

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.

.....
1841.

SECT. 15. If the defendant shall, at any time after the return of elongation, produce the body of the plaintiff in court, the court shall deliver the plaintiff from imprisonment, upon his giving to the defendant such bond as is before directed to be taken by the officer, when the plaintiff is delivered by him; and, for want of the bond, he shall stand committed to abide the judgment on the writ for replevying the plaintiff.

CHAP. 142.
Proceedings, if plaintiff be produced.

SECT. 16. When the body of the plaintiff is produced, as mentioned in the last section, the suit shall be tried in the manner before mentioned.

Same subject.

SECT. 17. Either party may appeal to the supreme judicial court, in like manner as in common civil actions, and, in case of an appeal from any order or judgment upon the writ of reprisal, the whole case in the original writ for replevying the plaintiff, shall be carried up to the supreme judicial court, and shall there be disposed of, as it should have been in the district court.

Appeal, and proceedings. 2 Mass. 207.

SECT. 18. The writ of replevin may be sued out by any person in behalf of the plaintiff, without any express power for that purpose, he giving bond, as before mentioned, when sued by the plaintiff himself.

A third person may sue out the writ. 1821, 66, § 5.

CHAPTER 143.

OF WRITS OF ERROR AND CERTIORARI.

- SECT. 1. How WRITS OF ERROR may issue.
- 2. Execution not to stay, unless bond be given.
- 3. Bond to be approved.
- 4. Filing of bond, and effect thereof.
- 5. Costs to prevailing party. Damages and costs; if defendant prevail.
- 6. Proceedings, on writs of error.
- 7. Writs of error in capital cases.

- SECT. 8. Effect thereof, in other criminal cases.
- 9. Provision for keeping plaintiff in error, on stay of proceedings.
- 10. Limitation of writs of error.
- 11. WRITS OF CERTIORARI, how issued.
- 12. Costs, on applications, or on final decisions.
- 13. Limitation of applications for certiorari.

SECTION 1. Writs of error, in civil cases, may issue of course out of the supreme judicial court, in vacation as well as term time; and shall be returnable to the same court.

How writ of error may issue. 6 Mass. 4. 10 Mass. 163.

SECT. 2. No writ of error shall operate to stay or supersede execution in any civil action, unless the plaintiff in error, or some person in his behalf, shall give bond to the defendant with one or more sureties, with condition that the plaintiff shall prosecute his suit to effect, and shall pay and satisfy such judgment as shall be rendered thereon.

Execution not to stay, unless bond be given.

SECT. 3. The sufficiency of the sureties, and the sum for which the bond shall be given, shall be determined by any judge of the supreme judicial court, or by the clerk from whose office the writ of error is issued, according to such general rules, as the court may, from time to time, establish.

Bond to be approved.

CHAP. 143.

Filing of bond,
and effect
thereof.

SECT. 4. When such bond shall be given, it shall be filed in the clerk's office, for the use of the defendant; which shall be deemed a delivery of the bond; and no execution shall be there- after issued on the judgment, complained of, during the pendency of the writ of error; and, if execution shall have been already issued, the clerk shall make out and sign a certificate of the issuing of the writ of error, and the filing of the bond; and, after notice of such certificate to the officer holding the execution, all further proceedings thereon shall be stayed.

Costs to pre-
vailing party.
Damages and
costs, if defend-
ant prevail.
14 Maine, 195.
18 Pick. 417.

SECT. 5. The prevailing party on a writ of error, in any civil action, shall, in all cases, be entitled to his costs against the adverse party; and, if the judgment is affirmed, the court shall adjudge to the defendant in error damages for his delay, not less than at the rate of six per cent., nor exceeding twelve per cent. a year, on the amount recovered by the former judgment; and, in such case, they may also, in their discretion, award double costs to the defendant.

Proceedings, on
writs of error.
4 Pick. 497.

SECT. 6. The proceedings upon writs of error, as to the assign- ment of errors, the scire facias to the defendant, and the pleadings and judgments; and all other matters not herein provided for, shall be according to the course of common law, as modified by the practice and usage in this state, and such general rules as may be made by the supreme judicial court.

Writs of error,
in capital cases.

SECT. 7. No writ of error, upon a judgment for any capital offence, shall issue, unless allowed by one of the justices of the supreme judicial court, after notice given to the attorney general or other attorney for the state.

