NINTH REVISION

REVISED STATUTES

OF THE

STATE OF MAINE

1954

FIRST ANNOTATED REVISION

IN FIVE VOLUMES

VOLUME 4

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA

Chapter 125.

Replevin of Beasts and Goods.

This chapter is remedial and should receive a liberal construction. Pease v. Simpson, 12 Me. 261.

It implies that property was taken from defendant's possession.—This chapter in all its provisions implies that the property replevied was in the possession of the defendant, that it was taken from his possession by the writ, and, in case of failure on the plaintiff's part, is to be restored to the possession of the defendant. Ramsdell v. Buswell, 54 Me. 546.

Who may replevy.—Every person, who, in good faith claims title to beasts or goods has a legal right to replevy the property, by the process given by this chapter and in so doing he incurs only the liabilities and duties imposed by law. Walker v. Osgood, 53 Me. 422.

Replevin of Beasts.

Sec. 1. Owners of beasts distrained may replevy.—Any person, whose beasts are distrained to obtain satisfaction for damages alleged to be done by them, may maintain a writ of replevin therefor against the distrainer before any trial justice or judge of any municipal court in the county, in the form prescribed by law or, if the value of the beasts distrained is more than $20, in the superior court. (R. S. c. 112, § 1.)

See § 18, re death of beasts replevied from an attacking officer.

Sec. 2. Writ, service and return.—The writ shall be sued out, served and returned and the cause heard and determined like other civil actions before a trial justice or municipal court, except as otherwise prescribed. (R. S. c. 112, § 2.)

A writ of replevin is sued out and indorsed, served and returned in the same manner as other original writs. Erskine v. Vannah, 114 Me. 225, 95 A. 1024.

Sec. 3. Bond given before service; when new sureties furnished.—The writ shall not be served unless the plaintiff or someone in his behalf executes and delivers to the officer a bond to the defendant, with sufficient sureties to be approved by the officer, or with a surety company authorized to do business in this state as surety, in a penalty double the actual value of the property to be replevied, conditioned as in the prescribed form of the writ and to be returned with the writ for the use of the defendant; and, if it afterwards becomes insufficient, the court may require additional surety or sureties to be furnished, who shall be held as if they had been original parties thereto; and, if not so furnished, it may dismiss the action and order a return of the property replevied or make such other order as is deemed reasonable. (R. S. c. 112, § 3.)

See c. 60, § 219, re foreign surety companies.

Sec. 4. Judgment, if beasts are lawfully distrained. — If it appears that the beasts were lawfully taken or distrained, the defendant shall have judgment for the sum found due from the plaintiff for the damages for which the beasts were distrained, with legal fees, costs and expenses occasioned by the distress and costs of the replevin suit; or, instead thereof, the justice or court may enter judgment for a return of the beasts to the defendant, to be held by him for the original purpose, irrepleviable by the plaintiff, and for the defendant's damages and costs in the replevin suit. (R. S. c. 112, § 4.)

Sec. 5. If unlawfully distrained.—If it appears that the beasts were taken or distrained without justifiable cause, the plaintiff shall have judgment for his damages and costs. (R. S. c. 112, § 5.)

Sec. 6. Appeal.—Either party may appeal as in other civil actions. (R. S. c. 112, § 6.)

Sec. 7. Certain causes transferred to superior court.—When it appears that the sum demanded as damages exceeds $20, or that the property in the beasts is in question and their value exceeds $20, or that the title to real estate is in question, at the request of either party, the case, if originally brought before any trial justice or judge of any municipal court, shall be transferred to the superior court to be there disposed of like actions brought before a trial justice in which the title to real estate is brought in question; but the party requesting such transfer shall recognize in such reasonable sum as the justice orders, to enter the action at the next term of said court, prosecute it with effect and pay all intervening damages and costs. (R. S. c. 112, § 7.)

See c. 111, § 1, re proceedings when title to real estate is in question.

Replevin of Goods.

