

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1538

S. P. 477

In Senate, March 21, 1973

Referred to the Committee on Judiciary. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Brennan of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT to Regulate Prejudgment Attachment and Seizure of Property.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 14, § 2601, amended. Section 2601 of Title 14 of the Revised Statutes is amended to read as follows:

§ 2601. Actions in which trustee process used

In connection with ~~the commencement of~~ any personal action, except actions only for specific recovery of goods and chattels, for malicious prosecution, for slander by writing or speaking, or for assault and battery, trustee process may be used in the Superior Court or in the District Court.

Sec. 2. R. S., T. 14, § 2604, amended. The first paragraph of section 2604 of Title 14 of the Revised Statutes is amended to read as follows:

If all the trustees live in the same county, the action shall be brought there; if they reside in different counties, in any county in which one of them resides; and in a trustee process against a corporation, its residence shall be deemed to be in the county in which it has its established or usual place of business, **maintains its registered office**, held its last annual meeting or usually holds its meetings; except that an action in which a railroad corporation is named and alleged as trustee may be brought in any county in which said railroad corporation runs and operates its road; and except that an action in which a banking institution is named and alleged as trustee may be brought in any county in which said banking institution maintains a place of business. Service may be made on the manager of such banking institution in the county having jurisdiction over the parties named in the action.

Sec. 3. R. S., T. 14, §§ 2606, 2613 and 2623, repealed. Sections 2606, 2613 and 2623 of Title 14 of the Revised Statutes are repealed.

Sec. 4. R. S., T. 14, § 4102, repealed. Section 4102 of Title 14 of the Revised Statutes is repealed.

Sec. 5. R. S., T. 14, §§ 4103 and 4104, additional. Title 14 of the Revised Statutes is amended by adding 2 new sections 4103 and 4104 to read as follows:

§ 4103. Prejudgment attachment, trustee process and replevin prohibited, exceptions

Notwithstanding any other provisions of law, no real estate, goods and chattels or any other property may be subjected to attachment, trustee process or replevin except upon order of court in the following circumstances:

1. Where the person of the defendant is not otherwise subject to the jurisdiction of the court in the action; or

2. Where there is clear and convincing factual evidence of conduct of the defendant showing that there is an immediate danger that the defendant will remove the property from this State; or

3. Where the claim is not based upon a transaction involving personal, family or household purposes and the claim exceeds \$25,000, exclusive of interest and costs, and the defendant has executed a waiver. A waiver shall be conspicuously identified and knowingly made and state with particularity that the defendant's property is thereby subject to attachment, trustee process or replevin without prior notice or hearing.

§ 4104. Prejudgment attachment, trustee process and replevin only by court order

1. Any plaintiff who seeks a prejudgment attachment, trustee process or replevin shall file a motion for an order of court authorizing such attachment, trustee process or replevin.

2. Such motion shall identify the particular real estate, goods and chattels or other property to be subjected to attachment, trustee process or replevin and shall state the particular exception provided by section 4103 upon which the plaintiff claims to be entitled to prejudgment attachment, trustee process or replevin. The motion shall be accompanied by an affidavit of the plaintiff setting forth in detail the facts which substantiate the claimed exception; provided however, that an affidavit shall be insufficient to substantiate the claim to the 2nd exception provided by section 4103. A plaintiff seeking to substantiate such 2nd exception shall introduce supporting real or testimonial evidence to the satisfaction of the court that an immediate danger exists that the defendant will remove the property from this State.

3. No order of court authorizing prejudgment attachment or trustee process shall issue without notice to the defendant and an opportunity to be heard, except in the case where the plaintiff shall establish that the first exception provided for by section 4103 is applicable. In all other cases, notice

of the motion shall be served upon the defendant not less than 7 days prior to a time designated for hearing by the court. Notice of the motion shall be served in the manner provided for service of original process and shall include the date, time and place for hearing. The notice shall advise the defendant of his right to appear personally or by counsel and to file with the court an acceptable bond with a surety approved by the court in an amount equal to the value of the property or the amount claimed, whichever be less, to prevent the issuance of an order authorizing prejudgment attachment, trustee process or replevin. A copy of any affidavit filed by the plaintiff with the motion shall be served on the defendant with the notice of the motion. The notice shall likewise advise the defendant that failure to appear shall be deemed a default and that prejudgment attachment, trustee process or replevin may issue.

4. Failure of the defendant to appear shall be deemed a default and if the plaintiff has established grounds for prejudgment attachment, trustee process or replevin under any of the exceptions under section 4103, such process may be issued or authorized by the court.

Sec. 6. R. S., T. 14, § 4157, repealed. Section 4157 of Title 14 of the Revised Statutes is repealed.

STATEMENT OF FACT

The purpose of this bill is reflected in the title.