

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED APRIL 17, 1857;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN

APPENDIX.

PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

BANGOR:
WHEELER & LYNDE.

1857.

CHAP. 102.

CHAPTER 102.

WRITS OF ERROR AND CERTIORARI.

WRITS OF ERROR.

- SEC. 1. Writs of error may issue from the supreme judicial court in vacation or term time.
2. Execution not to stay, unless bond is given. Bond to be approved by a justice of the court, or the clerk.
 3. Filing of the bond deemed a delivery thereof; clerk to issue certificate to stay proceedings.
 4. Costs to prevailing party; damages and costs if defendant prevails.
 5. Form of writ of error.
 6. Scire facias to specify the errors of fact and law.
 7. Proceedings on writs of error, according to the common law.
 8. Writs of error in capital cases; notice to attorney general.
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WRITS OF CERTIORARI.

11. How writs of certiorari to be issued.
12. Costs on application, or on final decisions.
13. Limitations of applications for certiorari.

WRITS OF ERROR.

May issue from
S. J. Court.
R. S., c. 143,
§ 1.

SEC. 1. Writs of error in civil cases may issue out of the supreme judicial court in vacation or term time, returnable to the same court. (a)

Execution not
to stay, unless
bond is given
and approved,
&c.
R. S., c. 143,
§ 2, 3.

SEC. 2. No writ of error shall stay or supersede execution in any civil action, unless the plaintiff in error, or some person in his behalf, gives bond to the defendant, conditioned, that the plaintiff shall prosecute his suit with effect, and satisfy the judgment rendered therein, in such sum and with such sureties as a justice of the court, or the clerk from whose office the writ issued, approves, according to the rules of court.

Filing of bond
deemed deliv-
ery.
R. S., c. 143,
§ 4.

SEC. 3. When the bond is given, the filing of it in the clerk's office for the use of the defendant shall be deemed a delivery thereof; and no execution shall be issued on the judgment complained of, while such suit is pending; and if execution has already issued, the clerk shall make a certificate of the issue of the writ and filing of the bond; and after notice thereof to the officer holding the execution, all further proceedings thereon shall be stayed.

Costs to pre-
vailing party,
&c.
14 Maine, 195
R. S., c. 143,
§ 5.

SEC. 4. The prevailing party in such writ in a civil action shall be entitled to his costs; and if the judgment is affirmed, the defendant in error shall be entitled to not less than six, nor more than twelve per cent. a year on the amount of his former judgment, as damages for his delay, and the court may allow him double costs.

(a) 16 Maine, 81; 19 Maine, 219; 23 Maine, 251; 24 Maine, 437; 29 Maine, 360; 30 Maine, 194, 422; 31 Maine, 57, 420; 32 Maine, 185; 33 Maine, 250, 265, 350, 368, 509; 35 Maine, 97; 36 Maine, 198.

SEC. 5. The writ of error may be a scire facias issued substantially as follows, without any assignment of errors, or other preliminary proceedings:

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Form of writ
of error.
1852, c. 269,
§ 1, 2.

STATE OF MAINE.

[L. S.] ——— ss. To the sheriff, &c.

Greeting.

We command you, that you make known unto ———, of ———, to appear, if he sees cause, before our supreme judicial court, to be held at ———, within and for our said county of ———, on the ——— to answer to ———, of ———, in a plea of error, whereas the said ——— alleges that in the process, proceedings, and judgment had before ———, at ———, on ———, wherein the said ——— was plaintiff, and the said ——— defendant, there occurred the errors hereinafter specified, by which the present plaintiff was injured, and for which he therefore seeks that said judgment may be reversed, recalled, or corrected, as law and justice require; that is to say, the following errors: ———.

Hereof fail not, and have you there this writ with your doings thereon.

Witness, ——— Esq., at ——— the ——— day of ———.

—————, Clerk.

SEC. 6. The scire facias shall specify the errors of fact and law, upon which the plaintiff relies; and a transcript of the record, process, and proceedings, attested by the clerk of the court or justice of the peace rendering the judgment, without further authentication, or the introduction of the record, shall be competent evidence in such trial; and in case of mistake in the transcript, the court may grant leave to amend.

