution for the same, in like manner, as he could recover them in a subsequent suit; and instead of such mode.

CHAP. 141.

Special damages.
1821, 65, § 6.

SECT. 5. The defendant may plead the general issue, of not guilty, with or without a brief statement, as the case may require; or plead any special matter in bar: and exceptions may be alleged to the rulings, instructions and opinion of the court, as prescribed in case of civil actions, unless by law an appeal is allowable.

Pleadings.
Filing exceptions.
1821, 65, § 7, 8.

SECT. 6. When the plaintiff is in prison, by virtue of such execution, the court, before which such action is brought, may admit him to bail, to be approved by the court; and the bond shall be conditioned, that, if final judgment be rendered for the defendant, the complainant shall, within thirty days after such judgment, surrender himself to the jail keeper to be detained on the execution, or, within that time, satisfy the same execution, and also such final judgment, as shall be rendered for the respondent.

Proceedings, if plaintiff be in prison.
1821, 65, § 9.

SECT. 7. If the plaintiff shall surrender himself to jail, he shall be in lawful custody on such execution, and there detained until discharged according to law.

Effect of a surrender to jail.
1821, 65, § 9.

CHAPTER 142.

OF THE WRIT FOR REPLEVYING A PERSON.

- SECT. 1. Who is entitled to the writ.
2. From what court to issue. Service.
3. Form of the writ.
4. Bond to be given.
5. Officer responsible for the sureties.
6. What judgment, if action be maintained.
7. What judgment, if not maintained.
8. What judgment, if defendant be entitled to custody of the plaintiff.
9. If defendant have eloiigned the plaintiff, he may be arrested.

- SECT. 10. He may give bail.
11. Discharge, and costs, if not guilty of eloiigning.
12. If guilty, to be imprisoned.
13. Form of writs of reprisal.
14. Discharge of defendant; on proof of plaintiff's death.
15, 16. Proceedings, if plaintiff be produced.
17. Appeal, and proceedings.
18. A third person may sue out the writ.

SECTION 1. If any person is imprisoned, restrained of his liberty, or held in duress, unless by force of a lawful writ, warrant or other process, civil or criminal, issued by a court of competent authority, he shall be entitled as of right, to the writ for replevying a person; and to be thereby delivered in the manner herein provided.

Who is entitled to the writ.
1821, 66, § 1.

SECT. 2. The writ shall be issued from, and returnable to the district court in the county in which the plaintiff is confined; and shall be directed to the sheriff, or coroner, of such county, as the case may require, and shall be served as soon as may be, and fourteen days before the return day.

From what court to issue. Service.
1821, 66, § 2.
11 Mass. 271.

SECT. 3. The writ shall be in the form heretofore established,

Form of the writ.

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1821, 66, § 2.

except that the proviso shall be as follows: "provided that the said A. B." (the plaintiff) "shall, before his deliverance, give bond to the defendant, in such sum as you shall judge reasonable, and with two sufficient sureties, with condition to appear at said court to prosecute his replevin against the defendant, and to have his body there to be redelivered, if thereto ordered by the court, and to pay all such damages and costs, as may be awarded against him; and, if the plaintiff is delivered by you, at a day before the sitting of said court, you are to summon the defendant to appear at said court."

Bond to be given.
1821, 66, § 2.

SECT. 4. No person shall so be delivered by such writ, until a bond shall be given, as prescribed in the preceding section; and the bond shall be returned to the court with the writ.

Officer responsible for the sureties.
1821, 66, § 2.

SECT. 5. The officer, serving the writ, shall be answerable for the sufficiency of the sureties in like manner, as he is answerable for taking insufficient bail in a civil action.

What judgment, if action be maintained.

SECT. 6. If the plaintiff shall maintain his action, by proving the alleged unlawful imprisonment or restraint, he shall be discharged, and recover his costs.

What judgment, if not maintained.
1821, 66, § 3.

SECT. 7. If he shall not maintain his action, the defendant shall recover his costs and such damages as the jury may assess, or the court, if the parties consent, or in case of a default.

What judgment, if defendant be entitled to custody of the plaintiff.
13 Maine, 408.

SECT. 8. If it shall appear, that the defendant is bail for the plaintiff, or that, as his child, ward, apprentice or otherwise, he is entitled to the custody of the plaintiff, he shall have judgment for a redelivery of the body of the plaintiff, to be held or disposed of, according to law.

