

MAINE STATE LEGISLATURE

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FOURTH REVISION.

THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED AUGUST 29, 1883, AND TAKING EFFECT JANUARY 1, 1884.

BY THE AUTHORITY OF THE LEGISLATURE.



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SEC. 15. On non-payment of any of the penalties aforesaid, the defendant shall be imprisoned not less than five days, and at the rate of one day for each dollar of the amount of the judgment, if it is over five dollars.

CHAP. 95.

Imprisonment for non-payment.
1874, c.252, §4.

SEC. 16. If an heir or devisee of a person deceased, whose estate is represented insolvent, afterwards and before sale of the real estate for payment of debts, or before all the debts are paid, removes or injures any building or trees, except as is needed for fuel or repairs, or commits any strip or waste on such estate, he shall forfeit treble the amount of damages, to be recovered by the executor or administrator in an action of trespass.

Penalty for waste on lands of an insolvent deceased.
R.S., c.95, § 12.
10 Me., 370.
15 Me., 206.

SEC. 17. If such executor or administrator, being heir or devisee, commits such trespass or waste, on proof thereof before the judge of probate, he shall be liable to the same extent as the heirs or devisees; and in both cases, the damages, when recovered by the executor or administrator, or adjudged against him by the judge of probate, shall be accounted for in the administration account.

Liability of executor or administrator for committing waste.
R.S., c.95, § 13.

SEC. 18. All or any of the tenants in common, coparceners; or joint tenants of lands may join or sever in personal actions for injuries done thereto, setting forth in the declaration the names of all other co-tenants, if known, and the court may order notice to be given in such actions to all other co-tenants known, and all or any of them, at any time before final judgment, may become plaintiffs in the action, and prosecute the suit for the benefit of all concerned.

One or more tenants in common may join in actions.
—notice to other co-tenants.
R.S., c.95, § 14.
29 Me., 204.
43 Me., 253.
57 Me., 409.

SEC. 19. The court shall enter judgment for the whole amount of the injury proved; but shall award execution only for the proportion thereof sustained by the plaintiffs; and the remaining co-tenants may afterwards jointly or severally sue out a scire facias on such judgment, and execution shall be thereupon awarded for their proportion of the damages adjudged in the original suit.

Judgment for the whole damage; execution for plaintiff's share: scire facias by the other co-tenants.
R.S., c.95, § 15.

SEC. 20. If any one or more of the joint tenants or tenants in common take the whole rents or income of the joint estate, or more than their share, without the consent of their co-tenants, and refuse, for a reasonable time after demand, to pay such co-tenants their share thereof, any one or more of them may have an action of special assumpsit against the refusing co-tenants, to recover their proportion thereof.

If one or more joint tenants take the whole rent, others may recover.
R.S., c.95, § 16.
64 Me., 465.
72 Me., 406.

CHAPTER 96.

REPLEVIN OF BEASTS AND CHATTELS.

REPLEVIN OF BEASTS.

- SEC. 1. Owner of beasts distrained, may replevy them.
2. The writ may be sued out, served, returned and tried, like other cases.
3. Bond shall be given before service. When new sureties may be required.

- CHAP. 96.** SEC. 4. If the beasts are lawfully distrained, defendant shall have judgment for forfeiture or damages, fees, costs and expenses, or for a return.
5. If unlawfully distrained, plaintiff to have judgment for damages and costs.
6. Either party may appeal.
7. In what cases and how, such a cause may be transferred from a trial justice to the supreme judicial or superior court.

REPLEVIN OF GOODS.

- SEC. 8. Any goods, unlawfully detained, may be replevied.
9. In what courts, replevin may be brought.
10. Bond must be given before service; when new sureties may be required.
11. If plaintiff fails, defendant shall have judgment for return, and for damages and costs. Judgment, when property is held as security.
12. Assessment of damages, on judgment for return of property to an attaching officer.
13. Money recovered by the officer for goods attached or taken on execution, how to be disposed of.
14. Appropriation of the money received by the creditor in such cases.
15. Judgment for damages and costs, if plaintiff recovers.
16. Continuance of the attachment, if goods are replevied.
17. When a writ of reprisal may issue.
18. Defendant's remedy on the replevin bond.
19. Limitation of surety's liability on replevin bond.