Sec. 8. Goods, unlawfully detained, replevied.—When goods, unlawfully taken or detained from the owner or person entitled to the possession thereof, or attached on mesne process, or taken on execution, are claimed by any person other than the defendant in the suit in which they are so attached or taken, such owner or person may cause them to be replevied. (R. S. c. 112, § 8.)

Cross references.—See c. 61, § 92, re replevin of liquor seized by officer; c. 112, § 45, re exemption from suit of officer attaching mortgaged property.

Common law altered.—The statutes have so far altered the common law that an action of replevin may be maintained in case of an unlawful detention, though the taking was lawful. Seaver v. Dingley, 4 Me. 306; Ramsdell v. Buswell, 54 Me. 546.

Unlawful detention will support action.—It is no defense to a replevin suit that the defendant did not take the property from the owner, or his agent, but merely took charge of it for an attacking officer, since an unlawful detention, as well as an illegal caption, will support the action. Douglass v. Gardner, 63 Me. 462; Lewis v. Smart, 67 Me. 206.

Where an officer takes the property of a stranger to the process and sells it, the property in the hands of the purchaser is unlawfully detained and as such liable to replevin under this section. Coombs v. Gordon, 59 Me. 111.

But title or right of possession is necessary.—Where replevin was brought in the name of the treasurer of a city, for the city, the action could not be maintained because the plaintiff therein had neither title, nor the right of possession, to the property replevied. Clark v. Anderson, 103 Me. 134, 68 A. 633.

One tenant in common of a chattel cannot maintain replevin against another tenant, because each one is entitled to the possession. Hardy v. Sprowle, 32 Me. 322.

Sec. 9. Jurisdiction.—Actions of replevin of goods shall be brought in the county where they are detained. The action may be brought before any municipal court or trial justice in said county, if the value of the goods does not exceed the amount to which the civil jurisdiction of such court or justice is limited; otherwise the action shall be brought before the superior court. (R. S. c. 112, § 9.)

The action of replevin is a local action and must be brought in the county where the goods are detained. Central Maine Power Co. v. Maine Central R. R., 113 Me. 103, 93 A. 41.

If replevin be brought in the wrong county, the error may be pleaded, or taken advantage of at the trial, or if the error is shown on the face of the record, it may be reached by demurrer. Central Maine Power Co. v. Maine Central R. R., 113 Me. 103, 93 A. 41.

Former provision of section.—For cases relating to former provision permitting action to be brought before justice of the peace if the goods did not exceed the

value of twenty dollars, see Ridlon v. Emery, 6 Me. 261; Brewer v. Curtis, 12 Me. 51; Seiders v. Creamer, 22 Me. 558.

Quoted in part in Harmon v. Flood, 115 Me. 116, 97 A. 834.

Sec. 10. Bond given before service.—Before serving the writ, the officer shall take from the plaintiff, or someone in his behalf, a bond to the defendant, with sufficient sureties or with a surety company authorized to do business in this state as surety, in double the value of the goods to be replevied, conditioned as in the prescribed form of the writ, to be returned with the writ to the court from which the writ issued, for the use of the defendant, and new sureties or surety company may be required thereon as provided in section 3. (R. S. c. 112, § 10.)

I. General Consideration.
II. Duties of Officer.
III. Sufficiency of Sureties.

I. GENERAL CONSIDERATION.

This section does not require that the replevin bond be formally approved. Provost v. Jodoin, 126 Me. 593, 136 A. 813.

But it does not contemplate a situation where principal and sureties in a replevin bond are the same parties. Macomber v. Moor, 128 Me. 481, 148 A. 682.

Failure to return bond when none taken.—This section does not require, if there be no bond taken, that one shall be returned, and the not doing it is no ground of complaint. Garlin v. Strickland, 27 Me. 443.

Bond is for defendant's benefit.—The bond is given with sureties to secure to the defendant in replevin the complete execution of the judgment which he may recover against the plaintiff. Pettygrove v. Hoyt, 11 Me. 66; Greely v. Currier, 39 Me. 516; Jones v. Smith, 79 Me. 452, 10 A. 256.

And may be waived.—The bond is for the defendant's benefit, and may be waived by him. Greely v. Currier, 39 Me. 516; Littlefield v. Pinkham, 72 Me. 369.