Effect thereof,
in other criminal
cases.

SECT. 8. Upon all other judgments in criminal cases, writs of error shall issue of course; but they shall not stay or delay the execution of the sentence or judgment, unless they shall be allowed by a justice of the supreme judicial court, with an express order thereon, for a stay of all proceedings on such judgment or sentence.

Provision for
keeping plain-
tiff in error, on
stay of proceed-
ings.

SECT. 9. When a stay of proceedings shall be ordered, as pro- vided in the preceding section, the judge may, at the same time, make such order as the case may require, for the custody of the plaintiff in error, or for letting him to bail; or the party may, upon a writ of habeas corpus, procure his enlargement upon giving bail, if entitled thereto.

Limitation of
writs of error.

SECT. 10. No judgment in any case shall be reversed or avoided for any error or defect, unless the writ of error thereon be sued out within six years next after the entering up of judgment, or within six years next after this chapter shall become a law; but, if any person entitled to such writ, at the time such title accrued to him, shall be within the age of twenty one years, a married woman, insane, imprisoned, or out of the limits of the United States, then such person, his heirs, executors or administrators may sue out the same, within five years after the removal of the disability aforesaid.

Writs of certio-
rari, how issued.
6 Mass. 72.
14 Mass. 393.
8 Greenl. 292.
2 Pick. 386.
15 Pick. 234.

SECT. 11. All writs of certiorari, to correct errors in proceed- ings, that are not according to the course of the common law, shall be issued from the supreme judicial court, according to the practice heretofore established, and subject to such further regulations, as shall be made from time [to time] by the supreme judicial court.

Costs, on ap-
plications, or on
final decision.

SECT. 12. Upon every application for a certiorari, and also on

the final adjudication, when a certiorari is granted, the court may, in their discretion, award costs against any party, who shall appear and undertake to maintain or object to the proceeding in question.

SECT. 13. No such application for a writ of certiorari shall be sustained, unless made therefor within six years next after the proceeding which is complained of, or within six years after this chapter shall take effect; provided, that the saving clause in the tenth section of this chapter shall apply to this section also.

CHAP. 143.

Limitation of applications for certiorari.

CHAPTER 144.

OF THE ACTION OF DOWER.

SECT. 1. Right of a widow to sue for dower.
 2. Previous demand. Time of bringing the action.
 3. Demand upon a corporation, and time for commencing the action.
 4. Pleadings in such action.
 5. Damages for detaining dower.
 6. Suit to be against tenant of the freehold. Liable for damages only whilst in possession.

SECT. 7. Separate action for damages against the person, on whom the demand was made.
 8. Writ of seizin, and proceedings in setting off dower.
 9. Assignment of rents and profits in certain cases.
 10. Recovery of dower by a woman divorced.

SECTION. 1. When a woman is entitled to dower, and it is not set out to her, by the heir, or tenant of the freehold, to her satisfaction, according to the intendment 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.
 1821, 40, § 1.

SECT. 2. She must demand her dower of the person, who is seized of the freehold at the time of making the demand, if he be in this state, otherwise, of the tenant in possession, and shall not commence her action to recover the same before the expiration of one month after making such demand, nor after the expiration of one year from the same time; but this shall not preclude her making a new demand and commencing an action thereon, if an action should not be brought within one year after the first demand.

Previous demand. Time for bringing the action.
 1821, 40, § 1.

SECT. 3. When any corporation is the tenant of the freehold, she must demand her dower in writing of any officer of such corporation, on whom by law, a writ in a civil action against the same may be served; but she shall not commence her action against such corporation before the expiration of sixty days, nor after the expiration of one year from such demand; but a second demand may be made, if necessary, as provided in the preceding section.

Demand upon a corporation, and time for commencing the action.
 1839, 363, § 1.

SECT. 4. In an action of dower, the defendant may plead in abatement, that he is not tenant of the freehold, but not in bar of the action.

Pleadings in such action.
 1839, 363, § 2.

SECT. 5. If the demandant recovers judgment for her dower, she shall also in the same action recover her damages for the detention thereof.

Damages for detaining dower.
 1821, 40, § 2.

SECT. 6. The action shall be brought against the person, who

Suit to be a-