If defendant have eligned the plaintiff, he may be arrested.
1821, 66, § 4.

SECT. 9. If it shall appear, that the defendant has eligned the plaintiff's body, so that the officer cannot deliver him, the court shall, on motion in behalf of the plaintiff, issue a writ of reprisal to take the body of the defendant, and him safely keep, so that he may be at the then next term of the court, to traverse the return of the said writ for the replevying the plaintiff.

He may give bail.
1821, 66, § 4.

SECT. 10. The defendant may be enlarged, by giving bail in such sum as the officer shall require, with two sufficient sureties, for his appearance at court.

Discharge, and costs, if not guilty of eligning.
1821, 66, § 4.

SECT. 11. At such court, the defendant may traverse the return on the writ for replevying the plaintiff; and, if it shall appear, that he is not guilty of eligning the plaintiff, he shall be discharged and recover his costs.

If guilty, to be imprisoned.
1821, 66, § 4.

SECT. 12. If such return shall not be traversed, or if, upon such traverse, it shall appear, that the defendant is guilty of eligning the plaintiff, an alias writ of reprisal shall issue; and, thereupon, he shall be committed to the common jail, there to remain, irrepleviable, until he shall produce the body of the plaintiff, or prove his death.

Form of writs of reprisal.
1821, 66, § 4.

SECT. 13. The aforesaid writs shall be substantially in the form heretofore established, and used for the same in this state.

Discharge of defendant, on proof of plaintiff's death.
1821, 66, § 4.

SECT. 14. The defendant, after having been committed on an alias writ of reprisal, may suggest the death of the plaintiff; and the court shall empanel a jury to try the fact, at the expense of the defendant; and, if the death is proved, the defendant shall be discharged.

SECT. 15. If the defendant shall, at any time after the return of elongation, produce the body of the plaintiff in court, the court shall deliver the plaintiff from imprisonment, upon his giving to the defendant such bond as is before directed to be taken by the officer, when the plaintiff is delivered by him; and, for want of the bond, he shall stand committed to abide the judgment on the writ for replevying the plaintiff.

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Proceedings, if plaintiff be produced.

SECT. 16. When the body of the plaintiff is produced, as mentioned in the last section, the suit shall be tried in the manner before mentioned.

Same subject.

SECT. 17. Either party may appeal to the supreme judicial court, in like manner as in common civil actions, and, in case of an appeal from any order or judgment upon the writ of reprisal, the whole case in the original writ for replevying the plaintiff, shall be carried up to the supreme judicial court, and shall there be disposed of, as it should have been in the district court.

Appeal, and proceedings. 2 Mass. 207.

SECT. 18. The writ of replevin may be sued out by any person in behalf of the plaintiff, without any express power for that purpose, he giving bond, as before mentioned, when sued by the plaintiff himself.

A third person may sue out the writ. 1821, 66, § 5.

CHAPTER 143.

OF WRITS OF ERROR AND CERTIORARI.

- SECT. 1. How WRITS OF ERROR may issue.
- 2. Execution not to stay, unless bond be given.
- 3. Bond to be approved.
- 4. Filing of bond, and effect thereof.
- 5. Costs to prevailing party. Damages and costs; if defendant prevail.
- 6. Proceedings, on writs of error.
- 7. Writs of error in capital cases.

- SECT. 8. Effect thereof, in other criminal cases.
- 9. Provision for keeping plaintiff in error, on stay of proceedings.
- 10. Limitation of writs of error.
- 11. WRITS OF CERTIORARI, how issued.
- 12. Costs, on applications, or on final decisions.
- 13. Limitation of applications for certiorari.

SECTION 1. Writs of error, in civil cases, may issue of course out of the supreme judicial court, in vacation as well as term time; and shall be returnable to the same court.

How writ of error may issue. 6 Mass. 4. 10 Mass. 163.

SECT. 2. No writ of error shall operate to stay or supersede execution in any civil action, unless the plaintiff in error, or some person in his behalf, shall give bond to the defendant with one or more sureties, with condition that the plaintiff shall prosecute his suit to effect, and shall pay and satisfy such judgment as shall be rendered thereon.

Execution not to stay, unless bond be given.

SECT. 3. The sufficiency of the sureties, and the sum for which the bond shall be given, shall be determined by any judge of the supreme judicial court, or by the clerk from whose office the writ of error is issued, according to such general rules, as the court may, from time to time, establish.

Bond to be approved.