

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.



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CHAP. 101. 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.

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

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 replevying 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.

SEC. 2. No writ of error shall stay or supersede execution in any civil action, unless the plaintiff in error, or some person in his behalf, gives bond to the defendant, conditioned, that the plaintiff shall prosecute his suit with effect, and satisfy the judgment rendered therein, in such sum and with such sureties as a justice of the court, or the clerk from whose office the writ issued, approves, according to the rules of court.

SEC. 3. When the bond is given, the filing of it in the clerk's office for the defendant's use is a delivery thereof; no execution shall be issued on the judgment complained of, while such suit is pending; and if execution has already issued, the clerk shall make a certificate of the issue of the writ and filing of the bond; and after notice thereof to the officer holding the execution, further proceedings thereon shall be stayed.

SEC. 4. The prevailing party in such writ in a civil action shall be entitled to costs; and if the judgment is affirmed, the defendant in error shall be entitled to not less than six, nor more than twelve per cent. a year on the amount of his former judgment, as damages for his delay, and the court may allow him double costs. (a)

SEC. 5. When a debtor's property has been sold on an execution, and the judgment on which it was issued is afterwards reversed on writ of error, the title of the purchaser is not affected thereby; but the defendant in the original suit may maintain an action of assumpsit against the original plaintiff for so much of said judgment as is satisfied. But the levy of an execution upon real estate is void, when the original judgment upon which it issued, is reversed by writ of error, brought within a year thereafter.

SEC. 6. When there were several defendants in the original judgment, either may bring a writ of error in the name of all, on furnishing to each co-defendant requiring it, such security against all liabilities arising therefrom, as the court deems reasonable; and at any stage of the proceedings, the court shall, on motion of any such co-defendant, require such security.

SEC. 7. The writ of error may be a scire facias issued substantially as follows, without any assignment of errors, or other preliminary proceedings:

“STATE OF MAINE.

[L. s.] ———, ss. To the sheriff, &c. Greeting:

We command you, that you make known unto ———, of ———, to appear, if he sees cause, before our supreme judicial court, to be held at ———, within and for our said county of ———, on the ——— day of ——— next, to answer to ———, of ———, in a plea of error, whereas the said ——— alleges that in the process, proceedings, and judgment had before ———, at ———, on the ——— day of ———, A. D., 18—, wherein said ——— was plaintiff, and said ———, defendant, there occurred the errors hereinafter specified, by which the present plaintiff was injured, and for which he therefore seeks that said judgment may be reversed, recalled, or corrected, as law and justice require; that is to say, the following errors: ———.

Hereof fail not, and have you there this writ with your doings thereon.

(a) 12 Me., 459; 14 Me., 196; 72 Me., 260.

CHAP. 102.

Execution shall not be stayed, unless bond is given and approved. R.S., c. 102, § 2. 47 Me., 173.

The filing of a bond is deemed a delivery; effect thereof. R.S., c. 102, § 3.

Costs to prevailing party; damages and costs, if defendant prevails. R.S., c. 102, § 4.

Reversal of judgment does not vitiate sale of real estate. R.S., c. 102, § 5. 51 Me., 152, 556.

—levy is void.

One co-defendant may bring writ of error, on giving security to the others. R.S., c. 102, § 6.

Form of writ of error. R.S., c. 102, § 7.

CHAP. 102. Witness, ———, Esq., our ———, at ———, the ——— day of ———, A. D., 18—.

—————, Clerk.”

Scire facias shall specify the errors of fact and law. R. S., c. 102, § 8. 30 Me., 199. 35 Me., 99. 42 Me., 571. 43 Me., 345. 44 Me., 59. 48 Me., 265.

Proceedings. R. S., c. 102, § 9. 23 Me., 254. 24 Me., 436.

Limitation of writs of error; exceptions. R. S., c. 102, § 12.

SEC. 8. The scire facias shall specify the errors of fact and law, upon which the plaintiff relies; and a transcript of the record, process, and proceedings, attested by the clerk of the court or trial justice rendering the judgment, without further authentication, or the introduction of the record, is competent evidence in such trial; and in case of mistake in the transcript, the court may grant leave to amend.

SEC. 9. The proceedings upon writs of error, not herein provided for, shall be according to the common law as modified by the practice and usage in the state, and the general rules of court.

SEC. 10. No writ of error shall be sustained, unless brought within six years after the entering up of the judgment sought to be reversed or avoided; but if the person entitled to such writ is a minor, a married woman, insane, imprisoned, or not in the United States, when becoming so entitled, then he, his heirs, executors, or administrators, may sue out the writ within five years after the removal of such disability.

WRITS OF ERROR IN CRIMINAL CASES.

Writ of error in capital cases. R. S., c. 102, § 10.

Effect of writ of error in criminal cases. R. S., c. 102, § 11.