Scire facias to
specify the errors
of fact and
law.
1852, c. 269, § 3.

SEC. 7. The proceedings upon writs of error, not herein provided for, shall be according to the common law as modified by the practice and usage in this state, and the general rules of court.

Proceedings
on writs of
error.
23 Maine, 251.
R. S., c. 143,
§ 6.
1852, c. 269, § 4.

SEC. 8. No writ of error upon a judgment for a capital offence shall issue, unless allowed by one of the justices of the supreme judicial court, after notice to the attorney general or other attorney for the state.

Writs of error
in capital
cases.
R. S., c. 143,
§ 7.

SEC. 9. Writs of error shall issue of course upon all other judgments in criminal cases, but not to stay or delay execution of sentence or judgment, unless allowed by a justice of the supreme judicial court, with an express order to stay all proceedings thereon; and in that case, the judge may make such order as the case requires for the custody of the plaintiff in error or letting him to bail; or, upon a writ of habeas corpus, if entitled, he may procure his enlargement by giving bail.

Effect of writ
of error in
other criminal
cases.
Provision for
keeping plain-
tiff in error on
stay of pro-
ceedings.
R. S., c. 143,
§ 8, 9.

SEC. 10. No writ of error shall be sustained, unless brought within six years next after the entering up of the judgment sought to be reversed or avoided; but if the person entitled to such writ is a minor, married woman, insane, imprisoned, or not in the United States, when becoming so entitled, then he, his heirs, executors, or administrators, may sue out the writ within five years after the removal of such disability.

Limitation of
writs of error.
R. S., c. 143,
§ 10.

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WRITS OF CERTIORARI.

How writs of certiorari to be issued.

R. S., c. 143, § 11.

Costs.

R. S., c. 143, § 12.

Limitation of applications for certiorari.

R. S., c. 143, § 13.

SEC. 11. All writs of certiorari, to correct errors in proceedings 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 are made, from time to time, by such court. (a)

SEC. 12. Upon every application for a certiorari, and on the final adjudication thereof, the court may award costs against any party, who appears and undertakes to maintain or object to the proceedings.

SEC. 13. No application for a writ of certiorari shall be sustained, unless made within six years next after the proceedings complained of, or within five years from the removal of such disabilities as are described in section ten.

CHAPTER 103.

ESTATES IN DOWER, AND BY CURTESY, AND ACTIONS OF DOWER.

ESTATES IN DOWER AND BY CURTESY.

- SEC. 1. Of what lands a woman is dowable.
2. Of what she is not dowable.
3. When judge of probate may assign dower.
4. Mode of proceeding in assignment of dower.
5. Special assignment in certain cases.
6. Rights of widow before dower is assigned.
7. Widow of naturalized alien entitled to dower.
8. A married woman may bar her right to dower by deed; how executed.
9. A woman may bar her right to dower by accepting a jointure before marriage.
10. Also by a pecuniary provision made for the benefit of an intended wife in lieu of dower.
11. Widow may waive jointure in certain cases.
12. She may waive provision in her husband's will.
13. Remedy if she is evicted of her dower.
14. When dowable of an equity of redemption.
15. Penalty if she commits waste.
16. Rights of widow to remain in her husband's house.
17. Tenancy by curtesy. Husband has right of dower in deceased wife's estate.

ACTION OF DOWER.

18. Rights of widow to sue for dower.
19. Previous demand, and time of bringing the action.
20. Demand upon a corporation, and time for bringing the action.
21. Defendant may plead in abatement, but not in bar, that he is not tenant of the freehold.
22. Damages for detaining dower.
23. Suit to be against the tenant of the freehold; liable for damages only while he held possession. Separate action against prior tenant, of whom demand was made.

(a) 8 Greenl. 292; 19 Maine, 46, 338; 23 Maine, 9, 511; 25 Maine, 69; 26 Maine, 353; 28 Maine, 121; 29 Maine, 196; 30 Maine, 19, 270, 302, 351; 31 Maine, 578; 32 Maine, 450, 452; 33 Maine, 237, 260; 35 Maine, 373; 36 Maine, 74; 37 Maine, 561; 38 Maine, 492; 39 Maine, 52, 355.