

MAINE STATE LEGISLATURE

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FIFTH REVISION.

THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED SEPTEMBER 1, 1903, AND TAKING EFFECT JANUARY 1, 1904.

BY THE AUTHORITY OF THE LEGISLATURE.



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CHAPTER 91.

PETITIONS AND ACTIONS OF REVIEW.

PETITIONS FOR REVIEW.

SEC. 1. The supreme judicial court held by one justice, may grant one review in civil actions, including petitions for partition, and for certiorari, and proceedings for the location of lands reserved for public uses, when judgment has been rendered in any judicial tribunal, if petition therefor is presented within three years after the rendition of judgment, and in the special cases following: (a)

Review, within three years after judgment, and in special cases. R. S., c. 89, § 1.

I. When a petition for a review of an action defaulted without appearance is presented within three years after an officer having the execution issued on the judgment therein demands its payment of the defendant or his legal representative. (b)

Actions defaulted without appearance.

II. When the petitioner shows that a witness testified falsely to material facts against him in the trial of the action, whereby he was surprised, and was then unable to prove the falsity, but has since discovered evidence, which with that before known, is, in the opinion of the court, sufficient proof that the testimony was false; or if the witness has been convicted of perjury therefor.

Surprise by false testimony. 1 Me., 824. 3 Me., 93. 56 Me., 550. 78 Me., 214.

III. On the petition of a party in interest who was not a party to the record, setting forth the fact of such interest, and upon filing a bond with sufficient surety or sureties, approved by the presiding justice, to secure the party of record against any judgment recovered by the defendant in review.

By party in interest and not of record, on filing bond. 63 Me., 464. 81 Me., 203.

IV. When a judgment has been rendered on the report of referees in an action referred by rule of court, if other matters in dispute between the parties were included in the rule of reference. The depositions used before the referees may be used on the hearing of such petition, and if review is granted, they may be used at the trial; and all matters embraced in the rule of reference, although not wholly contained in the writ, shall be included and tried in review.

When action and all other matters are referred, and judgment on report. 60 Me., 53.

V. When a material amendment of the declaration is made after entry of the action, without actual notice thereof to the defendant, and judgment is rendered on default, a review may be granted before execution of final process in the action, or within three years thereafter.

Declaration amended without notice. 74 Me., 526.

VI. In cases mentioned in section fifty-two of chapter seventy-eight.

Cases in c. 78, § 52.

VII. A review may be granted in any case where it appears that through fraud, accident, mistake or misfortune, justice has not been done, and that a further hearing would be just and equitable, if a petition therefor is presented to the court within six years after judgment. (c)

Fraud, accident or mistake.

VIII. Any defendant in the original judgment may petition in the name of all, by furnishing to each of his co-defendants requiring it, such security against all liability therefrom as the court deems reasonable;

By one defendant in the name of all, on giving se-

(a) 1 Me., 324; 3 Me., 93; 4 Me., 61, 537; 6 Me., 412, 479; 8 Me., 212; 19 Me., 108, 260; 24 Me., 170; 27 Me., 537; 33 Me., 233, 586; 39 Me., 170; 67 Me., 408; 72 Me., 366.

(b) 33 Me., 586; 42 Me., 571; 73 Me., 30; 84 Me., 303.

(c) 42 Me., 571; 60 Me., 52, 438; 62 Me., 191; 63 Me., 120; 67 Me., 408; 69 Me., 150; 93 Me., 146.

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curity to the others.
44 Me., 84.

When attorney may sign petition.
R. S., c. 89, § 2.

—attachment.

—notice,
See c. 84, § 1.

Evidence, discovered pending petition, how to be used.
R. S., c. 89, § 3.

Evidence and names of witnesses must be stated on oath.
R. S., c. 89, § 4.

Stay of execution or supersedeas on filing bond.
R. S., c. 89, § 5.
47 Me., 439.
64 Me., 237.

When and how a second review may be granted.
R. S., c. 89, § 6.
74 Me., 209.

Issue and entry of writ.
R. S., c. 89, § 7.

—copies shall be produced.

Recitals of writ.
R. S., c. 89, § 8.
—service.

and the court, on motion of any original co-defendant shall require such security in any stage of the proceedings.

SEC. 2. A petition for review may be signed by the petitioner's attorney when the facts therein stated are known to him, and the petitioner is out of the state at the time of filing it; and the petition may be inserted in a writ of attachment and property may be attached thereon, the same as on other writs; notice thereon may be ordered by any justice of the supreme judicial court in term time or vacation, returnable in the county where the judgment was rendered, and it must be given accordingly. (a)

SEC. 3. When a petitioner discovers new and important testimony during the pendency of his petition, he may avail himself of it at the hearing by serving notice thereof on the adverse party fourteen days at least before court, stating the names of the witnesses, and in substance what he expects to prove by them. (b)

SEC. 4. When the discovery of new evidence is alleged in the petition, the names of the witnesses to prove it, and what each is expected to testify, must be stated under oath. Newly discovered cumulative evidence is admissible, and shall have the same effect as other newly discovered evidence. (c)

SEC. 5. On presentation of a petition for review, any justice of said court may in term time, or in vacation, stay execution on the judgment complained of, or grant a supersedeas, upon a bond filed with sureties approved by him, or by such person as he appoints, in double the amount of the damages and costs, conditioned to pay said amount if the petition is denied, or the amount of the final judgment on review, if it is granted, with interest thereon at the rate of twelve per cent from the date of the bond to the time of final judgment.