Intention of parties governs.—In construing a replevin bond to ascertain whether it conforms to the requirements of this section, the intention of the parties governs, and in case of doubt regard must be had to the general purpose and object of the instrument. Green v. Walker, 37 Me. 25.

Bond is not invalidated by misplacing of names.—Where a replevin bond conformed in all respects to the requirements of this section, except that the name of the obligor was inserted where that of the obligee should have been, it was deemed to be a clerical error and the bond was held to be valid. Green v. Walker, 37 Me. 25.

It must be executed by principal or by his authority.—A bond not executed by the principal, or anyone having authority from him for the purpose is defective. Garlin v. Strickland, 27 Me. 443.

Defects may be waived.—Though the bond may not be in accordance with this section, the defendant may waive any variance from its requirements. Tuck v. Moses, 54 Me. 115; Littlefield v. Pinkham, 72 Me. 369.

Form of writ.—The form of the writ is prescribed by R. S. 1821, c. 63, § 9. See Ramsdell v. Buswell, 54 Me. 546.

Stated in part in Chase v. Stevens, 11 Me. 128.

II. DUTIES OF OFFICER.

Officer must receive bond before serving writ.—This section prohibits the taking of personal property from another by replevin, until the officer serving the writ has taken a bond to the defendant which meets its requirements. Thomas v. Spofford, 46 Me. 408.

He is a trespasser if he makes service without bond.—The delivery of the bond is a condition precedent to the legal service by the officer and he may be treated as a trespasser if he undertakes to make service without it. Baldwin v. Whittier, 16 Me. 33; Green v. Walker, 37 Me. 25; Tuck v. Moses, 54 Me. 115; Adams v. McGlinchy, 62 Me. 533; Hall v. Monroe, 73 Me. 123; Edgecomb v. Lawlis, 126 Me. 550, 140 A. 182.

And he is also liable in damages.—The officer is required by this section to take a bond to the defendant, with sufficient sureties, in double the value of the property replevied and if he serve the writ without taking such bond as the law prescribes, and the defendant in replevin suffer damage thereby the officer is liable to the extent of the injury thus occasioned. Chase v. Stevens, 11 Me. 128; Kimball v. True, 34 Me. 84.

Where a deputy sheriff failed to take a bond as required by this section he was without authority to take the property on the replevin writ and became thereby a trespasser and also liable in damages. Williams v. Dunn, 120 Me. 506, 115 A. 276.

But he is presumed to have taken bond.—In the absence of proof to the contrary, a replevying officer is presumed to have taken the bond required by this section. Howe v. Handley, 28 Me. 241; Massachusetts Breweries Co. v. Herman, 106 Me. 524, 76 A. 943.

If the defendant seeks to dismiss the replevin action because the officer did not take a good bond or with sufficient sureties, he must do it by plea in abatement and furnish proof, otherwise the officer is presumed to have complied with the statute if the bond appears regular on its face. Edgecomb v. Lawlis, 126 Me. 550, 140 A. 182.

He is protected if conditions of section are met.—When the requirements of this section are met the officer is protected, and, until it is done, he has no protection from his precept, Bettinson v. Lowery, 86 Me. 218, 29 A. 1003.

But he must determine whether they have been met.—It is the business of the officer having the replevin writ to determine at his peril, whether the conditions of this section have been complied with. Chase v. Stevens, 11 Me. 128.

The officer is required to take a bond "with sufficient sureties" and he cannot justify the taking of an insufficient surety by showing that the plaintiff was a person of abundant property. Harriman v. Wilkins, 20 Me. 93.

Real value governs.—Under this section the real value of the property is the test which is to govern, not that which the plaintiff may put upon it. Hall v. Monroe, 73 Me. 123.

III. SUFFICIENCY OF SURETIES.

Lack of surety is fatal defect.—A bond under this section with only one surety is fatally defective, if objected to by a plea in abatement, or by motion seasonably filed. Greely v. Currier, 39 Me. 516.

