

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

United States and of the State of Maine,

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

APPENDIX.

PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

Augusta:

PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE.

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1841.

CHAPTER 123.

OF GRANTING REVIEWS.

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| <p>SECT. 1. In what cases the supreme judicial court may grant reviews.</p> <p>2. In what cases the district court may grant them.</p> <p>3. Notice.</p> <p>4. Application, where filed.</p> <p>5. Only one review to be granted.</p> <p>6. Limitation of application.</p> | <p>SECT. 7. Mode of petitioning, on the ground of newly discovered evidence.</p> <p>8. Court may stay execution, on bond being filed.</p> <p>9. Leave to prosecute a rejected claim against an insolvent estate. Limitation.</p> <p>10. Where new trial may be had.</p> |
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In what cases the supreme judicial court may grant reviews.

1821, 57, § 2.
6 Mass. 498.
9 Mass. 520.
1 Greenl. 322.
3 Greenl. 92.
4 Greenl. 58, 534.

6 Greenl. 412, 479.
8 Greenl. 211.
12 Pick. 172.

In what cases the district court may grant them.

1835, 165, § 3.
6 Greenl. 412.

Notice.
1821, 57, § 1.

Application, where filed.

Only one review to be granted.

1821, 57, § 3.
13 Mass. 490.

Limitation of application.

1821, 57, § 3.
2 Greenl. 114.

Mode of petitioning, on the ground of newly discovered evidence.

6 Greenl. 479.

Court may stay execution, on bond being filed.

1821, 57, § 5.
1831, 502, § 3.
11 Mass. 407.

Leave to prosecute a rejected claim against an insolvent estate. Limitation.

1821, 57, § 8.

SECTION 1. The justices of the supreme judicial court may grant a review in all civil actions, including petitions for partition, originally commenced in the late court of common pleas or district court, and in which judgment has been or shall be rendered in that court or in the supreme judicial court, whenever they shall judge it reasonable, and for the advancement of justice, without being limited to particular cases; including also, prosecutions for maintenance of bastard children.

SECT. 2. Any justice of the district court may, concurrently with the supreme judicial court, grant reviews of actions, of the kinds, and in the circumstances mentioned in the preceding section, in which judgment was rendered in said district court; and also in actions wherein the judgment was rendered by a justice of the peace, or municipal or police court.

SECT. 3. No review shall be granted by either court, until due notice has been given to the adverse party.

SECT. 4. The application, to the supreme judicial court, for a review may be filed in any county, and the order of notice made returnable in the county where the judgment was rendered.

SECT. 5. Not more than one review shall be granted in the same action.

SECT. 6. No review shall be granted, unless application is made therefor, within three years next after the rendition of the judgment, complained of.

SECT. 7. Whenever an application for a review is filed, if one of the grounds of application be the alleged discovery of new evidence, the substance of such new evidence, and the names of all the witnesses by whom the allegation is intended to be proved, must be stated in the application, under oath.

SECT. 8. On application for a review by a defendant in a personal action, the court may, in their discretion, stay execution on the judgment complained of, or grant a supersedeas, upon his filing in court his bond, with sureties to be approved by the court, or such person as they may appoint, in a penal sum, equal to double the amount of the damages and costs, conditioned to pay said amount, if such should be the final judgment on the review, with interest thereon from the date of said bond up to the time of rendition of judgment in the action on said bond, at the rate of twelve per cent. annually.

SECT. 9. When any person, whose claim on an insolvent estate has been rejected, in whole or in part, by the commissioners appointed by the judge of probate, by accident or mistake has omitted to give notice at the probate office, within the time by law pre-

scribed, of his intention to have his claim determined at law, said court may, after due notice to the executor or administrator on the estate, if they think that justice requires it, give such applicant leave to institute a suit for recovery of his claim, at the next district court in the county, where the executor or administrator resides; but such application must be made, within two years after the return of the commissioners; and leave shall not be granted after the lapse of four years from the time administration was granted; and no distribution shall be disturbed by any judgment, which may be recovered in such action.