—provision for keeping plaintiff in error, on stay of proceedings.

SEC. 11. No writ of error upon a judgment for a capital offence shall issue, unless allowed by one of the justices of the supreme judicial court, after notice to the attorney general or other attorney for the State.

SEC. 12. Writs of error shall issue of course upon all other judgments in criminal cases, but not to stay or delay execution of sentence or judgment, unless allowed by a justice of the supreme judicial court, with an express order to stay all proceedings thereon; and in that case the justice may make such order as the case requires, for the custody of the plaintiff in error or for letting him to bail; or, upon a writ of habeas corpus, if entitled thereto, he may procure his enlargement by giving bail.

WRITS OF CERTIORARI.

How and by whom writs of certiorari shall be issued. R. S., c. 102, § 13.

Costs on application, and on final decision. R. S., c. 102, § 14.

Limitation of applications for certiorari.

SEC. 13. All writs of certiorari, to correct errors in proceedings not according to the course of the common law, shall be issued from the supreme judicial court according to the practice heretofore established, subject to such further regulations, as are made, from time to time, by such court. (a)

SEC. 14. Upon every application for certiorari, and on the final adjudication thereof, the court may award costs against any party, who appears and undertakes to maintain or object to the proceedings. (b)

SEC. 15. No application for a writ of certiorari shall be sustained, unless made within six years next after the proceedings complained of,

(a) 8 Me., 293; 19 Me., 48, 343; 23 Me., 11, 513; 25 Me., 73; 26 Me., 356; 28 Me., 123; 29 Me., 290; 30 Me., 24, 271, 305, 352; 31 Me., 509, 530; 32 Me., 452; 33 Me., 238, 261; 35 Me., 378; 36 Me., 76; 37 Me., 562; 39 Me., 53, 356; 42 Me., 400; 43 Me., 258; 49 Me., 145, 418; 51 Me., 110; 56 Me., 186; 60 Me., 268, 538; 62 Me., 366; 63 Me., 314, 550; 65 Me., 161; 67 Me., 43, 433, 434; 68 Me., 226, 552.

(b) 67 Me., 435; 72 Me., 18.

or within five years from the removal of such disabilities as are described in section ten.

CHAP. 102.

R. S., c. 102,
§ 15.

WRITS OF MANDAMUS.

SEC. 16. A petition for a writ of mandamus may be presented to a justice of the supreme judicial court in any county in term time or vacation, who may, upon notice to all parties, hear and determine the same, or may reserve questions of law arising thereon, upon exceptions or otherwise, for the determination of the full court, which may hear and determine the same at any time in any county, as justice shall require. If on such hearing such writ is ordered, it may be issued from the clerk's office in any county and be made returnable as the court directs.

Petition, to whom and when presented. 1883, c. 225, § 1. —questions of law, reserved for full court. —first writ, whence issued, and how returnable.

SEC. 17. When a writ of mandamus issues, the person required to make return thereto shall make his return to the first writ, and the person suing the writ may by an answer traverse any material facts contained in such return, or may demur. If the party suing the writ maintains the issue on his part, his damages shall be assessed, and a judgment rendered that he recover the same with costs, and that a peremptory writ of mandamus be granted; otherwise the party making the return shall recover costs. No action shall be maintained for a false return to a writ of mandamus.

Return to writ, how to be answered. 1883, c. 225, § 2.

—judgment and peremptory writ.

—costs.

—no action for false return.

SEC. 18. The court may make rules, on a petition for the writ or upon and after the issuing of the first writ, calling upon any person having or claiming a right or interest in the subject matter, other than the party to whom the writ is prayed to be or has been directed, to show cause against the issuing thereof. If such person appears, he shall be heard in such manner as the court may direct, and in proper cases he may be allowed to frame and sign the return to the first writ, and to stand as the real party in the proceedings.

Third person may be cited to show cause. 1883, c. 225, § 3.

—may be heard, and stand as real party.

SEC. 19. If such third person is admitted, the proceedings shall not abate or be discontinued by the death, resignation, or removal from office by lapse of time or otherwise, of the person to whom the writ was directed, and any peremptory writ shall be directed to his successor.

Proceedings do not abate by death, resignation or removal. 1883, c. 225, § 4.

CHAPTER 103.

ESTATES IN DOWER, AND BY COURTESY, AND ACTIONS OF DOWER.

ESTATES IN DOWER AND BY COURTESY.

- SEC. 1. Of what lands, a woman is dowable.
 2. Of what, she is not dowable.
 3. Special assignment, when division cannot be made by metes and bounds.
 4. Rights of widow, before dower is assigned.
 5. Widow of naturalized alien is entitled to dower.
 6. A married woman may bar her right to dower by deed; how executed. She is not deprived of dower by levy or sale on execution.