Sufficiency of nonresident surety can be attached.—The fact that one of the two sureties upon the bond is a nonresident of Maine does not, in and of itself, constitute noncompliance with the requirements of this section. But the sufficiency of such surety can be attacked by plea in abatement. Massachusetts Breweries Co. v. Herman, 106 Me. 524, 76 A. 943.

Sureties' consent is necessary to increase amount of bond.—When the sum of a bond is fixed with reference to the value of the articles originally described in the writ this amount cannot afterward be increased to meet the requirements of an amended writ without consent of the sureties. Musgrave v. Farren, 92 Me. 198, 42 A. 355.

Sureties individually bound.—A replevin bond signed by the sureties, who were named in the bond individually, but executed by the sureties in the name of A. Co., B. Treas., C. Pres., is sufficient and the sureties are bound as individuals. Edgecomb v. Lawlis, 126 Me. 550, 140 A. 182.

Sec. 11. If defendant prevails, writ of return with damages and cost; judgment, when property held as security.—If it appears that the defendant is entitled to a return of the goods, he shall have judgment and a writ of return accordingly, with damages for the taking and costs. If the plaintiff claims the property replevied as security for a debt, his claim shall be discharged by payment or tender thereof, with interest and costs; and judgment shall be for a return without costs, unless his title has become absolute by a legal foreclosure. (R. S. c. 112, § 11.)

Remedy is of equitable nature.—In determining whether or not there shall be a return, the power of the court is as unlimited in an action of replevin as in a suit in equity. Bath v. Miller, 53 Me. 308.

A return of property replevied will not be ordered "when in equity it ought not to be returned, though the defendant has judgment in his favor in the suit." Bath v. Miller, 53 Me. 308; Bettinson v. Lowery, 86 Me. 218, 29 A. 1003.

Defendant must have been possessed of goods at time action was commenced.—A defendant is not entitled to a return of the goods under this section where he was not possessed of the things in the beginning, as a return cannot be commanded to him from whom the property was not taken. Millett v. Soule, 125 Me. 188, 132 A. 216.

And right to possession must exist at time judgment is rendered.—If the defendant was entitled to the possession of

the property when the action was commenced, but his right to possession has expired, or been extinguished, or lost, at the time judgment is rendered, he is not entitled to judgment for a return. Bath v. Miller, 53 Me. 308.

To be entitled to a return the defendant must show property in himself or in the debtor whose property was attached. Hall v. Gilmore, 40 Me. 578.

Return will not issue when non cepit alone is pleaded.—When non cepit alone is pleaded, the defendant cannot have judgment for a return, because the taking only is in issue, and not the title to the property. Bath v. Miller, 53 Me. 308.

Under this section, in all cases of abatement or nonsuit in replevin, except where non cepit alone is pleaded, the order for return goes as a matter of course, and becomes a part of the judgment to be formulated by the clerk without further order. Bettinson v. Lowery, 86 Me. 218, 29 A. 1003.

But may issue if defendant alleges property is not in plaintiff.—Where the defendant, with a plea of non cepit, files a brief statement that the property is in himself, or in a stranger, and not in the plaintiff, and there is a verdict of non cepit, the defendant is entitled to a judgment of return. Moulton v. Bird, 31 Me. 296.

Defendant is entitled to a return if bond is insufficient.—Where the bond given by the officer is not sufficient, the taking of the property by him is without legal authority and the defendant is entitled to a judgment of return by virtue of this section. Greely v. Currier, 39 Me. 516.

Judgment for return is final and conclusive.—The judgment for a return is the final judgment in replevin, and is conclusive upon the parties as to the matters embraced within it. Bath v. Miller, 53 Me. 308; Tuck v. Moses, 58 Me. 461.

Defendant is entitled to damages if entitled to a return.—When the defendant makes a good title to the goods replevied, he is entitled to damages for the interruption of his possession, the loss of the use of the goods from the time of their replevin till their restoration, and for their deterioration. Washington Ice Co. v. Webster, 62 Me. 341; Archer v. Aetna Casualty Co., 143 Me. 64, 55 A. (2d) 135.

