

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED APRIL 17, 1857;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN

APPENDIX.

PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

BANGOR:
WHEELER & LYNDE.

1857.

CHAPTER 89.

PETITIONS AND ACTIONS OF REVIEW.

- SEC. 1. One review may be granted on petition within three years after judgment.
2. Petition presented in any county, and notice to be ordered.
 3. When discovery of new evidence is alleged, proceedings.
 4. Supersedeas granted in term time or vacation, on bond filed.
 5. On writ of review, trial to be had in county where judgment was rendered; copies to be produced.
 6. Writ of review describes former action, summons, and service.
 7. Original plaintiff being plaintiff in review, property may be attached.
 8. Pleadings, how made, amended on leave, trial on former issue.
 9. Plaintiff recovering greater sum than before, judgment, how to be rendered.
 10. Plaintiff recovering less sum than before, judgment, how to be rendered.
 11. In actions of replevin, and in actions in which a claim in set-off was filed, defendant in position of a plaintiff for damages.
 12. Party prevailing has costs, court may impose terms respecting them.

SEC. 1. The supreme judicial court held by one justice, may grant one review in civil actions, including petitions for partition and proceedings for the location of lands reserved for public uses, when judgment has been rendered in any judicial tribunal, if petition therefor is presented within three years after the rendition of judgment. (a)

Review within three years after judgment.
R. S., c. 123, § 1, 2, 5, 6.
1850, c. 183, § 1.
1852, c. 246, § 13.

SEC. 2. The petition may be presented in any county, and notice be there ordered returnable in the county where the judgment was rendered. Such reasonable notice must be given to the adverse party as the court orders. (b)

Petition presented; notice, &c.
R. S., c. 123, § 3, 4.

SEC. 3. When the discovery of new evidence is alleged in the petition, the names of the witnesses to prove it, and what each is expected to testify, must be stated under oath.

Discovery of new evidence, &c.
R. S., c. 123, § 7.

SEC. 4. On presentation of a petition for review, any justice of the court may, in term time, or in vacation, stay execution on the judgment complained of, or grant a supersedeas, upon a bond filed with sureties approved by him, or by such person as he appoints, in double the amount of the damages and costs, conditioned to pay said amount if the petition is denied, or the amount of the final judgment on review, if it is granted, with interest thereon at the rate of twelve per cent. from the date of the bond to the time of final judgment.

Any justice may grant a supersedeas, on bond filed.
R. S., c. 123, § 8.
1844, c. 95, § 3.

SEC. 5. When a review is a matter of right as provided by the fourth section of chapter eighty-two, or when granted on petition, a writ of review shall be issued, and the trial take place in the supreme judicial court in the county in which the judgment was rendered. It shall be entered at the next term after the review is granted, unless leave is granted to enter it at the second term; and the plaintiff in review shall produce and file an attested copy of the writ, judgment, proceedings, and depositions, or their originals, in the former suit.

Writ of review entered at first term and trial in the county where judgment rendered, &c.
R. S., c. 123, § 10.
R. S., c. 124, § 1, 5.

(a) 1 Greenl. 322; 3 Greenl. 92; 4 Greenl. 58, 534; 6 Greenl. 412, 479; 8 Greenl. 211; 19 Maine, 107, 259; 24 Maine, 166; 27 Maine, 536; 33 Maine, 233, 585.

(b) 6 Greenl. 412; 36 Maine, 9.

CHAP. 89.

Writ to describe former action, &c.
R. S., c. 124,
§ 2, 3.

When original plaintiff is plaintiff in review, property may be attached, &c.
R. S., c. 124,
§ 4, 11.

When pleadings had been made, cause tried on that issue, if not on new pleadings, &c.
R. S., c. 124,
§ 6, 7, 8.

When plaintiff recovers greater sum, judgment, how rendered.

38 Maine, 112.
R. S., c. 124,
§ 9, 13.

When sum first recovered is reduced, how judgment is rendered.
R. S., c. 124,
§ 12.

In actions of replevin, &c.
R. S., c. 124,
§ 14.

Party prevailing has costs, &c.
1 Greenl. 155.
2 Greenl. 397.
R. S., c. 124,
§ 10.

SEC. 6. In the writ of review, it shall be sufficient to describe the former action and judgment so as to identify it. The writ shall contain a summons to appear and answer to the plaintiff in review, and it may be served as other writs, and when the party is not an inhabitant of or found within the state, it may be served on his attorney in the original suit.

SEC. 7. When the original plaintiff is plaintiff in review, the property of the defendant may be attached, as it might have been in the original suit, and the form of the writ be varied accordingly; but no attachment made, or bail taken in the original action, shall be holden to satisfy the judgment on review.

SEC. 8. The proper pleadings shall be made on review, when no issue had been joined before judgment in the original action; when issue has been so joined, the cause shall be tried thereon; but amendments, brief statements, and other issues, may be made by leave of court, and the cause may be tried and disposed of as if it were an original suit.

SEC. 9. Judgment in the suit reviewed, shall be given without regard to the former judgment, except as follows. When the original plaintiff recovers a greater sum than he did by the first judgment as debt or damage, he shall have judgment therefor, or for so much thereof as remains unsatisfied, and for costs on review.

SEC. 10. When the sum first recovered is reduced, the original defendant shall have judgment for the difference, with costs, on the review; and if the former judgment has not been satisfied, one judgment may be set off against the other, and execution be issued for the balance.

SEC. 11. When actions of replevin, and actions in which a claim in set-off was filed, are reviewed, the defendant shall be regarded as in the position of a plaintiff, so far as it respects the damages awarded to him.

SEC. 12. The party prevailing in the action recovers costs, but this shall not prevent the court, granting a review, from imposing terms respecting costs.

CHAPTER 90.

MORTGAGES OF REAL ESTATE.

- SEC. 1. How mortgages of real estate are made.
2. Mortgagee may enter before breach, unless otherwise agreed.
3. Modes of obtaining possession for foreclosure.
4. Foreclosed in three years.
5. Mode of foreclosing without taking possession.
6. Mortgager may redeem within three years.
7. Form of declaring in a suit to obtain possession on mortgage. Conditional judgment, and judgment as at common law, in certain cases.
8. Form of conditional judgment; form of judgment when condition is for some act other than payment of money.
9. Judgment for defendant, if nothing be due.