

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.

needed for fuel or repairs, or commits any strip or waste on such estate, he shall forfeit treble the amount of damages, to be recovered by the executor or administrator in an action of trespass.

CHAP. 95.

10 Maine, 365.
15 Maine, 205.

SEC. 13. If such executor or administrator is heir or devisee, and commits such trespass or waste, on proof thereof before the judge of probate, he shall be liable to the same extent as the heirs or devisees; and in both cases, the damages, when recovered by the executor or administrator, or adjudged against him by the judge of probate, shall be accounted for in the administration account.

R. S., c. 129,
§ 15.

Liability of executor or administrator for committing waste.

R. S., c. 129,
§ 16.

SEC. 14. All or any of the tenants in common, co-parceners, or joint tenants of any lands may join or sever in personal actions for injuries done thereto, setting forth in the declaration the names of all other co-tenants, if known, and the court may order notice to be given in such actions to all other co-tenants known, and all or any of them, at any time before final judgment, may become plaintiffs in the action, and prosecute the suit for the benefit of all concerned.

One or more tenants in common may join, &c.

Notice to other co-tenants, &c.

R. S., c. 129,
§ 17, 18.

SEC. 15. The court shall enter judgment for the whole amount of the injury proved; but award execution only for the proportion thereof sustained by the plaintiffs; and the remaining co-tenants may afterwards 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.

Judgment for the whole damage, &c.
Scire facias by other co-tenants for their shares.

R. S., c. 129,
§ 19, 20.

SEC. 16. If any one or more of the joint tenants or tenants in common take the whole rents or income of the joint estate, or more than their share, without the consent of their co-tenants, and refuse, in a reasonable time after demand, to pay such co-tenants their share thereof, any one or more of them may have an action of special assumpsit against the refusing co-tenants, to recover their proportion thereof.

If one or more joint tenants take the whole rent, &c.

1848, c. 61,
§ 1, 2.

CHAPTER 96.

REPLEVIN OF BEASTS AND CHATTELS.

REPLEVIN OF BEASTS.

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 17. When a writ of reprisal may issue.
 18. Defendant's remedy on the replevin bond.
 19. Limitation of surety's liability on replevin bond.

REPLEVIN OF BEASTS.

Owner of
beasts dis-
trained, may
replevy them.
28 Maine, 481.
R. S., c. 130,
§ 1.

SEC. 1. Any person, whose beasts are distrained or impounded to recover a penalty or forfeiture supposed to be incurred by their going at large, or to obtain satisfaction for damages alleged to be done by them, may maintain a writ of replevin therefor against the impounder or finder, before any justice of the peace in the county, in the form prescribed by law.

Mode of pro-
ceeding.
R. S., c. 130,
§ 2.

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

Bond to be
given before
service.
20 Maine, 266.
R. S., c. 130,
§ 3.

SEC. 3. The writ shall not be served, unless the plaintiff, or some one in his behalf, executes and delivers 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 in the prescribed form of the writ, and to be returned with the writ for the use of the defendant.

If the beasts
are lawfully
distrained, &c.
17 Maine, 266,
307.
R. S., c. 130,
§ 4.

SEC. 4. If it appears that the beasts were lawfully taken or distrained, the defendant shall have judgment for the sum found due from the plaintiff for the penalty or forfeiture, or for damages for which the beasts were impounded, with the legal fees, costs, and expenses occasioned by the distress, and the costs of the replevin suit; or instead thereof, the justice or court, at discretion, may 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 and costs in the replevin suit.

If unlawfully
distrained, &c.
R. S., c. 130,
§ 5.

SEC. 5. If it appears that the beasts were taken or distrained without justifiable cause, the plaintiff shall have judgment for his damages and costs.

Appeal.
22 Maine, 558.
R. S., c. 130,
§ 6.

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

In what cases
a cause may
be transferred
from a justice
to the supreme
judicial court.
R. S., c. 130,
§ 7.

SEC. 7. When it appears that the sum demanded for the penalty, forfeitures, or damages, exceeds twenty dollars, or that the property of the beasts is in question, and their value exceeds twenty dollars, or that the title to real estate is in question, at the request of either party, the case shall be transferred to the supreme judicial court, to be there disposed of as provided by law respecting actions brought before a justice of the peace, in which the title to real estate is brought in question; but the

party requesting such transfer shall recognize in such reasonable sum, as the justice orders, to enter the action at the next term of said court, prosecute it with effect, and pay all intervening damages and costs.

CHAP. 96.

REPLEVIN OF GOODS.

SEC. 8. When any goods, unlawfully taken or detained from the owner or person entitled to the possession thereof, or 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 or taken, such owner or person may cause them to be replevied. (a)

Goods, unlawfully detained, may be replevied.
R. S., c. 130, § 8.