The defendant in replevin is never entitled to damages for the taking unless he is entitled to a return of the goods. Archer v. Aetna Casualty Co., 143 Me. 64, 55 A. (2d) 135.

Even though goods are returned in perfect condition.—Even if the replevied goods are returned in perfect condition the plaintiff is entitled to recover damages for the taking, detention and costs. Kimball v. Thompson, 123 Me. 116, 122 A. 46.

Actual damages must be proved to entitle the defendant to recover more than nominal damages. Washington Ice Co. v. Webster, 62 Me. 341.

Damages may be determined in suit on bond.—The amount of damages for taking and detention may be assessed in the original replevin suit but if not then assessed or considered, such damages may be determined and recovered in a suit on the bond. Archer v. Aetna Casualty Co., 143 Me. 64, 55 A. (2d) 135.

Amount consists of interest plus any special damages.—The damages under this section consist of interest upon the money value of the goods replevied up to the time of the verdict, and any special damages shown to result directly from their taking, in addition to such interest. Washington Ice Co. v. Webster, 62 Me. 341.

In the replevin of a horse the defendant is entitled to the value of its use or for what its services in use were worth. Smith v. Jeojay, 124 Me. 381, 130 A. 130.

Extent of interest determines copartner's damages.—Where the parties in an action of replevin are copartners and the plaintiff is nonsuited with an order to return, the damages should be in proportion to the extent of the defendant's ownership in the property replevied. Crabtree v. Clapham, 67 Me. 326.

This section does not contemplate recovery of counsel fees, for it clearly means "damages for the taking" recoverable by the defendant in the replevin suit. Kimball v. Thompson, 123 Me. 116, 122 A. 46.

Goods must be returned in such order and condition as when taken.—The words "in like good order and condition as when taken" are not required by this section to be inserted in the judgment but it is implied that the goods shall be in such order and condition and if not, the defendant has his bond. Berry v. Hoeffner, 56 Me. 170.

Sec. 12. Damages on judgment for return of property attached or taken on execution.—If the goods, when replevied, had been taken in execution or were under attachment and judgment is afterwards rendered for the at-

taching creditor, and if, in either case, the service of the execution is delayed by the replevin, the damages on a judgment for a return shall not be less than at the rate of 12% a year on the value of the goods while the service of the execution is so delayed. (R. S. c. 112, § 12.)

Damages assessed from judgment in attachment suit to judgment in replevin suit.—Where there was no proof that the value of the goods was any greater than that alleged in the writ until the judgment in the replevin, and the service of the execution was not delayed by the replevin beyond the date of the judgment for a return in that suit, the sum of damages was ascertained by taking twelve per cent of the value of the goods as stated in the replevin writ from the date of the judgment in the suit in which it was attached to the date of the judgment for a return in the replevin suit. Tuck v. Moses, 58 Me. 461.

Stated in part in Howe v. Handley, 28 Me. 241; Buck v. Collins, 69 Me. 445.

Sec. 13. Disposal of money recovered by officer for goods attached or taken on execution.—All sums recovered by an officer in an action of replevin on account of goods attached or taken in execution by him or recovered in a suit upon the replevin bond shall be applied:

I. To pay the lawful fees and charges of the officer, and the reasonable expenses of the replevin suit, and of the action on the bond, so far as they are not reimbursed by the costs recovered.

II. To pay the creditor, at whose suit the goods were attached or taken on execution, the sum, if any, recovered by him in that suit or what remains unpaid, with interest at the rate of 12% a year for the time that the money was withheld from the creditor or the service of his execution was delayed by reason of the replevin.

Officer acts in trust for creditor.—When the attaching officer receives the bond and defends against the suit in replevin, he acts in trust for the attaching creditor to whose use the damages recovered by the defendant enure. Chase v. Stevens, 11 Me. 128.

III. If the attaching creditor in such case does not recover judgment in his suit, or if any balance remains of the money so recovered by the officer after paying the creditor his due, such balance or the whole amount, as the case may be, shall be applied as the surplus of the proceeds of sale should have been applied if such goods had been sold on execution. (R. S. c. 112, § 13.)

