

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED JANUARY 25, 1871;

TO WHICH ARE PREFIXED
THE CONSTITUTIONS

OF THE
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX.

BY AUTHORITY OF THE LEGISLATURE.



PORTLAND:
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CHAP. 89.

CHAPTER 89.

PETITIONS AND ACTIONS OF REVIEW.

PETITIONS FOR REVIEW.

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Review, within three years after judgment, and in special cases.

R. S. c. 89, § 1.
1862, c. 93.
24 Me. 168.
27 Me. 536.
39 Me. 169.

Review granted in three years after demand by officer on execution in case of default without appearance.

1858, c. 40, § 1.
33 Me. 585.
42 Me. 569.

Review if the party is surprised by perjured testimony.

SEC. 1. The supreme judicial court held by one justice, may grant one review in civil actions, including petitions for partition, and for certiorari, 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, and in the special cases following: (a)

First.—When a petition for review of an action defaulted without appearance, is presented within three years after an officer having the execution issued on the judgment therein demands its payment of the defendant or his legal representative.

Second.—When the petitioner shows that a witness testified falsely to material facts against him in the trial of the action, whereby he was surprised, and was then unable to prove the falsity, but has since discovered evidence, which with that before known, is sufficient proof

(a) 1 Me. 322; 3 Me. 92; 4 Me. 58, 534; 6 Me. 412, 478; 8 Me. 211; 19 Me. 107, 250; 24 Me. 166; 37 Me. 536; 33 Me. 233, 535.

in the opinion of the court, that the testimony was false; or if the witness has been convicted of perjury therefor.

Third.—On the petition of a party in interest who was not a party to the record, setting forth the fact of such interest, and upon filing a bond with sufficient surety or sureties, approved by the presiding judge, to secure the party of record against any judgment recovered by the defendant in review.

Fourth.—When a judgment has been rendered on the report of referees, in an action referred by rule of court, and other matters in dispute between the parties were included in the rule of reference. The depositions used before the referees may be used on the hearing of such petition, and if review is granted, they may be used at the trial; and all matters embraced in the rule of reference, although not wholly contained in the writ shall be included and tried in review.

Fifth.—When a material amendment of the declaration is made after the entry of the action, without actual notice thereof to the defendant, and judgment is rendered on default, a review may be granted before execution of final process in the action, or within three years thereafter.

Sixth.—In cases mentioned in section forty-nine of chapter seventy-six.

Seventh.—A review may be granted in any case where it appears that justice has not been done, through fraud, accident, mistake or misfortune; and that a further hearing would be just and equitable, if a petition therefor is presented to the court within six years after judgment.

Eighth.—Any defendant in the original judgment may petition in the name of all, by furnishing to each of his co-defendants requiring it, such security against all liability therefrom as the court deems reasonable; and the court, on motion of any original co-defendant shall require such security in any stage of the proceedings.

SEC. 2. A petition for review may be signed by the petitioner's attorney when the facts therein stated are known to him, and the petitioner is out of the state at the time of filing it; property may be attached thereon as on a writ, and notice thereon may be ordered in any county, returnable in the county where the judgment was rendered, and it must be given accordingly.

SEC. 3. When a petitioner discovers new and important testimony during the pendency of his petition, he may avail himself of it at the hearing by serving notice thereof on the adverse party fourteen days at least before court, stating the names of the witnesses, and in substance what he expects to prove by them.

SEC. 4. 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. Newly discovered

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ny, and afterwards discovers proof of perjury.

1859, c. 94, § 1,

1 Me. 322.

3 Me. 92.

56 Me. 546.

Review by party in interest and not of record, on filing bond for costs.

1859, c. 94, § 3.

Review in case action and all other matters are referred and judgment on report.

What evidence may be used at the trial.

1862, c. 107.

Review when the declaration is amended without notice to defendant.

1862, c. 133.

Review in cases in c. 76, § 49.

1863, c. 200,

§§ 1, 2, 3.

Review within six years when justice was not done, by fraud, accident or mistake.

1863, c. 164.

42 Me. 569.

Review by one defendant in name of all, on giving security to the others.

1864, c. 268, § 5, 44 Me. 80.

When attorney may sign petition. Property may be attached thereon. Notice, how ordered and when returnable.

R. S. c. 89, § 2.

1864, c. 268, § 1.

1869, c. 66.

6 Me. 412.

36 Me. 9.

How evidence discovered pending the petition may be used at the hearing.

1861 c. 42,

Newly discovered evidence

CHAP. 89. cumulative evidence is admissible, and shall have the same effect as other newly discovered evidence. (a)

and the witnesses to prove it, must be stated on oath in the petition. New cumulative evidence, admissible, R. S. c. 89, § 3, 1858, c. 40, § 2, A justice of the court may grant stay of execution or supersedeas on filing a bond, R. S. c. 89 § 4, 47 Me. 435.

When and how second review may be granted. 1858, c. 40, § 3. 1861 c. 56.

Writ of review issued and entered at first term, in the county where judgment rendered. Copies to be produced. R. S. c. 89, § 5, 1 Me. 399.

What writ is to recite and how to be served. R. S. c. 89, § 6,

When original plaintiff is plaintiff in review, property may be attached. R. S. c. 89, § 7.

When pleadings had been made, cause tried on that issue, if not on new pleadings. R. S. c. 89, § 8.

SEC. 5. On presentation of a petition for review, any justice of 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.

SECOND REVIEW.

SEC. 6. A second review may be granted on a petition filed within three years after judgment on the first, when the court thinks justice manifestly requires it, and on such terms as it imposes; but no second review shall be granted except by the full court, in a case in which more than one verdict has been rendered against the petitioner.

ACTIONS OF REVIEW.

SEC. 7. When a review is a matter of right as provided by section four 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.

SEC. 8. 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. 9. 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. 10. 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.

(a) 44 Me. 65; 50 Me. 118; 53 Me. 355; 56 Me. 546.

SEC. 11. 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. 12. 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. When the original judgment is wholly reversed judgment shall be entered in review for the amount of the former judgment, and costs, with interest thereon, and for such further sum as the prevailing party would have been entitled to recover as costs in the original action, if, in the opinion of the court, justice requires it. In such case, if the original judgment remains unpaid, it shall be cancelled by a set-off entered of record, in the judgment on review, and execution shall issue for the balance only, otherwise for the amount of the latter judgment.

SEC. 13. 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. 14. If, on a petition for review, commenced within one year after an execution issued on the original judgment is levied on real estate, such judgment is finally reversed, the levy is void.

SEC. 15. In all actions of review the party prevailing recovers costs, and shall also recover the costs to which he would have been entitled if he had prevailed in the original action, unless the court otherwise order; but the court granting a review, may impose terms respecting costs.

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When plaintiff recovers greater sum, judgment, how rendered.
R. S. c. 89, § 9.
38 Me. 112.

When sum first recovered is reduced, how judgment is rendered.
When wholly reversed, how rendered.
Costs.
R. S. c. 89, § 10.
1864, c. 268,
§§ 2, 3.
1 Me. 255.
2 Me. 397.
38 Me. 112.
47 Me. 435, 525.
48 Me. 287.

In actions of replevin and set-off, plaintiff regarded as defendant
R. S. c. 89, § 11.

If judgment is reversed on petition filed within one year, levy void.
1864, c. 268, § 4.
47 Me. 525.

Party prevailing has costs; court may impose terms respecting them.
R. S. c. 89, § 12.
1864, c. 268, § 2.
1 Me. 155.
2 Me. 397.
40 Me. 331.