

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)

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.

.....
1841.

CHAP. 140.

for the party detained. 1821, 64, § 12. Supreme court, or any justice thereof, may allow bail, at discretion. Exception. 1821, 64, § 1.

Admission of a person to bail, when committed for not finding sureties. 1821, 68.

Habeas corpus may issue, to bring in a prisoner, for trial, or as a witness.

Minors, enlisting into the army and navy, entitled to the benefits of this chapter. 1821, 64, § 7.

appear for him in any action, brought therefor in his name, who shall stipulate for the payment of costs, as the court shall order.

SECT. 34. Nothing in this chapter shall be construed to restrain the supreme judicial court in term time; or any justice thereof in vacation, from bailing any person whatever, or for whatever offence committed, at their discretion; whenever the circumstances of the case may require it; excepting persons committed by the governor and council, senate or house of representatives, and for the causes mentioned in the constitution.

SECT. 35. When any person is confined in jail for a bailable offence, or for not finding sureties on a recognizance, any justice of the district court, or two justices of the peace and of the quorum, on application made to them, may inquire into the case, and admit any such person to bail, and exercise the same power concurrently, which any one of the justices of the supreme judicial court may or can do; and may issue a writ of habeas corpus, and cause such person to be brought before them, for the purpose expressed in this section, and may take such recognizance.

SECT. 36. Any court may issue a writ of habeas corpus, when necessary, to bring before them any prisoner for trial in any cause pending in any such court, or to testify as a witness, in a cause therein pending, when his personal attendance may be deemed necessary for the attainment of justice.

SECT. 37. If any minor, under the age of twenty one years, shall be enlisted within this state into the army or navy of the United States, without the consent in writing of his parent, guardian or master, he shall be entitled to all the benefits of this chapter, on the application of such minor or of his parent, guardian or master, to the district court.

CHAPTER 141.

OF THE WRIT OF AUDITA QUERELA.

SECT. 1. Form of the writ.

2. In what court and county to be sued out.

3. Proceedings in court.

SECT. 4. Special damages.

5. Pleadings. Filing exceptions.

6. Proceedings, if plaintiff be in prison.

7. Effect of a surrender to jail.

Form of the writ. 1821, 65, § 1, 2, 4.

10 Mass. 101. In what court and county to be sued out. 1821, 65, § 1.

Proceedings in court. 1821, 65, § 3.

SECTION 1. The writ of audita querela may be sued out in the form of a writ of attachment or summons; and shall be sealed, signed, tested and indorsed, as other writs.

SECT. 2. When brought to prevent, set aside or annul proceedings, had on a judgment or writ of execution, it shall be sued out of the same court, in which judgment was rendered; but, in all other cases, it shall be sued in the county and court having jurisdiction of the cause, according to the provisions of law, as to personal actions.

SECT. 3. If the defendant, after having been duly served with process, shall not appear, he shall be defaulted; and, if he appear, a trial shall be had, as in common civil actions.

SECT. 4. The complainant, in his writ, may also set forth and declare for any special damages, he may have suffered, by means of the service of such execution; and, on proof of such damages, he shall have judgment and execution for the same, in like manner, as he could recover them in a subsequent suit; and instead of such mode.

CHAP. 141.

Special damages.
1821, 65, § 6.

SECT. 5. The defendant may plead the general issue, of not guilty, with or without a brief statement, as the case may require; or plead any special matter in bar: and exceptions may be alleged to the rulings, instructions and opinion of the court, as prescribed in case of civil actions, unless by law an appeal is allowable.

Pleadings.
Filing exceptions.
1821, 65, § 7, 8.

SECT. 6. When the plaintiff is in prison, by virtue of such execution, the court, before which such action is brought, may admit him to bail, to be approved by the court; and the bond shall be conditioned, that, if final judgment be rendered for the defendant, the complainant shall, within thirty days after such judgment, surrender himself to the jail keeper to be detained on the execution, or, within that time, satisfy the same execution, and also such final judgment, as shall be rendered for the respondent.

Proceedings, if plaintiff be in prison.
1821, 65, § 9.

SECT. 7. If the plaintiff shall surrender himself to jail, he shall be in lawful custody on such execution, and there detained until discharged according to law.

Effect of a surrender to jail.
1821, 65, § 9.

CHAPTER 142.

OF THE WRIT FOR REPLEVYING A PERSON.

- SECT. 1. Who is entitled to the writ.
2. From what court to issue. Service.
3. Form of the writ.
4. Bond to be given.
5. Officer responsible for the sureties.
6. What judgment, if action be maintained.
7. What judgment, if not maintained.
8. What judgment, if defendant be entitled to custody of the plaintiff.
9. If defendant have eloiigned the plaintiff, he may be arrested.

- SECT. 10. He may give bail.
11. Discharge, and costs, if not guilty of eloiigning.
12. If guilty, to be imprisoned.
13. Form of writs of reprisal.
14. Discharge of defendant; on proof of plaintiff's death.
- 15, 16. Proceedings, if plaintiff be produced.
17. Appeal, and proceedings.
18. A third person may sue out the writ.

SECTION 1. If any person is imprisoned, restrained of his liberty, or held in duress, unless by force of a lawful writ, warrant or other process, civil or criminal, issued by a court of competent authority, he shall be entitled as of right, to the writ for replevying a person; and to be thereby delivered in the manner herein provided.

Who is entitled to the writ.
1821, 66, § 1.

SECT. 2. The writ shall be issued from, and returnable to the district court in the county in which the plaintiff is confined; and shall be directed to the sheriff, or coroner, of such county, as the case may require, and shall be served as soon as may be, and fourteen days before the return day.

From what court to issue. Service.
1821, 66, § 2.
11 Mass. 271.

SECT. 3. The writ shall be in the form heretofore established,

Form of the writ.