Section regulates settlement between officer and creditor.—This section regulates the settlement between the officer and the execution creditor regarding the application of money that has been recovered. It does not apply to the relation between officer and obligor. Kimball v. Thompson, 123 Me. 116, 122 A. 46.

Cited in Howe v. Handley, 28 Me. 241.

Sec. 14. Appropriation of money received by creditor.—All sums received by such creditor from the sale of goods attached or taken in execution and afterwards returned, all sums received for the value of any of such goods as are not returned and all sums recovered from the officer for insufficiency of the bond shall be applied in discharge of the creditor's judgment; but all sums received as interest or damages for delay of his execution shall be retained to his own use and not go in discharge of the judgment. (R. S. c. 112, § 14.)

Stated in part in Howe v. Handley, 28 Me. 241.

Sec. 15. Judgment if plaintiff recovers.—If it appears that the goods were taken, attached or detained unlawfully, the plaintiff shall have judgment for his damages caused thereby and for his costs. (R. S. c. 112, § 15.)

Former provision of section.—For cases under a former provision which allowed the plaintiff to recover no more than a quarter of the value of the goods or beasts if they did not exceed the value of twenty dollars, see Ridlon v. Emery, 6 Me. 261; Brewer v. Curtis, 12 Me. 51.

Cited in Kimball v. Thompson, 123 Me. 116, 122 A. 46.

Sec. 16. Continuance of attachment, if goods replevied.—If the goods replevied had been attached, they shall, in case of judgment for a return, be held by the attachment until 30 days after judgment in the suit in which they were attached; and if such final judgment is rendered before the return of the goods or if the goods when replevied had been seized on execution, they shall be held by the same attachment or seizure for 30 days after the return and may be taken and disposed of as if they had not been replevied. (R. S. c. 112, § 16.)

See c. 112, § 72 et seq., re dissolution of attachments.

Sec. 17. When writ of reprisal may issue.—When the officer, in the service of the writ of return and restitution, is not able to find in his precinct the beast or other property directed to be returned in his precept, he shall certify that fact in his return; and the court whence it issued, upon notice, may grant a writ of reprisal, in the form prescribed by law, against the plaintiff in replevin, to take his goods or beasts not exempt from attachment, of the full value, to be delivered to the defendant, to be held and disposed of by him according to law, until the plaintiff restores the beast or other property replevied by him. (R. S. c. 112, § 17.)

Quoted in part in Parker v. Hall, 55 Me. 362.

Stated in part in Tuck v. Moses, 54 Me. 115.

Sec. 18. Defendant's remedy on replevin bond.—The foregoing provisions shall not preclude the defendant from resorting to his remedy on the replevin bond, or to his remedy against the officer for insufficiency of the bond, to recover the value of the goods together with the damage or loss occasioned by the replevin thereof, notwithstanding he has endeavored to recover the same by the writs of return and of reprisal as aforesaid. (R. S. c. 112, § 18.)

Existing remedies on bond remain in force.—This section grants no new rights as it provides simply that existing remedies on the replevin bond shall remain in force, notwithstanding an unavailing resort to writs of return and reprisal. Tuck v. Moses, 54 Me. 115; Kimball v. Thompson, 123 Me. 116, 122 A. 46.

Resort to this remedy excludes bringing trespass. — The remedy against the officer provided by this section is an action on the case for official neglect and the plaintiff cannot have an action of trespass against the officer in addition to this remedy. Parker v. Hall, 55 Me. 362.

An action cannot be maintained upon a replevin bond which does not contain the name of the obligee and in which all the places where the name of the obligee should occur are blanks, though it be annexed to the replevin writ. Titus v. Berry, 73 Me. 127.

And defendant pleading such defect is thereafter estopped. — If a bond is delivered to the officer with the name of the obligee in blank and the defendant elects not to have the blanks filled but to treat the bond as void and procures dismissal of the action for that cause, he cannot thereafter have leave to fill up the blanks so as to make the instrument a valid bond. Titus v. Berry, 73 Me. 127.