SECOND REVIEW.

SEC. 6. A second review may be granted on a petition filed within three years after judgment on the first, when the court thinks that justice manifestly requires it, and on such terms as it imposes; but no second review shall be granted except by the full court, in a case in which more than one verdict has been rendered against the petitioner.

ACTIONS OF REVIEW.

SEC. 7. When a review is a matter of right as provided by section four of chapter eighty-four, or when it is granted on petition, a writ of review shall be issued, and the trial shall take place in the supreme judicial court in the county in which the judgment was rendered. It shall be entered at the next term after the review is granted, unless leave is granted to enter it at the second term; and the plaintiff in review shall produce and file an attested copy of the writ, judgment, proceedings and depositions, or their originals, in the former suit. (d)

SEC. 8. In the writ of review, it is sufficient to describe the former action and judgment so as to identify it. The writ shall contain a summons to appear and answer to the plaintiff in review, and it may be served

(a) 59 Me., 156; 64 Me., 204.

(b) 6 Me., 412; 36 Me., 11.

(c) 44 Me., 65, 83; 50 Me., 119; 53 Me., 356; 56 Me., 550; 74 Me., 210; 96 Me., 509.

(d) 1 Me., 405; 61 Me., 336; 68 Me., 480; 72 Me., 338.

as other writs, and when the party is not an inhabitant of or found within the state, it may be served on his attorney in the original suit.

SEC. 9. When the original plaintiff is plaintiff in review, the property of the defendant may be attached, as it might have been in the original suit and the form of the writ shall be varied accordingly; but no attachment made, or bail taken, in the original action, shall be held to satisfy the judgment on review.

When original plaintiff is plaintiff in review, property may be attached.
R. S., c. 89, § 9.

SEC. 10. The proper pleadings shall be made on review, when no issue had been joined before judgment in the original action; when issue has been so joined, the cause shall be tried thereon; but amendments, brief statements and other issues, may be made by leave of court, and the cause tried and disposed of as if it were an original suit.

Pleadings.
R. S., c. 89, § 10.

SEC. 11. Judgment in the suit reviewed, shall be given without regard to the former judgment, except as follows. When the original plaintiff recovers on review as debt or damage, a sum exceeding that recovered by the first judgment, he shall have judgment for the debt or damage recovered on review, or for so much thereof as remains unsatisfied, and for costs on review. (a)

Judgment.
R. S., c. 89, § 11.

SEC. 12. When the sum first recovered is reduced, the original defendant shall have judgment for the difference, with costs on review; and if the former judgment has not been satisfied, one judgment may be set off against the other, and execution be issued for the balance. When the original judgment is wholly reversed, judgment shall be entered in review for the amount of the former judgment and costs, with interest thereon, and for such further sum as the prevailing party would have been entitled to recover as costs in the original action, if, in the opinion of the court, justice requires it. In such case, if the original judgment remains unpaid, it shall be canceled by a set-off entered of record in the judgment on review, and execution shall issue for the balance only; otherwise for the amount of the latter judgment.

When sum first recovered is reduced, judgment, now rendered.
R. S., c. 89, § 12.

—and when wholly reversed.

—costs.
1 Me., 255.
2 Me., 397.
38 Me., 113.
47 Me., 440, 529.
48 Me., 288.
64 Me., 238.
73 Me., 247.

SEC. 13. When actions of replevin, and actions in which a claim in set-off was filed, are reviewed, the defendant is in the position of a plaintiff, so far as it respects the damages awarded to him.

In replevin and set-off, plaintiff is as defendant.
R. S., c. 89, § 13.

SEC. 14. If, on a petition for review, commenced within one year after an execution issued on the original judgment is levied on real estate, such judgment is finally reversed, the levy is void, and a copy of the final judgment in review duly certified by the clerk of courts in the county where such judgment is rendered, shall be recorded within thirty days from the rendition thereof, in the registry of deeds where such levy is recorded.

When levy is void.
R. S., c. 89, § 14.
47 Me., 529.

SEC. 15. In all actions of review the party prevailing recovers costs, and shall also recover the costs to which he would have been entitled if he had prevailed in the original action, unless the court otherwise orders; but the court granting a review, may impose terms respecting costs. (b)

Party prevailing, has costs; court may impose terms.
R. S., c. 89, § 15.

Note. Reviews in equity cases, c. 79, § 38.
Review of judgments of superior courts, c. 79, § 88.

(a) 38 Me., 113; 47 Me., 438; 64 Me., 238; 73 Me., 247.

(b) 1 Me., 255; 2 Me., 397; 40 Me., 332; 64 Me., 239; 73 Me., 247.