SEC. 9. If the value of the goods exceeds twenty dollars, the action shall be brought in the supreme judicial court for the county where the goods are detained; if it does not exceed twenty dollars, before a justice of the peace of the county where the goods are detained.

In what courts replevin may be brought.
R. S., c. 130, § 9.

SEC. 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 prescribed form of the writ, to be returned with the writ to the court from which the writ issued, for the use of the defendant. (b)

Bond to be given before service.
R. S., c. 130, § 10.

SEC. 11. If it appears that the defendant is entitled to a return of the goods, he shall have judgment and a writ of return accordingly, with damages for the taking and costs.

If plaintiff fails in his suit, &c.
R. S., c. 130, § 11.

SEC. 12. If the goods, when replevied, were taken in execution, or attached, and judgment is afterwards rendered for the attaching creditor, and if, in either case, the service of the execution is delayed by the replevin, the damages on a judgment for a return shall not be less than at the rate of twelve per cent. by the year on the value of the goods while the service of the execution is so delayed. (c)

Assessment of damages on judgment for return of property.
R. S., c. 130, § 12.

SEC. 13. All sums recovered by an officer in an action of replevin on account of goods attached or taken in execution by him, or recovered in a suit upon the replevin bond, shall be applied:

Disposal of the money recovered by officer.
R. S., c. 130, § 13.

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

Second.—To pay the creditor, at whose suit the goods were attached or taken in execution, the sum, if any, recovered by him in that suit, or what remains unpaid, with interest at the rate of twelve per cent. by the year for the time the money was with-

(a) 4 Greenl. 306; 12 Maine, 261; 15 Maine, 373; 19 Maine, 255, 281; 20 Maine, 287; 22 Maine, 537; 30 Maine, 184, 370; 31 Maine, 296, 340; 32 Maine, 192, 322; 37 Maine, 326.

(b) 27 Maine, 443; 29 Maine, 566; 34 Maine, 84; 35 Maine, 53; 37 Maine, 25; 39 Maine, 516.

(c) 11 Maine, 66; 28 Maine, 241; 32 Maine, 182; 33 Maine, 384.

CHAP. 96. held from the creditor, or the service of his execution delayed by reason of the replevin.

Third.—If the attaching creditor in such case does not recover judgment in his suit, or if any balance remains of the money so recovered by the officer, after paying the creditor his due, such balance or the whole amount, as the case may be, shall be applied as the surplus of the proceeds of sale should be applied if such goods had been sold on execution.

Appropriation of the money received by creditor.

R. S., c. 130, § 14.

SEC. 14. All sums received by such creditor from the sale of goods attached or taken in execution, and afterwards returned, for any of such goods not returned, and of the officer for the insufficiency of the bond, shall be applied in discharge of the creditor's judgment; but all sums received as interest or damages for delay of his execution, shall be retained to his own use, and not go in discharge of the judgment.

Judgment, if plaintiff recovers.

R. S., c. 130, § 15.

SEC. 15. If it appears that the goods were taken, attached, or detained unlawfully, the plaintiff shall have judgment for his damages caused thereby, and for his costs.

Continuance of attachment, if goods are replevied.

R. S., c. 130, § 16.

SEC. 16. If the goods replevied had been attached, they shall, in case of judgment for a return, be held by the attachment until thirty days after judgment in the suit, in which they were attached; and if such final judgment is rendered before the return of the goods, or if the goods when replevied were seized on execution, they shall be held by the same attachment or seizure for thirty days after the return, liable to be taken and disposed of, as if they had not been replevied.

When writ of reprisal may issue.

R. S., c. 130, § 17.

SEC. 17. When the officer, in the service of the writ of return and restitution, is not able to find in his precinct the beast or other property directed to be returned in his precept, he shall certify that fact in his return; and the court whence it issued, upon notice, may grant a writ of reprisal, in the form prescribed by law, against the plaintiff in replevin, to take his goods or beasts, not exempt from attachment, of the full value, to be delivered to the defendant, to be held and disposed of by him according to law, until the plaintiff restores the beast or other property replevied by him.

Defendant's remedy on the replevin bond.

18 Maine, 260; 21 Maine, 508. R. S., c. 130, § 18.

SEC. 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 bond, to recover the value of the goods together with the damage or loss occasioned by the replevin thereof, notwithstanding he has endeavored to recover the same by the writs of return and of reprisal as aforesaid.

Limitation of surety's liability on replevin bond.

R. S., c. 130, § 19.

SEC. 19. No action shall be maintained against any person as surety in a replevin bond, unless the writ is served on him within one year after the final judgment in the action of replevin; or if the action is not entered by the plaintiff, and the defendant does 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.