

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.

CHAPTER LXXX.

An Act directing the mode of process, to be adopted in replevying of Cattle or Beasts distrained, and also of goods and Chattels.

SEC. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled,* That when any person shall have his cattle restrained or impounded, in order to obtain satisfaction for damages they may have committed, or to obtain a forfeiture, supposed to have been incurred for their going at large out of the inclosure of the owner, in violation of law, in order to have the legality of such distraint or impounding determined, he may have and prosecute a writ of replevin for the liberation of the cattle thus impounded, in the form prescribed by law.

Owner of cattle impounded may have writ of replevin.

In certain cases judgment for defendants damages may be given, instead of return, if legally taken.

SEC. 2. *Be it further enacted,* That when it shall appear from the plea of the defendant in replevin, that the cattle were taken and impounded, damage feasant, or for the recovery of a penalty incurred for their being found going at large, out of the inclosure of the owner, in violation of law; and upon the issue it shall be determined that the cause of taking and detaining was lawful and justifiable, judgment shall, instead of a return of the cattle, be rendered for the defendant in replevin, to recover such reasonable damages, as upon a consideration of the circumstances of the case, the Justice (or a Jury in case it comes before one,) shall assess, together with his costs of taking and impounding, and costs of defence: but if upon the trial of the issue, it shall appear, that the cattle were taken or detained without sufficient and justifiable cause, the plaintiff in replevin shall recover such reasonable damages for the taking and detaining, as the Justice, (or Jury, in case it comes before one,) shall assess, together with his costs: but when, from the matter of the plea of the defendant in replevin, damages with propriety cannot be assessed, or that a restoration of the property replevied is the best recompense the parties can have, and upon the issue it shall be found, that the cattle were taken and detained lawfully, and for justifiable cause, the judgment shall be rendered, that the cattle be returned and restored to the defendant, irrepleviable, and for costs, and he be entitled to a writ of return and restitution accordingly.

If illegally taken, plaintiff shall have damages.

In certain cases defendant may have return instead of damages.

SEC. 3. *Be it further enacted,* That when it shall appear from the plea or avowry of the defendant in replevin, that the sum demanded in damage for the taking and detaining exceeds twenty dollars, or that the property of the beast taken, is the question between the parties (in case the value exceeds twenty dollars) or that the right to soil and freehold is coming in question in every such case, the Justice shall not proceed to try the issue, but shall order the defendant in replevin to recognise in a reasonable sum, with sufficient surety or sureties, to the adverse party, to enter the said action at the next Circuit Court of Common Pleas or the Supreme Judicial Court, to be held in the same county, as the plaintiff in replevin shall then and there elect and choose, and to prosecute the same to effect; and if such defendant in replevin shall neglect or refuse thus to recognise, the Justice shall render judgment against him in the same manner as if he refused to make answer to the same suit. And in case such defendant shall, after recognising fail of entering or prosecuting the same action, the plaintiff may enter and prosecute the action, or have his remedy on the recognisance, at his election.

When from plea it appears that the damages demanded exceed \$20,

what proceedings are to be had.

SEC. 4. *Be it further enacted,* That when any goods or chattels shall be taken, distrained, attached, or unlawfully detained, which shall be claimed by a third person, and the person thus claiming the same, shall think proper to replevy them, in case such goods and chattels are of the value of more than twenty dollars, he may take out and prosecute his writ of replevin from the Clerk's office of the Circuit Court of Common Pleas, in the county where the goods and chattels are thus taken, distrained or attached in form prescribed by law. And in case the plaintiff in replevin shall neglect to enter and prosecute the suit, the defendant may upon complaint have judgment for a return and restoration of the goods and chattels replevied, and the damages for the taking to the amount of six per cent. on the bond, with reasonable costs, and a writ of return and restitution thereupon accordingly. And if upon a trial of the issue, judgment shall be rendered for a return and restitution, the interest of six per cent. upon the penal sum of the bond, shall be taken as a rule for estimating the plaintiff's damages, in case they

When goods are taken, distrained attached or detained and claimed by third person, form of proceeding.

Mode of assessing damages in different cases.

Attachment on mesne process continued in certain cases.

were taken on execution. And if the taking shall have been upon execution, the goods and chattels returned shall be held responsible for the space of twenty days after the return; and if on mesne process, until thirty days shall have expired, after final judgment thereon, in case judgment shall not have been given; but if final judgment on the mesne process shall have been given before the return, then for the space of twenty days only after the return, to the end, the creditor, at whose suit they were originally taken, may have a complete remedy, and the benefit of his attachment. And the monies recovered by way of damages, by any officer who has taken or attached any goods or chattels, at the suit of a creditor shall be considered and taken as recovered to the use of the creditor;—and when received, be paid over to him accordingly.

Damages recovered by officer to be to use of creditor.

Court may issue writ of withernam, in case.

SEC. 5. *Be it further enacted*, That when the Sheriff or other officer, unto whom the writ of return and restitution shall be directed, shall not be able to find the beast or other property in his precinct, which shall, by the same precept, be directed to be returned and restored irrepleviable, and the same shall appear in writing by the return of the officer thereon, the Court from whence the same issued, may, upon motion, grant a withernam against the plaintiff in replevin, to compel a complete and specific performance of the judgment, which writ of withernam shall be in form prescribed by law.

Court may vary form of writs in certain cases.

SEC. 6. *Be it further enacted*, That when the writ of return and restoration or writ, in withernam, shall issue from any other Court of law, or for any other property than beasts, the Court from whence the same shall issue, shall so vary the form as to them shall appear expedient to carry the same into full force and effect, as the nature and circumstances of the case shall require.

[Approved January 27, 1821.]