SECT. 10. Whenever a review is granted, by either of said courts, the trial shall be had in the court by which the review was granted.

Where new trial may be had.

CHAPTER 124.

OF ACTIONS OF REVIEW.

- SECT. 1. In what court, a writ of review shall be prosecuted.
2. Form of the writ.
 3. Mode of service.
 4. Attachment of property.
 5. Entry of the action, and filing papers.
 - 6, 7. Pleadings, and issue.
 8. Evidence and proceedings.

SECT. 9. Judgment.

10. Costs.
11. Original attachment or bail, not continued by review.
12. Form of judgment, if damages be reduced.
13. Form, if damages be increased.
14. Provision, in cases of replevin and set off.

SECTION 1. Whenever a person is entitled, as a matter of right, to a review of an action, as provided in the seventh section of the one hundred and fifteenth chapter, or whenever a review is granted by the supreme judicial court, or by the district court, a writ of review, in the former case, shall be sued out, and prosecuted in the same court in which the judgment complained of was rendered; and, in the latter case, the writ shall be sued out and prosecuted in the court, which granted the review.

In what courts, a writ of review shall be prosecuted. 1821, 57, § 4.

SECT. 2. It shall not be necessary, in the writ of review, to recite at length the writ and proceedings in the original suit, but it may merely contain a summons to the defendant to appear and answer to the plaintiff in the review of an action, which was brought by the plaintiff; and such suit, and the judgment therein, may be described and identified in a condensed form, so as to render it intelligible and sufficiently certain.

Form of the writ.

SECT. 3. Such writ of review may be served in the same manner, as other writs; or, when the defendant is not an inhabitant of, or found in the state, it may be served on the person, who appeared, as his attorney, in the original suit.

Mode of service.

SECT. 4. If the writ of review is sued out by the original plaintiff, he may cause the defendant's property to be attached, as might have been done in the original suit, and the form of the writ may be varied accordingly.

Attachment of property.

**The following page(s) from
“An Act to Amend the Revised Statutes”
include amendments to this chapter.**

dence shall be drawn up in the form of a report, and signed by the presiding judge; and, if the motion shall be founded on any alleged cause, other than the rulings and instructions of the judge to the jury, the evidence, as to the facts stated in the motion, shall be heard, examined and reported by the judge, and, in either case, the action shall be continued, to be heard on the motion before the whole court.

The same chapter shall be further amended, by inserting, at the close of section, one hundred and four, the following words:

In which case, the first execution may be issued in not less than one year, and not more than two years from the time judgment was rendered.

Time of issuing execution, when defendant was out of the state and not notified.

R. S. ch. 117.

SECTION 20. The one hundred and seventeenth chapter shall be amended, in section fifteen, by striking out the words, "in case of goods and chattels," and inserting instead thereof, the following words: "is provided in the nineteenth section"; so that the said fifteenth section, as amended, will be as follows:

Shares in incorporated companies, if attached on the writ, may be sold on execution without further notice to the corporation.

R. S. ch. 120.

Survivorship of applications for review and actions of review. 1821, 59, § 27, 28.

R. S. ch. 123.

Supreme judicial court, on petition, may allow entry of an appeal or complaint which was omitted through mistake or accident. 1821, 57, § 6.

SECT. 15. If the property has been, and then is attached, the officer shall proceed in seizing and selling it on execution, in the same manner, as is provided in the nineteenth section.

SECTION 21. The one hundred and twentieth chapter shall be amended, by inserting, at the end of section, fifteen, the following words:

Applications for review of actions, and actions of review.

SECTION 22. The one hundred and twenty third chapter shall be amended, by inserting, at the end thereof, three new sections, as follows:

SECT. 11. When an appeal shall be claimed from the judgment of a district court, in any civil action, and, by reason of any mistake or accident, the appellant shall not duly enter his appeal, or the appellee shall not duly enter his complaint for affirmation of judgment, in the supreme judicial court, the court may, on the petition of the appellant or of the appellee, as the case may be, allow the appeal or the complaint to be entered at any other term of the court, held for the same county, upon such terms as they may deem just and reasonable; and, if the appeal or the complaint be so entered, the court shall proceed therein, as if it had been entered at the proper term.

