

MAINE STATE LEGISLATURE

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L A W S

OF THE

STATE OF MAINE;

TO WHICH ARE PREFIXED

THE

CONSTITUTION OF THE U. STATES

AND OF SAID STATE,

IN TWO VOLUMES,

WITH AN APPENDIX.

.....
VOL. I.
.....

Published according to a resolve of the State, passed
March 8, 1821.

BRUNSWICK.

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.....
1821.

ed by the Court, conditioned, if final judgment be rendered for the respondent, that the complainant shall within thirty days after the entering such final judgment, surrender himself to the gaol keeper to be detained in custody under the same execution, or within that time satisfy the same execution, and also such final judgment as shall be rendered as aforesaid for the respondent. And if the said complainant shall surrender himself to the gaol keeper as aforesaid, he shall be in custody under said execution, as fully and to all intents and purposes as if the said writ of audita querela had not been brought nor the said complainant admitted to bail.

Approved January 23, 1821.

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CHAPTER LXVI.

An Act establishing the Right to the Writ for replevying a Person.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That every person within this State, who shall be imprisoned, confined, or held in duress, shall be entitled as of right, to the writ for replevying a person, and to be thereby delivered; unless, while the writ of habeas corpus is suspended by the Legislature, he shall stand committed by the special order of the Supreme Executive Power of the State as dangerous to the public safety, or by the same, or by some subordinate authority of the government, for treason, the death of man, counterfeiting the common currency, house burning, burglary, robbery, or some other offence, for which if he is convicted, he may suffer death or banishment, or unless he is held in execution upon judgment of debt, forfeiture, withernam, or by distress for taxes, or under sentence after conviction, for fine, costs or in punishment. And where any person stands committed by lawful authority for any crime for which he may not suffer death, or otherwise than is above in this Act specified, the writ shall be in form prescribed by law.

Who are entitled to the writ.

SEC. 2. *Be it further enacted,* That if the plaintiff stands committed for any crime not before in this Act mentioned, or for any other offence, whereof if he is convicted, he may not have sentence of death or banishment thereof passed up

Writ in certain cases to issue from S. J. Court—

in others, from
C. C. C. Pleas.

Proceedings in
S. J. Court.

Proceedings in
C. C. C. Pleas.

In what cases
the plaintiff
shall not be set
at liberty.

If Sheriff re-
turn that de-
fendant has

on him, he shall have his writ from the Clerk of the Supreme Judicial Court fourteen days before the return day of the same; and the same writ shall be made returnable in the same county where the imprisonment happens, and unto the next Supreme Judicial Court, to be there holden: but if he is held by any person without due order of law, he shall have his writ from the Clerk of the Circuit Court of Common Pleas of the county wherein he is held returnable, fourteen days at the least from the day of the date; and where the plaintiff is delivered by a writ returnable into the Supreme Judicial Court, having been committed for any offence, and from which commitment he is replevisable, he shall, before he is delivered, recognise before the Sheriff of the county, in person, with sufficient surety or sureties in a reasonable sum for his appearance at the same Court, to answer, abide and perform the order and sentence of the same; which recognisance shall be returned into Court by the Sheriff; and when the plaintiff shall be delivered by a writ returnable into the Circuit Court of Common Pleas, he shall before his deliverance give bond to the use of the defendant with sufficient surety or sureties, at the discretion of the Sheriff, to appear at the Court to which the writ is returnable; and there to prosecute his replevin against the defendant, to have his body there ready to be re-delivered, as the Court shall order, and to pay all damages and costs that may be awarded against him; and the Sheriff shall be answerable, if the sureties shall prove insufficient, unless they are such as the defendant agrees to.

SEC. 3. *Be it further enacted,* That if the plaintiff shall not prosecute, or in prosecuting, shall be unable to support his replevin, then the defendant shall recover his reasonable costs; and if it shall be found, upon the trial, that the plaintiff is the ward or infant of the defendant, or that he the said defendant is entitled to the service of the plaintiff, or that the defendant is bail to the plaintiff, then the defendant shall have judgment against the plaintiff for a re-delivery of his body and for such damages as the Jury shall assess against the plaintiff, with reasonable costs.

SEC. 4. *Be it further enacted,* That if the Sheriff shall return upon the writ, for replevying a person, issuing from

the Circuit Court of Common Pleas, that the defendant hath eloined the plaintiff's body, so that he cannot deliver him, then the plaintiff shall on motion to the Court, have a capias in withernam to take the defendant's body, and to keep the same until he shall produce the plaintiff to be delivered according to the commandment of the original writ: *Provided nevertheless*, That if the defendant shall give full and sufficient bail for his appearance at the Court whereunto the writ is returnable, then and there to traverse the return of the Sheriff upon the writ for replevying a person, that the Sheriff shall take such bail; or if the defendant cannot procure such bail, and is thereupon committed by the Sheriff, he may nevertheless at the next term (and not afterwards) be allowed to traverse the Sheriff's return of elongation, or to plead any matter of justification in the same manner as he might have done to the original replevin: and if the Jury shall not find that he is guilty of eloining the plaintiff as set forth in the return, or if they find that the justification is supported, the defendant shall be allowed his costs against the plaintiff; but if the defendant will not traverse the return, and put himself upon the county; or if upon traversing the same, he shall be found guilty of the elongation of the plaintiff; or if upon pleading a justification, he shall not support the same, then the Court shall order him into the custody of the Sheriff, and shall issue an alias writ of withernam to hold him, until he shall produce the body of the plaintiff, or until he can prove that the plaintiff is dead; which fact may be tried at any term of the same Court, and in the same county, by a Jury upon the information and at the expense of the defendant. And the original writ of withernam shall be in form prescribed by law.

eloined plaintiff's body—
what proceedings shall be had.

SEC. 5. *Be it further enacted*, That in any stage of the proceedings upon process pursuant to this Act, any person shall be permitted to appear for the plaintiff, who will stipulate as the Court shall direct for the payment of all costs and damages that may be awarded against the plaintiff, although he can produce no special power for that purpose.

Any person stipulating for damages may appear for plaintiff.

[Approved January 27, 1821.]