

MAINE STATE LEGISLATURE

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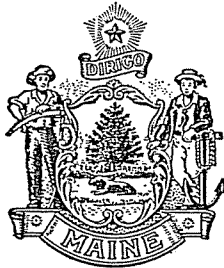
EIGHTH REVISION

THE
REVISED STATUTES

OF THE
STATE OF MAINE

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Sec. 38. Habeas corpus may issue on application in behalf of insane person. R. S. c. 113, § 38. When an insane person is arrested or imprisoned on mesne process or execution in a civil suit, a justice of the supreme judicial court or of the superior court, or the judge of probate within his county, on application, may inquire into the case; issue a writ of habeas corpus; cause such person to be brought before him for examination; and after notice to the creditor or his attorney, if either is living in the state, and a hearing, if it is proved to the satisfaction of said justice or judge that the person is insane, he may discharge him from arrest or imprisonment; and the creditor may make a new arrest, on the same demand, when the debtor becomes of sound mind. If he is arrested on the same demand a second time, before he becomes of sound mind, and is again discharged for that reason, he is forever after exempt from arrest for the same cause.

CHAPTER 114.

WRIT OF AUDITA QUERELA.

Sec. 1. Form of writ. R. S. c. 114, § 1. The writ of audita querela may be sued out in the form of a writ of attachment or summons; and shall be sealed, signed, tested, and indorsed as other writs.

Sec. 2. In what court and county to be sued out. R. S. c. 114, § 2. When brought to prevent, set aside, or annul proceedings on a judgment or execution, it shall be sued out of the court in which judgment was rendered, but in all other cases it shall be sued in the county and court having jurisdiction of the case according to the provisions of law as to personal actions.

59 Me. 567; 62 Me. 13.

Sec. 3. Proceedings. R. S. c. 114, § 3. If the defendant does not appear, after being duly served with process, he shall be defaulted; but if he appears, a trial shall be had as in other actions.

Sec. 4. Complainant may recover special damages. R. S. c. 114, § 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.

24 Me. 306.

Sec. 5. Pleadings, and filing exceptions. R. S. c. 114, § 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. Proceedings, if complainant in prison. R. S. c. 114, § 6. When the complainant is in prison on execution, the court, before which such action described in this chapter 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 30 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. Effect of a surrender to jail. R. S. c. 114, § 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 115.

WRIT FOR REPLEVYING A PERSON.

Sec. 1. Persons entitled to the writ, and from what court. R. S. c. 115, § 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 superior court, in term time or vacation, at the discretion of such justice and not otherwise.

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

Sec. 2. Issue and service of writ. R. S. c. 115, § 2. The writ described in this chapter shall issue from and be returnable to the superior court in the county where the plaintiff is confined, and be directed to a proper officer and served as soon as may be, 14 days at least before the return day.

Sec. 3. Form of writ. R. S. c. 115, § 3. The form of the writ shall be as follows:

"STATE OF MAINE.

[L. S.] —, ss. To the sheriff of our county of —, 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 —, by the duress of G. H., that he may appear at our superior court, next to be held at —, within and for the county of —, 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. Bond to be given before writ issues. R. S. c. 115, § 4. No person shall be delivered by such writ described in this chapter until a bond is given by the plaintiff or person suing in his behalf, to be returned to the court with the