District court may allow entry of an appeal or complaint, which was omitted through mistake or accident. 1821, 57, § 7.

SECT. 12. When an appeal shall be claimed from the judgment of a justice of the peace, or a municipal or police court, in any civil action, and, by reason of any mistake or accident, the appellant shall not duly enter his appeal, or the appellee shall not duly enter his complaint for affirmation of judgment in the district court, the court may, on the petition of the appellant, or of the appellee, as the case may be, allow the appeal or the complaint to be entered at any other term of the court, held for the same county, upon such terms as they may deem just and reasonable; and, if the appeal or the complaint be so entered, the court shall proceed therein, as if it had been entered at the proper term.

Petitions therefor limited to one year. Attachments and

SECT. 13. No petition for the entry of any such appeal or complaint shall be sustained, unless it be presented to the court, or filed in the clerk's office, within one year after the term at which the

same ought to have been entered; and no attachment made, and no bail taken, shall be revived or continued in force, by the entry of any such appeal or complaint by the original plaintiff, as provided in the two preceding sections; but such attachment and bail shall remain discharged.

bail not continued by entry of the appeal. 1821, 57, § 7.

SECTION 23. The one hundred and twenty fifth chapter shall be amended, by adding, at the end of the nineteenth section, the following words: R. S. ch. 125.

When such mortgagee or person claiming under him, being out of the state, or whose residence is unknown, shall have proceeded according to the provisions of the fifth section of this chapter, for the purpose of foreclosure, the mortgager, or other person having a right to redeem, may file his bill or petition, as provided in section, sixteen, and may at the same time pay to the clerk of the court the sum due, and the court shall order such notice to be given as they may judge proper; and such payment shall have the like effect and force, as a tender of payment made before the commencement of the suit.

If mortgagee or his assignee be out of the state, bill in equity may be filed on payment of redemption money to clerk of the court.

SECTION 24. The one hundred and fortieth chapter shall be amended, by inserting, at the end thereof, a new section, in the following words: R. S. ch. 140.

SECT. 38. When any insane person is arrested or imprisoned on mesne process or execution in any civil suit, any judge of the supreme judicial court or district court, or any judge of probate within his county, on application, may inquire into the case, and, if he think proper, may issue a writ of habeas corpus, and cause such person to be brought before him for examination; and, after notice to the creditor or attorney, if either be living in the state, and a hearing thereon, if it shall be proved to the satisfaction of said judge, that the person is insane, he may discharge such person from arrest or imprisonment; and, in that case, the creditor shall have a right to make a new arrest, upon the same demand, whenever such debtor shall become of sound mind. But, if such person be arrested on the same demand a second time before he becomes of sound mind, and be discharged again for the same reason, his body shall forever thereafter be exempted from arrest therefor.

Habeas corpus may issue for discharge of an insane person, arrested on mesne process or execution. Effect thereof.

SECTION 25. The one hundred and forty fourth chapter shall be amended, in section, one, by striking out the words, "to her satisfaction;" so that the said first section, as amended, will be as follows: R. S. ch. 144.

SECT. 1. When a woman is entitled to dower, and it is not set out to her by the heir or tenant of the freehold, according to the intentment of the law, nor assigned to her by the judge of probate, she may recover the same by a writ of dower, in the manner hereinafter prescribed.

Right of a widow to sue for dower.

SECTION 26. The one hundred and fifty sixth chapter shall be amended, by adding at the end of the chapter, a new section, as follows: R. S. ch. 156.

SECT. 16. Upon any conviction of burglary, robbery or larceny, unless it be before a justice of the peace for larceny, the court may order a meet recompense to the prosecutor, and also to the officer, who has secured or kept the stolen property, not exceeding their actual expenses, with a reasonable allowance for their time and trouble, to be paid by the county treasurer, and charged by him to the state.

Compensation for expenses of prosecutor to conviction, for larceny, &c. and officer. 1821, 7, § 16.