

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

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:
PUBLISHED BY BAILEY & NOYES.

CHAPTER 101.

WRIT FOR REPLEVING A PERSON.

- SEC. 1. Who is entitled to the writ, and from what court.
2. In what county writ to issue and how served.
3. Form of the writ.
4. Bond to be given, before writ issues, and officer responsible for the sureties.
5. What judgment, if the action is or is not maintained.
6. What judgment, if defendant is entitled to the custody of the plaintiff.
7. If defendant has eligned the plaintiff, he may be arrested. Defendant may be enlarged by giving bail.
8. Discharge and costs, if not guilty of eligning. If guilty, to be imprisoned; and discharged on proof of plaintiff's death. Form of writ of reprisal.
9. Proceedings, if the plaintiff is produced.

SEC. 1. If any person is imprisoned, restrained of his liberty, or held in duress, unless by a lawful writ, warrant, or other process, civil or criminal, he may have the writ for replevying the person, on application made by himself or any one, in his behalf, to any judge of the supreme judicial court, or in the county of Cumberland, to the judge of the superior court, in term time or vacation, at the discretion of such judge and not otherwise.

Who is entitled to the writ and from what court.
R. S. c. 101, § 1.
1863, c. 217.
13 Me. 408.
32 Me. 560.
34 Me. 126.
35 Me. 267.
48 Me. 123.
49 Me. 16.

SEC. 2. The writ shall issue from and be returnable to such court in the county where the plaintiff is confined, and directed to a proper officer, and served, as soon as may be, fourteen days at least before the return day.

In what county writ to issue and how served.
R. S. c. 101, § 2.

SEC. 3. The form of the writ shall be as follows :

Form of writ.
R. S. c. 101, § 3.
1865, c. 300 § 1.

STATE OF MAINE.

[L. s.] S——, ss. To the sheriff of our county of S——, or his deputy,

Greeting.

We command you, that without delay you cause to be replevied, C. D., who, as it is said, is taken and detained in a place called N., in our said county of S——, by the duress of G. H., that he may appear at our supreme judicial court, next to be held at——, within and for the county of S——, on the —— day of —— next, then and there in our said court to demand right and justice against said G. H., for the duress and imprisonment aforesaid, and to prosecute his replevin, as the law directs; provided that the said C. D., (the plaintiff,) before his deliverance, gives bond to the defendant, in such sum as you judge reasonable, 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 re-delivered, if thereto ordered by the court, and to pay all such damages and costs as are

CHAP. 101. 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.

Witness J. S., Esquire, at —, the — day of —, in the year of our Lord —. L. M., Clerk.

Bond to be given before writ issues. Officer answerable for sufficiency. R. S. c. 101, §§ 4, 5, 35 Me. 53.

What judgment, if action is or is not maintained. R. S. c. 101, § 6.

What judgment, if defendant is entitled to the custody of the plaintiff. R. S. c. 101, § 7. If defendant has eligned the plaintiff, he may be arrested and give bail. R. S. c. 101, § 8.

Discharge and costs, if not guilty of eligning; if guilty, to be imprisoned. Form of writ of reprisal. R. S. c. 101, §§ 9, 10.

Proceedings if the plaintiff is produced. R. S. c. 101, § 11.

SEC. 4. No person shall be delivered by such writ until a bond is given by the plaintiff or person suing on his behalf, to be returned to the court with the writ, and for the sufficiency of which, the officer shall be answerable, as in case of bail in civil actions.

SEC. 5. If the plaintiff maintains his action, he shall be discharged and recover his costs; but if not, the defendant shall recover his costs and such damages as the jury assess; or if the defendant is defaulted, or the parties consent, the court may assess the damages.

SEC. 6. If it appears that the defendant is bail for the plaintiff, or that, as his child, ward, apprentice or otherwise, he is entitled to his custody, he shall have judgment for a re-delivery of his body, to be held or disposed of according to law.

SEC. 7. If it appears that the defendant has eligned the plaintiff's body, so that the officer cannot deliver him, the court, on motion, shall issue a writ of reprisal to take the defendant's body and him safely keep, so that he may be at the then next term of the court, to traverse the return of said writ for replevying the plaintiff; and he may be enlarged by giving bail for his appearance at court, with two sufficient sureties, in such sum as the officer requires.

SEC. 8. The defendant may traverse the return on the writ for replevying the plaintiff; and if it appears that he is not guilty of eligning the plaintiff, he shall be discharged and recover costs; but if he does not traverse it, or if, on such traverse, it appears that the defendant did elign the plaintiff, an alias writ of reprisal shall issue, substantially in the form heretofore established and used in this state, on which he shall be committed to jail to remain irrepleviable, till he produces the body of the plaintiff or proves his death. He may suggest the plaintiff's death, and the court shall impanel a jury to try the fact at the defendant's expense; and if the death is proved, he shall be discharged.

SEC. 9. If the defendant after the return of elignment produces the body of the plaintiff in court, the court shall deliver him from imprisonment, on his giving the defendant such bond as before directed to be taken by the officer, when the plaintiff is delivered by him; and for want thereof, he shall be committed to abide the judgment on the writ for replevying the plaintiff; and, in either case, the suit shall be tried as aforesaid.