REPLEVIN OF BEASTS.

Owners of beasts distrained may replevy. R.S., c. 96, § 1. Sec 1821, c. 63, § 9.

SEC. 1. Any person, whose beasts are distrained or impounded to recover a penalty or forfeiture for their going at large, or to obtain satisfaction for damages alleged to be done by them, may maintain a writ of replevin therefor against the impounder or finder, before any trial justice in the county, in the form prescribed by law. (a)

Writ, service and return. R.S., c. 96, § 2.

SEC. 2. The writ shall be sued out, served, and returned, and the cause heard and determined like other civil actions before a trial justice, except as otherwise prescribed.

Bond must be given before service. R.S., c. 96, § 3.

SEC. 3. The writ shall not be served, unless the plaintiff, or some one in his behalf, executes and delivers to the officer a bond to the defendant, with sufficient sureties, to be approved by the officer, in a penalty double the actual value of the property to be replevied, conditioned as in the prescribed form of the writ, and to be returned with the writ for the use of the defendant; and if it afterwards becomes insufficient, the court may require additional surety or sureties to be furnished, who shall be held as if they had been original parties thereto; and if not so furnished, it may dismiss the action, and order a return of the property replevied, or make such other order as is deemed reasonable.

—when new sureties must be furnished.

Judgment, if the beasts are lawfully distrained. R.S., c. 96, § 4. 23 Me., 491.

SEC. 4. If it appears that the beasts were lawfully taken or distrained, the defendant shall have judgment for the sum found due from the plaintiff for the penalty or forfeiture, or for damages for which the beasts were impounded, with legal fees, costs, and expenses occasioned by the distress, and costs of the replevin suit; or instead thereof, the justice or court, at discretion, may enter judgment for a return of the beasts to the defendant, to be held by him for the original purpose, irrepleviable by the plaintiff, and for the defendant's damages and costs in the replevin suit.

If unlawfully distrained.

SEC. 5. If it appears that the beasts were taken or distrained with-
(a) 17 Me., 189; 18 Me., 249; 23 Me., 489.

out justifiable cause, the plaintiff shall have judgment for his damages and costs.

SEC. 6. Either party may appeal as in other civil actions.

SEC. 7. When it appears that the sum demanded for the penalty, forfeitures, or damages, exceeds twenty dollars, or that the property in the beasts is in question, and their value exceeds twenty dollars, or that the title to real estate is in question, at the request of either party, the case shall be transferred to the supreme judicial or superior court, to be there disposed of like actions brought before a trial justice, in which the title to real estate is brought in question; but the party requesting such transfer shall recognize in such reasonable sum, as the justice orders, to enter the action at the next term of said court, prosecute it with effect, and pay all intervening damages and costs.

REPLEVIN OF GOODS.

SEC. 8. When goods, unlawfully taken or detained from the owner or person entitled to the possession thereof, or attached on mesne process, or taken on execution, are claimed by any person other than the defendant in the suit, in which they are so attached or taken, such owner or person may cause them to be replevied. (a)

SEC. 9. If the value of the goods exceeds twenty dollars, the action shall be brought in the supreme judicial or superior court for the county where they are detained; if it does not exceed twenty dollars, before any trial justice of said county.

