

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED JANUARY 25, 1871;

TO WHICH ARE PREFIXED
THE CONSTITUTIONS

OF THE
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX.

BY AUTHORITY OF THE LEGISLATURE.



PORTLAND:
PUBLISHED BY BAILEY & NOYES.

CHAPTER 102.

WRITS OF ERROR AND CERTIORARI.

WRITS OF ERROR.

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WRITS OF ERROR.

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)

Writs of error may issue from S. J. Court. R. S. c. 102, § 1.

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.

Execution not to be stayed, unless bond is given and approved by court or clerk. R. S. c. 102, § 2. 47 Me. 173.

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.

Filing bond deemed delivery, and effects thereof. R. S. c. 102, § 3.

(a) 16 Me. 81; 19 Me. 219; 23 Me. 251; 24 Me. 437; 26 Me. 411; 28 Me. 232; 29 Me. 360; 30 Me. 194, 422; 31 Me. 57, 420; 32 Me. 185; 33 Me. 250, 265, 350, 363, 509; 35 Me. 97; 36 Me. 198.

CHAP. 102.

Costs to prevailing party; damages and costs, if defendant prevailed.

R. S. c. 102, § 4.
12 Me. 458.
14 Me. 195.

Reversal of judgment does not vitiate sale of real estate, but does levy.
1860, c. 138, § 2.
1864, c. 268, § 4.
51 Me. 149, 556.

One co-defendant may bring writ of error on giving security to others.
1864, c. 268, § 5.

Form of writ of error.
R. S. c. 102, § 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.

SEC. 5. When a debtor's property has been sold by virtue of an execution, and the judgment on which it was issued, is afterwards reversed on writ of error, the title of the purchaser thereof is not affected thereby; but the defendant in the original suit may maintain an action of assumpsit against the original plaintiff for so much of said judgment as is satisfied. But the levy of an execution upon real estate shall be void, when the original judgment upon which it issued, is reversed by writ of error, brought within a year thereafter.

SEC. 6. When there were several defendants in the original judgment, either may bring a writ of error, in the name of all on furnishing each co-defendant requiring it, such security against all liabilities arising therefrom, as the court deems reasonable; and at any stage of the proceedings, the court shall, on motion of any such co-defendant, require such security.

SEC. 7. The writ of error may be a scire facias issued substantially as follows, without any assignment of errors, or other preliminary proceedings:

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.

Scire facias to specify the errors of fact and law.
R. S. c. 102, § 6.
30 Me. 194.
43 Me. 345.
35 Me. 97.
42 Me. 569.

SEC. 8. 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. CHAP. 102.

SEC. 9. 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.

SEC. 10. 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.

SEC. 11. 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.

SEC. 12. 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.

WRITS OF CERTIORARI.

SEC. 13. 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. 14. Upon every application for 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. 15. 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 twelve.

(a) 8 Me. 292; 19 Me. 46, 338; 23 Me. 9, 511; 25 Me. 69; 26 Me. 353; 28 Me. 121; 29 Me. 196; 30 Me. 19, 270, 302, 351; 31 Me. 506, 578; 32 Me. 450, 452; 33 Me. 237, 260; 35 Me. 873; 36 Me. 74; 37 Me. 561; 38 Me. 492; 39 Me. 52, 355; 42 Me. 395; 43 Me. 257; 49 Me. 143, 417; 51 Me. 108; 56 Me. 184, 542.

44 Me. 88.
48 Me. 263.
55 Me. 370.
Proceedings on writs of error.
R. S. c. 102, § 7.
23 Me. 251.
24 Me. 437.
Writs of error in capital cases not to issue without order of court and notice.
R. S. c. 102, § 8.
Effect of writ of error in other criminal cases.
Provision for keeping plaintiff in error on stay of proceedings.
R. S. c. 102, § 9.

Limitation of writs of error; exceptions.
R. S. c. 102, § 10.

How and by whom writs of certiorari to be issued.
R. S. c. 102, § 11.

Costs on application and final decision.
R. S. c. 102, § 12.

Limitation of applications for certiorari.
R. S. c. 102, § 13.