

MAINE STATE LEGISLATURE

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FOURTH REVISION.

THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED AUGUST 29, 1883, AND TAKING EFFECT JANUARY 1, 1884.

BY THE AUTHORITY OF THE LEGISLATURE.



PORTLAND:
PUBLISHED BY LORING, SHORT & HARMON
AND
WILLIAM M. MARKS, PRINTER.
1884.

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CHAP. 100.

Complainant may recover special damages. R.S., c. 100, § 4. 24 Me., 306. Pleadings, and filing exceptions. R.S., c. 100, § 5.

Proceedings, if complainant is in prison. R.S., c. 100, § 6.

Effect of a surrender to jail. R.S., c. 100, § 7.

SEC. 4. The complainant may declare in his writ for any special damages that he has suffered by the service of such execution; and on proof, he shall have judgment and execution for such damages, instead of recovering therefor in a subsequent suit.

SEC. 5. The defendant may plead the general issue of not guilty, with or without a brief statement, or any special matter in bar; and exceptions may be alleged to the rulings, instructions and opinion of the court, as in civil actions.

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

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

CHAPTER 101.

WRIT FOR REPLEVYING A PERSON.

- SEC. 1. Who is entitled to the writ, and from what court.
2. In what county, writ shall issue, and how it shall be served.
3. Form of the writ.
4. Bond must be given, before writ issues; officer is responsible for sureties.
5. What judgment, if the action is or is not maintained.
6. What judgment, if defendant is entitled to custody of plaintiff.
7. If defendant has enjoined the plaintiff, he may be arrested. Defendant may be enlarged by giving bail.
8. Discharge and costs, if not guilty of enjoining. 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.

Who is entitled to the writ, and from what court. R.S., c. 101, § 1.

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 justice of the supreme judicial, or either of the superior courts, in term time or vacation, at the discretion of such justice and not otherwise. (a)

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

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

(a) 13 Me., 411; 32 Me., 563; 34 Me., 130; 35 Me., 271; 37 Me., 132; 48 Me., 127; 49 Me., 18.

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

CHAP. 101.

“STATE OF MAINE.

Form of writ.
R.S., c. 101, § 3.

[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” (or superior 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 redelivered, if thereto ordered by the court, and to pay all such damages and costs as are awarded against him; and if the plaintiff is delivered by you at a day before the sitting of said court, you shall summon the defendant to appear at said court.

Witness J. S., Esquire, our ——, at ——, the —— day of ——, in the year of our Lord eighteen hundred and ——.

L. M., Clerk.”

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

Bond to be given before writ issues. R.S., c. 101, § 4. —officer answerable.

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.

What judgment, if action is, or is not maintained. R.S., c. 101, § 5.

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 redelivery of his body, to be held or disposed of according to law.

If defendant is entitled to custody of plaintiff. R.S., c. 101, § 6.

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 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.

If defendant has eligned the plaintiff, he may be arrested and give bail. R.S., c. 101, § 7.

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 the state, on which he shall be committed to jail to remain irrepleviable, until he produces the body

Defendant, if guilty, shall be imprisoned; writ of reprisal to issue. R.S., c. 101, § 8. See 1821, c. 63, § 10. [withernam.]

CHAP. 101.

—defendant
may suggest
plaintiff's
death.
Proceedings,
if plaintiff is
produced.
R.S., c. 101, § 9.
See § 4.

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 eloignment, produces the body of the plaintiff in court, the court shall deliver him from imprisonment, upon his giving the defendant such bond as hereinbefore 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 replevyng the plaintiff; and, in either case, the suit shall be tried as aforesaid.

CHAPTER 102.

WRITS OF ERROR, CERTIORARI, AND MANDAMUS.

WRITS OF ERROR.

- SEC. 1. Writs may issue from the supreme court, in vacation or term time.
2. Execution shall not be stayed, unless bond is given. Bond may be approved by a justice of the court, or by the clerk.
3. Filing of the bond shall be deemed a delivery thereof; clerk shall issue a certificate to stay proceedings.
4. Costs to prevailing party; damages and costs, if defendant prevails.
5. Reversal of judgment does not vitiate sale of real estate, but avoids a levy.
6. One co-defendant may bring the writ, on giving security to others.
7. Form of writ of error.
8. Scire facias shall specify the errors of fact and law.
9. Proceedings on writs of error, according to the common law.
10. Limitation of writs of error; exceptions.

WRITS OF ERROR IN CRIMINAL CASES.

- SEC. 11. Shall not issue in capital cases, without order of court and notice.
12. Effect of writs of error in other criminal cases. Provisions for keeping such plaintiff in error, on stay of proceedings.

WRITS OF CERTIORARI.

- SEC. 13. How and by whom, writs of certiorari shall be issued.
14. Costs on application, and on final decision.
15. Limitations of applications for certiorari.

WRITS OF MANDAMUS.

- SEC. 16. Petition, to whom and when to be presented. Proceedings.
17. Return, how to be answered; judgment and peremptory writ. Costs. No action for false return.
18. Third person may be cited to show cause; may be heard, and stand as real party.
19. Proceedings do not abate by death, resignation, or removal.

WRITS OF ERROR.

May issue
from supreme
court.
R.S., c. 102, § 1.

SEC. 1. Writs of error in civil cases may issue out of the supreme judicial court in vacation or term time, returnable to the same court. (a)

(a) 16 Me., 82; 19 Me., 220; 23 Me., 233; 24 Me., 438; 26 Me., 420; 28 Me., 237; 29 Me., 360; 30 Me., 199, 423; 31 Me., 59, 420; 32 Me., 187; 33 Me., 251, 266, 351, 368, 511; 36 Me., 200; 59 Me., 149; 60 Me., 521; 64 Me., 204.