SEC. 10. Before serving the writ, the officer shall take from the plaintiff, or some one in his behalf, a bond to the defendant, with sufficient sureties, in double the value of the goods to be replevied, conditioned as in the prescribed form of the writ, to be returned with the writ to the court from which the writ issued, for the use of the defendant, and new sureties may be required thereon as provided in section three. (b)

SEC. 11. If it appears that the defendant is entitled to a return of the goods, he shall have judgment and a writ of return accordingly, with damages for the taking and costs. If the plaintiff claims the property replevied as security for a debt, his claim shall be discharged by payment or tender thereof, with interest and costs; and judgment shall be for a return without costs, unless his title has become absolute by a legal foreclosure. (c)

SEC. 12. If the goods, when replevied, had been taken in execution, or were under attachment, and judgment is afterwards rendered for the attaching creditor, and if, in either case, the service of the execution is delayed by the replevin, the damages on a judgment for a return shall

(a) 3 Me., 186; 4 Me., 315; 12 Me., 261; 15 Me., 246, 375; 19 Me., 258, 285; 20 Me., 289; 32 Me., 323; 40 Me., 580; 56 Me., 293, 558; 59 Me., 114; 63 Me., 465; 64 Me., 315; 65 Me., 564; 67 Me., 209.

(b) 11 Me., 132; 16 Me., 35; 20 Me., 97; 27 Me., 447; 28 Me., 251; 34 Me., 88; 37 Me., 26; 39 Me., 517; 54 Me., 119; 63 Me., 464; 72 Me., 375; 73 Me., 124.

(c) 15 Me., 246, 375; 31 Me., 298; 47 Me., 522; 53 Me., 316; 55 Me., 364; 56 Me., 138; 58 Me., 478; 62 Me., 361.

CHAP. 96.

R.S., c. 96, § 5.

Appeal.

R.S., c. 96, § 6.

22 Me., 558.

In what cases a cause may be transferred from a trial justice to the supreme or superior court.

R.S., c. 96, § 7.

See c. 83, § 4.

Goods, unlawfully detained, may be replevied. R.S., c. 96, § 8.

In what courts, replevin may be brought. R.S., c. 96, § 9. 12 Me., 262. 40 Me., 581.

Bond to be given before service. R.S., c. 96, § 10. See 1821, c. 63, § 9.

—new sureties may be required.

If defendant prevails, he shall have a writ of return, with damages and cost. R.S., c. 96, § 11. —judgment, when property is held as security.

Damages, on judgment for return of property attached or taken on execution. R.S., c. 96, § 12.

CHAP. 96. not be less than at the rate of twelve per cent. a year on the value of the goods while the service of the execution is so delayed.

58 Me., 478.
69 Me., 446.
Disposal of
money
recovered by
officer, for
goods attach-
ed or taken
on execution.
R.S., c. 96, § 13.

SEC. 13. All sums recovered by an officer in an action of replevin on account of goods attached or taken in execution by him, or recovered in a suit upon the replevin bond, shall be applied :

I.—To pay the lawful fees and charges of the officer, and the reasonable expenses of the replevin suit, and of the action on the bond, so far as they are not re-imbursed by the costs recovered.

II.—To pay the creditor, at whose suit the goods were attached or taken on execution, the sum, if any, recovered by him in that suit, or what remains unpaid, with interest at the rate of twelve per cent. a year for the time that the money was withheld from the creditor, or the service of his execution was delayed by reason of the replevin.

III.—If the attaching creditor in such case does not recover judgment in his suit, or if any balance remains of the money so recovered by the officer, after paying the creditor his due, such balance or the whole amount, as the case may be, shall be applied as the surplus of the proceeds of sale should have been applied if such goods had been sold on execution.

Appropriation of the money received by the creditor.
R.S., c. 96, § 14.

SEC. 14. All sums received by such creditor from the sale of goods attached or taken in execution, and afterwards returned; all sums received for the value of any of such goods as are not returned; and all sums recovered from the officer for insufficiency of the bond, shall be applied in discharge of the creditor's judgment; but all sums received as interest or damages for delay of his execution, shall be retained to his own use, and not go in discharge of the judgment.

Judgment, if plaintiff recovers.
R.S., c. 96, § 15.

SEC. 15. If it appears that the goods were taken, attached, or detained unlawfully, the plaintiff shall have judgment for his damages caused thereby, and for his costs. (a)

Continuance of attachment, if goods are replevied.
R.S., c. 96, § 16.