Failure to prosecute writ is breach of bond.—The failure to enter a replevin writ in court and to prosecute the same to judgment, when due service has been made upon the defendant, constitutes a breach of the replevin bond. Jones v. Smith, 79 Me. 452, 10 A. 256.

Complaint for costs must contain prayer for return.—If the defendant files a complaint for his costs, omitting therein to pray for a return of the goods, and execution is issued for the costs only and is satisfied, he cannot later maintain a suit upon the replevin bond. Pettygrove v. Hoyt, 11 Me. 66.

Defendant may resort to bond if order or return is ignored.—In a replevin suit, if the plaintiff's bond is defective, the defendant may abate the writ, giving the latter the right to an order of return. If the order is not complied with, the defendant, by the express provisions of this section, may then resort to his remedy upon the replevin bond. Tuck v. Moses, 54 Me. 115; Washington Ice Co. v. Webster, 62 Me. 341.

If the plaintiff fails to satisfy the defendant's judgment, the bond must be resorted to in order to reach the sureties and compel them to pay damages equal to the injury sustained by the neglect of the principal to satisfy the judgment in

all respects. Pettygrove v. Hoyt, 11 Me. 66.

And he may recover value of goods with interest plus damages.—If the goods replevied are not forthcoming on demand on the writ of return, the defendant in replevin, in a suit on the replevin bond, will be entitled to recover the value of the goods replevied at the date of the demand on the writ of return with interest thereon, the damages and costs assessed in the replevin suit, and interest. Washington Ice Co. v. Webster, 62 Me. 341.

Damages may be assessed in action on bond.—In a judgment for return in a replevin suit, if there be no assessment of damages occasioned by the detention, and no return of the goods was obtained, damages for the detention may be assessed and allowed in an action upon the replevin bond. In such a case, the damage will be computed from the time of the original taking. Smith v. Dillingham, 33 Me. 384.

Interest runs from date of breach.—Immediately upon a breach of the bond the penalty is due the obligee and if the penalty be paid after the breach, interest should be added for the detention of the penalty, to make it equivalent to a payment at the date of the breach. Wyman v. Robinson, 73 Me. 384.

Defendant's valuation of property is not binding in suit on bond.—The defendant in replevin is not bound by his own valuation of the property replevied and if he valued the property too low he may recover the actual value of the goods or other property taken wrongfully from his possession in a suit upon the bond. Washington Ice Co. v. Webster, 62 Me. 341.

Nor is he bound by valuation stated in bond or writ. — In a suit on the bond the defendant in replevin is not concluded by the value of the property named in the bond or the writ for he would be at the mercy of his opponent, whose interest always is to fix as low a value as possible. Thomas v. Spofford, 46 Me. 408.

Issue of title may be raised if not determined in replevin suit.—In a suit upon the replevin bond, the defendant may show that the plaintiff had no title to the property replevied when there has been no judgment in the replevin suit determining the title to the property. Jones v. Smith, 79 Me. 452, 10 A. 256.

Where the right of property has been determined in the progress of the replevin suit, that question cannot be opened anew in a suit on the replevin bond. Buck v. Collins, 69 Me. 445.

Death of replevied animal while suit pending.—A party who in good faith replevies an animal from the possession of an officer, who had seized it on execution as the property of a third party, is not liable on the replevin bond for its value if, pending the replevin suit, the animal dies without the fault of anyone. Melvin v. Winslow, 10 Me. 397; Walker v. Osgood, 53 Me. 422.

Estopped to plead copartnership.—One who brings replevin against his copartner for firm property and is ordered to return all property taken is thereafter estopped in an action on the bond from setting up the copartnership and must return all the property or pay full damages. Crabtree v. Clapham, 67 Me. 326; Clapham v. Crabtree, 72 Me. 475.

Sec. 19. Limitation of surety's liability on replevin bond.—No action shall be maintained against any surety in a replevin bond unless the writ is served on him within 1 year after final judgment in replevin; or, if the action is not entered by the plaintiff and the defendant does not obtain judgment upon a complaint, such writ against the surety may be served on him within 1 year after the end of the term at which the action of replevin ought to have been entered, and not afterwards. (R. S. c. 112, § 19.)