

MAINE STATE LEGISLATURE

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FIFTH REVISION.

THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED SEPTEMBER 1, 1903, AND TAKING EFFECT JANUARY 1, 1904.

BY THE AUTHORITY OF THE LEGISLATURE.



AUGUSTA :
KENNEBEC JOURNAL PRINT,
1904.

CHAPTER 103.

WRIT FOR REPLEVING A PERSON.

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)

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

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.

In what county writ shall issue, and how to be 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.

"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" (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 nineteen 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

If defendant has eligned the plaintiff,

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

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he may be arrested and give bail.
R. S., c. 101, § 7.

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

—defendant may suggest plaintiff's death.

Proceedings, if plaintiff is produced.
R. S., c. 101, § 9.
See § 4.

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.

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 eloining 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 eloin 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 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 eloinment, 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 104.

WRITS OF ERROR, CERTIORARI AND MANDAMUS.

WRITS OF ERROR.

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

Execution not stayed, unless bond is given and approved.
R. S., c. 102, § 2.
47 Me., 176.

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.

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)

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. (b)

(a) 16 Me., 82; 19 Me., 220; 23 Me., 253; 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.

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