SEC. 16. If the goods replevied had been attached, they shall, in case of judgment for a return, be held by the attachment until thirty days after judgment in the suit in which they were attached; and if such final judgment is rendered before the return of the goods, or if the goods when replevied had been seized on execution, they shall be held by the same attachment or seizure for thirty days after the return, liable to be taken and disposed of, as if they had not been replevied.

When writ of reprisal may issue.
R.S., c. 96, § 17.

SEC. 17. When the officer, in the service of the writ of return and restitution, is not able to find in his precinct the beast or other property directed to be returned in his precept, he shall certify that fact in his return; and the court whence it issued, upon notice, may grant a writ of reprisal, in the form prescribed by law, against the plaintiff in replevin, to take his goods or beasts, not exempt from attachment, of the full value, to be delivered to the defendant, to be held and disposed of by him according to law, until the plaintiff restores the beast or other property replevied by him.

See 1821, c. 63, § 9.
[withernam.]

Defendant's

SEC. 18. The foregoing provisions shall not preclude the defendant

(a) 6 Me., 262; 12 Me., 54; 15 Me., 21, 246; 20 Me., 88; 21 Me., 509; 40 Me., 286; 56 Me., 173.

from resorting to his remedy on the replevin bond, or to his remedy against the officer for insufficiency of the bond, to recover the value of the goods together with the damage or loss occasioned by the replevin thereof, notwithstanding he has endeavored to recover the same by the writs of return and of reprisal as aforesaid. (a)

SEC. 19. No action shall be maintained against any surety in a replevin bond, unless the writ is served on him within one year after final judgment in replevin; or, if the action is not entered by the plaintiff, and the defendant does not obtain judgment upon a complaint, such writ against the surety may be served on him within one year after the end of the term at which the action of replevin ought to have been entered, and not afterwards.

CHAP. 96.
remedy on
the replevin
bond.
R.S., c. 96, § 18.

Limitation
of surety's
liability on
a replevin
bond.
R.S., c. 96, § 19.
62 Me., 534.

CHAPTER 97.

BASTARD CHILDREN AND THEIR MAINTENANCE.

- SEC. 1. Accusation by a woman pregnant with a bastard child, and her examination.
2. Any justice of the peace may issue a warrant.
 3. Person arrested must give bond. On refusal, he shall be committed.
 4. Cause shall be continued, if complainant has not been delivered, or is unable to attend court. Surrender of principal by his sureties, and proceedings.
 5. Declaration must be filed before trial; form thereof.
 6. On what conditions, complainant may maintain her prosecution.
 7. Proceedings, if respondent is adjudged guilty.
 8. Complainant cannot settle with the father, if overseers of the poor object in writing.
 9. Town prosecuting, is liable for costs, if respondent prevails.
 10. The father may be discharged from imprisonment, on taking the poor debtor's oath; his liability after such discharge, to the mother and town.
 11. Complainant dying before trial, her representative may prosecute suit.

SEC. 1. When a woman pregnant with a child, which, if born alive, may be a bastard, or who has been delivered of a bastard child, accuses any man of being the father thereof, before any justice of the peace, and requests a prosecution against him, such justice shall take her accusation and examination on oath, respecting the accused, and the time and place when and where the child was begotten, as correctly as they can be described, and such other circumstances as he deems useful in the discovery of the truth. (b)

SEC. 2. He may issue his warrant for the apprehension of the accused, directed to the sheriff of any county in which the accused is supposed to reside, or to either of his deputies, accompanied by such accusation and examination.

Accusations
by a woman
pregnant
with a
bastard
child, and her
examination.
R.S., c. 97, § 1.

Justice may
issue a
warrant.
1873, c. 106.

(a) 11 Me., 69; 18 Me., 261; 21 Me., 509; 33 Me., 387; 46 Me., 410; 53 Me., 425; 54 Me., 121; 55 Me., 364; 56 Me., 173; 69 Me., 446; 72 Me., 477; 73 Me., 128, 386.

(b) 8 Me., 164; 16 Me., 40; 36 Me., 488; 39 Me., 471; 64 Me., 373; 66 Me., 271
70 Me., 418.